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Freedom, Power and Relational Equality: Republican Justice in Diverse Societies

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A thesis submitted for the Degree of PhD to National University of Ireland, Galway

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# Contents

Declaration of Originality: iv  
Abstract: v  
Acknowledgements: vi  

**Introduction** 1  
0.1 The Big Issue 1  
0.2 Rousseau’s Radical Republicanism 5  
0.3 The Partial Republican Revival 10  
0.4 Taking Rousseau’s Republicanism off the Couch: Freedom’s 2nd Face 14  
0.5 An Outline of the Thesis 19  

1. **Chapter One: Unfreedom, Non-freedom and the Eyeball Test** 22  
   1.1 Introduction 22  
   1.2 Being Free, Unfree and Dominated 24  
      1.2.1 Slavery: On what it means to be unfree 27  
      1.2.2 Republican Unfreedom, Morrissian Power and Anti-power 31  
   1.3 Disabling Constraints and being non-free 34  
      1.3.1 Disabling constraints: On what it means to be able 35  
      1.3.2 Disabling constraints and being unfree 37  
      1.3.3 Structural Domination and Structural Egalitarianism 39  
      1.3.4 Disabling Constraints and social-structural processes 42  
   1.4 Structural Constraint and the Eyeball Test 47  
   1.5 Conclusion 51  

2. **Chapter Two: Republicanism, Capabilities and Relational Equality** 52  
   2.1 Introduction 52
2.2 Equality of what?
   2.2.1 The why and what of equality 56
   2.2.2 Social Primary Goods 59
   2.2.3 Social Primary Goods: Three Objections 62
   2.2.4 Dworkinian Resources 68
   2.2.5 Dworkinian Resources and Luck Egalitarianism: Objections 70
   2.2.6 The Capabilities Approach 73
2.3 Capabilities and Republican Equality 79
   2.3.1 Capabilities and Republican Equality: A Radical Reinterpretation 84
   2.3.2 Symbolic Inequality and the Capability to Look Others in the Eye: Two cases 87
2.4 A Final Word on the Pattern of Republican Justice 89
   2.4.1 Equality, Priority, Sufficiency 89
2.5 Conclusion 92

3. Chapter Three: Liberalism, Multiculturalism and Republican Equality 94
   3.1 Introduction 94
   3.2 Political Liberalism: Toleration, neutrality and anti-perfectionism 97
      3.2.1 Liberalism: Political or Perfectionist? 102
      3.2.2 Political Liberalism: From ethical diversity to cultural diversity 103
   3.3 The moral foundations of cultural recognition 108
      3.3.1 Recognition and Autonomy: Kymlicka’s liberal multiculturalism 108
      3.3.2 Liberal Multiculturalism: Objections 111
      3.3.3 Recognition and Freedom: Kukathas’ libertarian multiculturalism 116
      3.3.4 Libertarian multiculturalism: Objections 118
   3.4 Republicanism, Recognition and Structural Equality 120
      3.4.1 A Prima Facie Case in Favour of State Recognition 121
      3.4.2. Distinguishing Claims 122
   3.5 Conclusion 126
4. Chapter Four: Culture, Deliberation and Republican Equality 128

4.1 Introduction 128
4.2 Multiculturalism and the Value of Culture 131
   4.2.1 The Intrinsic Value of Culture: Taylorian Recognition 132
   4.2.2 The Instrumental Value of Culture: Kymlickian Autonomy 134
   4.2.3 The Intrinsic Value of Cultural Diversity: Parekhian Recognition 137
   4.2.4 Culture, Capabilities and Republican Equality 141
4.3 On the Priority of Non-domination: Lovett’s Non-deliberative a priorism 144
   4.3.1 Veiled in Controversy: The Hijab Ban in French Public Schools 148
4.4 Deliberative Multiculturalism 154
   4.4.1 What is Deliberative Democracy? 154
   4.4.2 Deveauxian Deliberation 158
4.5 A Republic of Reasons: Symbolic Equality, Deliberation and Contestation 162
   4.5.1 The Paradox of Multicultural Vulnerability Reconsidered 162
4.6 Conclusion 169

5. Chapter Five: Reimagining the Nation-state: On the Process of Building a Republican Political Community 171

5.1 Introduction 171
5.2 Nations and Nationalism 173
5.3 Republican Nationalism 179
5.4 Is Patriotism Enough? 184
   5.4.1 Habermas and Constitutional Patriotism 185
   5.4.2 Re-Imagining Republican Political Community 188
   5.4.3 Creating a Shared Narrative: From Ethnie to Patrie 189
5.5 Conclusion 195

Conclusion 196

6.1 Introduction 196
6.2 Clearing up Conceptual Confusion 197
   6.2.1 Thompsonian Domination 197
6.2.1.1 Dimension One: Extractive Domination 198
6.2.1.2 Structural Domination 201
6.2.1.3 Dimension Two: Constitutive Domination 202

6.3 Contributions 205
6.4 Limitations 208
6.5 Future Work 210
6.6 Conclusion 211

Bibliography 214
Declaration of Originality:

I, Daniel Savery, declare that this thesis is entirely my own work. I have not obtained a degree in this University, or elsewhere, on the basis of this work.

Daniel Savery

27/09/16
Abstract:

This thesis is my response to a view of republicanism that has become orthodox among contemporary political theorists. On that view, when we are talking about what it means to be treated as free and equal in a republic we are talking about having a certain security or resilience against the arbitrary interference of other agents or agencies in our lives. Social equality, on this orthodox republican view, is secured if citizens enjoy ‘equal freedom as non-domination’ in their lives. While this orthodox view has a lot to recommend it, I do not think that it goes far enough in securing our freedom and equality in number of important additional domains. As I argue in this thesis, if republicanism is going to provide an attractive public philosophy for our contemporary age, as neo-republicans aspire it to, then we need to go beyond the narrow concern with relations of unfreedom and explore the various forms of non-freedom or disabling constraints to action that render citizens socially unequal vis-à-vis each other. Accordingly, in what follows, I argue for an account of republican relational equality, which I claim is more efficacious in removing cultural and symbolic inequalities in society than the standard republican view. Furthermore, I apply this conception of relational equality to one of the more challenging issues of our times, namely, the reasonable accommodation of minority cultures in a republic. As I will show, the account of republican equality developed in this thesis provides a normatively attractive way for adjudicating cases where the demands for individual freedom as non-domination conflicts with a minority group’s demand for recognition.
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Introduction

0.1. The Big Issue

According to no less an authority than Machiavelli, ‘a Princedom is impossible where Equality prevails, and a Republic where it does not’ (2007, p.130). If Machiavelli is indeed right, then what of the state of many of today’s putatively named ‘republics’ throughout the world? In a recent report by the independent Think-Tank for Action on Social Change (TASC) entitled Cherishing all Equally: Economic Inequality in Ireland, the Irish republic is now cited as the most economically unequal society in the EU, with levels of inequality approaching that of the largest republic in the world, the United States of America (OConnor and Staunton, 2015, p.32). And, according to another recent report, this time published by the Council of Europe, not only is the French republic considerably unequal along wealth and income lines, but it is also struggling with an overall ‘loss of tolerance’ in French society, with ‘homophobic, xenophobic and anti-Muslim’ abuse on the rise (Muižnieks, 2015, p.7).\footnote{For more on the unequal distribution of wealth and income in Europe and the US, see Piketty (2014).}

So much for the Machiavellian connection between republicanism and equality, we might say.

While there has been a considerable retreat from a concern with equality at the level of everyday republican politics, we have seen the obverse trend in the realm of ideas. It is now something of a commonplace to speak of a recent republican revival in contemporary political
thought. Much of the discussion here has centred on re-establishing republicanism as an attractive public philosophy for our contemporary age by reviving the important distinction between classical liberal and classical republican freedom (Pettit, 2016). That is to say, for so-called neo-republicans, what makes republicanism distinct from the going alternatives, and an idea worth reviving for our contemporary situation, is a particular account of the free-person, not one grounded in the classical liberal idea of freedom as the absence of interference, but one grounded in the classical republican idea of freedom as the absence of domination. It is this latter, richer account of freedom, for neo-republicans, that promises to provide a much more radically egalitarian basis for the way in which we organise our social and political lives. The general view among neo-republicans is that the path to social equality in a republic lies in citizens enjoying ‘equal freedom as non-domination’ at two distinct levels: the interpersonal level (dominium) and in their relation to the state (imperium).

While this renewed focus on freedom and equality in republican theory is to be welcomed, I claim that the recent republican revival does not go far enough. When it comes to addressing some of the more structural and symbolic relations of inequality in society I do not think that freedom as non-domination, as it is presently conceived, is sensitive enough to these forms of injustice. This thesis is an attempt to fill in that lacuna. I claim that the next ethical step for republicans is to incorporate a concern with some of the more subtle or insidious forms of cultural and symbolic inequality into their accounts. Crucially, however, while a number of critics reject contemporary republicanism for its lack of conceptual resources to incorporate these demands, I claim that we can address these concerns within the existing parameters of the debate over the nature of social and political freedom in republican theory. ² A central argument of this thesis is, then, that while I believe we need to go beyond the narrow neo-

² For more on the insufficiency of non-domination in this respect, see especially Krause (2013), Thompson (2015) and Schuppert (2015). For a slightly different perspective on the insufficiency of non-domination, see also Markell (2008).
republican concern with equalising relations of non-domination, this does not imply that we ought to go beyond the idea of social and political freedom and neo-republican theory *tout court*. In this sense, it is possible to read this thesis as an argument internal to contemporary republican theory. That is to say, it is possible to read it as an argument directed to neo-republican theorists *about* the state of neo-republican theory. However, as I also aim to show, I claim that the argument put forward in this thesis has wider, external ramifications for social justice and political theory more generally, which go well beyond just a republican audience.

The starting point, or indeed the axiom, of the thesis is this: the path to social equality in a republic depends on equalising our relations with one another in three distinct but often interrelated areas, namely, the interpersonal, the structural and the symbolic. At the interpersonal level, equality is achieved by ensuring that citizens are not subject to the arbitrary interference of other agents in their lives. At the structural level, the path to equality lays in reorganising or indeed removing social structures which aid or facilitate in domination. Finally, at the symbolic level, social equality is achieved by ensuring that the symbolic space(s) in which citizens communicate with one another do not privilege a particular group’s norms, habits, communicative practices and so on. To put it in the contemporary neo-republican language, the guiding idea at all these levels ought to be that citizens are able to look one another in the eye without fear or deference.  

That is to say, citizens ought to be able to pass what Philip Pettit, republicanism’s leading contemporary political philosopher, has called the ‘eyeball test’ (2012, p.84-88). As I will show, my chief disagreement with neo-republicans concerns precisely what this ability to look others in the eye requires.

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3 ‘The goal of this political philosophy is to ensure that ‘everyone can look the others in the eye’, without fear or deference, and with a shared consciousness of equal status’ (Marti and Pettit, 2010, p.17).
Although a concern with *all* these dimensions of inequality is largely absent from the neo-republican canon, this does not mean that each level did not feature as a salient moral concern for earlier, classical republicans. While Rousseau has largely been written out of the neo-republican revival, his republican writings speak to a concern with each of the three dimensions I have mentioned: the interpersonal, the structural and the symbolic. As I will show in the rest of this introduction, in contrast to the view that Rousseau ought to be regarded as a ‘heretical’ figure who is ‘deeply at odds’ with many of the key republican tenets, I claim that such an analysis obscures more than it reveals. It is my claim that what makes Rousseau an important republican thinker has less to do with his narrow endorsement of the idea that freedom from arbitrary interference matters in leading a worthwhile life and more to do with his wider claim that the kinds of constraints we experience in our modern social lives can take on a number of different forms. In other words, and here Rousseau and I are in deep agreement, it is not enough to simply build a republican theory out of a concern with arbitrary interference or unfreedom alone. On the contrary, we also need a republicanism that is sensitive to the way in which cultural and symbolic resources are unevenly distributed in society, independent of their relation to unfreedom.

In the rest of this introduction I lay out, in general terms, Rousseau’s central insight, namely, that securing equal freedom as non-domination in our interpersonal relations and in our relation with the state, while necessary conditions for freedom and equality in the social world, are not sufficient conditions when it comes to enjoying meaningful freedom and equality in our social and political lives. As I will show, while Rousseau conceptualises symbolic inequality in terms of a by-product of *amour propre*, I claim that we can hold on to the idea of symbolic inequality without recourse to Rousseau’s dubious moral psychology. In other words, if I am in agreement with Rousseau that symbolic inequality is a salient moral consideration for a republican theory of justice, I disagree with the manner in which he
conceptualises it. As I explain briefly in the rest of this introduction and more comprehensively in the next chapter, cultural or symbolic inequality can be conceptualised in the language of freedom and power, which ought to situate it firmly in the neo-republican discourse of what it means to enjoy freedom and equality in the modern world.

0.2. Rousseau’s Radical Republicanism

‘Man is born free; and everywhere he is in chains’ (Rousseau, 1973, p.165). Thus begins Rousseau’s *Social Contract* and the attempt to formulate a set of just social and political arrangements for the modern world. For Rousseau, in leaving the state of nature, social man is vulnerable to two different types of constraints on action. First, and in perhaps the most obvious sense, inequalities in the distribution of material resources in society render social man vulnerable to the possibility of intentionally-imposed constraints in his life. These *dominating* social relationships may exist at the private level of individual agents (dominium) or the public level of the state (imperium). They concern the kinds of social relationships by virtue of which an individual or group in society can interfere with impunity in the affairs of another. These are the kinds of social relationships which, following the long republican tradition of political thought, we tend to describe as rendering a person *unfree* in a certain domain of choice. Second, and less obvious to classical and contemporary republicans, the discursive, symbolic, cultural practices bound up in the social order itself are a further possible restriction on action, according to Rousseau. Here, Rousseau makes the important observation that competition for the scarce positional good of cultural or symbolic capital can be no less constraining when it comes to our capacity or ability to make a choice. The

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4 In speaking of the ‘long republican tradition’, I am, of course, referring to that version of republicanism which has been the focus of recent historical scholarship by Pocock (1975), Fink (1962), Bailyn (1967), Wood (1969), Skinner (1978) and others.
artificial, social order contains a whole series of encoded communicative social practices which culturally reproduces differentially situated classes or groups in society. Accordingly, our capacity to, say, communicate with one another effectively in a domain like the public sphere, depends in large part on whether we have been exposed or socialised into the dominant cultural competencies of this domain. While the former dominating types of constraints derive from our subjection to the arbitrary will of another, these latter symbolic or cultural types of constraints, according to Rousseau, derive from our psychosocial dependency upon the esteem of others.

In the *Origins of Inequality Among Men*, Rousseau writes that ‘in the relations between man and man the worst that can happen to one is to find himself at another’s discretion’ (1997, p.176). Here, following in the political and philosophical footsteps of Machiavelli, Trenched and Gordon, Algernon Sidney and others before him, Rousseau is committed to the distinctly republican idea that ‘liberty solely consists in an independency upon the will of another’ (1990, p.17). The common intuition for all these writers is that just like the slave who ‘enjoys all at the will of his master’ but is still a slave, the freeperson must be someone whose life is under their own direction or control (Sidney, 1990, p.17). However, unlike his classical republican forerunners, being truly independent for Rousseau requires not merely being independent of the good will of others, but being independent of the desire for the positive esteem or good opinion of others. It is this latter form of dependency, for Rousseau, which represents the most insidious form of constraint on action in the modern world. By constantly seeking the positive esteem of others, social man ‘is capable of living only in the opinion of others and, so to speak, derives the sentiment of his own existence solely from their judgement’ (Rousseau, 1997, p.187).

On Rousseau’s account, not only are material resources unequally distributed in the social world, but cultural or symbolic resources are also unequally distributed. Consequently,
competition for the ownership of scarce material resources also applies to the ownership of cultural or symbolic resources. The key social-psychological mechanism driving this desire for the ownership of material and cultural resources derives from a selfish desire for the positive regard of others, or, as Rousseau conceptualises it, *amour propre*. Indeed, unlike the generally benign concept of *amour de soi*, which describes the natural, asocial desire for self-preservation, it is the concept of *amour propre*, according to Rousseau, which captures this artificial, social desire for the good opinion of others. As Rousseau writes: ‘*[a]mour propre and *amour de soi-même*, two very different passions in their nature and their effects, should not be confused. Self-love [*amour de soi-même*] is a natural sentiment which inclines every animal to attend to its self-preservation... *Amour propre* is only a relative sentiment, factitious, and born in society’ (1997, p.218). Crucially however, while *amour de soi* represents a neutral or benign concern with oneself, *amour propre* represents a relative and possibly malign or corruptible concern with oneself in the eyes of others; or as Rousseau describes it, a sentiment ‘which inclines every individual to set greater store by himself than by anyone else, inspires men with all the evils they do one another, and is the genuine source of honor’ (1997, p.218).

The transition from natural man to social man provides an important starting point in explaining why *amour propre* only emerges in the social world. In the state of nature, according to Rousseau, natural man is content with his own preservation and has little to no interaction with others. However, once natural man leaves the relatively peaceable condition of the state of nature and lives with others, he begins to develop an awareness of himself through the eyes of others. *Amour propre* is thus a uniquely psychosocial state: a psychological state bound up with one’s social environment. And, just as each society or

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6 In *Rousseau Judge of Jean-Jacques* (1990), Rousseau refers to ‘his great principle that nature made man happy and good, but that society depraves him and makes him miserable’ (p.213).
social environment is likely to be shaped by a range of endogenous and exogenous factors, the various forms that *amour propre* is likely to take will also be shaped by these factors. In a hierarchical society, like his own, this desire for the good opinion of others is ultimately bound up with notions of hierarchy and power. Not only is the ownership of material resources instrumental toward this end, but where one stands in the symbolic or cultural order represents an important expression of an individual’s status in society. Competition for the dominant cultural or symbolic resources in society is, therefore, simply a function of a deeper psychological yearning for social esteem. Accordingly, a major thread running through Rousseau’s major political and philosophical writings is not only how do we go about creating a society in which individuals can live free of the arbitrary whim of others, but how do we go about creating a society in which this competition for cultural resources might be re-configured such that it works for the benefit of all, not merely the few.

This multi-levelled approach to social justice – focused on the interpersonal, the structural and the symbolic – takes a particular form in Rousseau’s two major political treatises *The Social Contract* and *The Government of Poland*. In the more commonly cited *Social Contract*, Rousseau sees the general will as providing the central mechanism by virtue of which an individual can preserve some semblance of freedom in the social world. For Rousseau, only by each individual giving himself up to the impartial dictates of the general will, does each individual effectively give himself up to no one. The general will, on this account, represents the democratic will of the people and provides a non-sectional basis for the exercise of public power in society. Again, Rousseau here is undoubtedly concerned with freedom from dependency or domination in the classical republican sense. That is to say, the view that ‘[l]iberty consists less in doing one’s will than in not being subject to that of another’ (Rousseau, 2013, p.260). However, while Rousseau certainly sees the general will as an important mechanism by virtue of which an individual can remain free from domination in
that classical republican sense, he also sees it as providing an important non-sectional or neutral basis for communication or discourse in the public sphere (Dobel, 1986). The general will, on this account, provides citizens with a ‘common symbolic universe’ which each individual citizen embodies when communicating with one another in the public sphere. The virtuous citizen is not only an individual who can bracket their private will outside of the public sphere, thereby ensuring that public power is exercised non-arbitrarily; they are also a person who acts according to the implicit symbolic or communicative rules and practices of the general will. Crucially, for Rousseau, by anchoring the competitive desire for cultural or symbolic resources in society to the positional good of virtue, performing one’s civic duty can become the greatest avenue to social esteem.

In his less cited Government of Poland, Rousseau goes beyond his argument in The Social Contract to further detail just how citizens might be ‘nudged’ to ensure that competition for symbolic status can be put to a positive, political use. Here, the attempt to provide a shared symbolic universe is connected to Rousseau’s proto-nationalism. The sheer size, internal divisions and threat of foreign subjugation found in Poland demand a more extensive process of cultural engineering than we find in his earlier Social Contract. Taking his leave from the great legislators of antiquity, Moses, Lycurgus, and Numa, Rousseau points to the significance of ‘an array of prizes, ceremonies, public approbations, games and other devices and incentives…to ensure that public esteem – and hence, amour-propre – would attach to civic virtue’ (Daly, 2014b, p.617). These rituals and games ought to be rooted in a love of the fatherland, providing citizens with an incentive structure which channels the otherwise possibly malign effects of amour propre to a positional good which benefits all. A strong national civic education is also central to this task:

‘[I]t is education that you must count on to shape the souls of the citizens in a national pattern and so to direct their opinions, their likes, and dislikes, that they shall be patriotic by inclination, passionately, of necessity…Your true republican is a man who imbibed love of
fatherland, which is to say love of laws and of liberty, with his mother’s milk. That love makes up his entire existence: he has eyes only for the fatherland, lives only for his fatherland; the moment he is alone, he is a mere cipher; the moment he has no fatherland, he is no more; if not dead, he is worse-off than if he were dead’ (Rousseau, 1985 [1782], p.19).

Education, ceremonies, games and so on thus take on a distinctly political form in Rousseau’s *Government of Poland*, producing and reproducing the shared symbolic order and directing the desire for the good opinion of others to the benefit of all. Again, what drives or grounds all this is Rousseau’s view that when we are talking about freedom and equality in our social and political lives, we ought to be looking at our relations at three distinct levels, namely, the interpersonal, the structural and the symbolic. Unfortunately, rather than this signalling a move to a more tolerant or culturally inclusive version of republicanism, Rousseau takes the opposite view. In contrast to a number of recent writers who have attempted to account for cultural or symbolic equality by developing a more multiculturalist or recognition-centred theory of justice, the price of liberty, on Rousseau’s radical republican account, is a politics of *monoculturalism*, not a politics of *multiculturalism*. Indeed, as is suggested by the above quotation, there is no conceptual space for independent opinion, beyond that of the nation, which, as argued by Gellner (1983), implies conformity, not diversity.

**0.3. The Partial Republican Revival**

Today, Rousseau’s position in the recent republican revival is less than prominent. Increasingly, he has come to be regarded as a ‘renegade or heretical’ figure in the tradition (Pettit, 2005b, p.36). This heresy, for republicanism’s leading contemporary political philosopher Philip Pettit, derives from Rousseau’s *corporatist* approach to popular sovereignty (2012, p.12; 2013, p.184-188). In other words, for Pettit, Rousseau abandons a key tenet of republican theory when he argues that sovereign power ought to reside solely or absolutely in the hands of the general will – that is, in the *corporate* will of the community directed towards the good of the community as a whole. In contrast to this view, Pettit
follows an argument, perhaps most famously put forward by Montesquieu in *The Spirit of the Laws* (1986 [1748]) and developed later by Madison in *The Federalist Papers, no.47*, which states that ‘[t]he accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny’ (Hamilton et al., 2003, p.234). In deviating from this distinctive account of sovereignty, Rousseau is deemed to have ‘betrayed the earlier tradition of republicanism’ and is ‘deeply at odds’ with the political theory of republicanism (Pettit, 2012, p.14 & 15). Accordingly, the centrality that Pettit’s writings now hold on the contemporary discussion on republican theory has meant that Rousseau has largely been consigned to the margins. When Rousseau is mentioned, if he is mentioned at all, it usually has more to do with what ‘disqualifies’ him from the republican tradition properly understood rather than what he might add (de Dijn, 2015). The symbolic dimension of Rousseau’s types of possible constraints in our social lives does not get a mention at all.

By contrast, the recent literature on republican theory has generally focused on three distinct but related areas (Lovett and Pettit, 2009). First, there has been considerable focus on the particular republican account of freedom, namely, freedom as the absence of domination. In contrast to the more well-known negative account of freedom as non-interference, which states that you are free in a choice if and only if you are free from interference in that choice, republicans believe that you are only free in a choice if and only if you are free from domination in that choice, where domination is understood as a condition in which an individual or group is subject to the potential arbitrary or uncontrolled interference of others.

The intuitive appeal of freedom as non-domination over freedom as non-interference is most

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7 These three ideas ‘distinguish republicanism from …other political traditions’ (Honohan, 2012, p. 56). See also (Hickey, 2012, p. 90-91).
9 For more on the idea of freedom as non-interference, see Berlin (2002). For more on domination as arbitrary or uncontrolled interference, see Pettit (1997, 2012). For a slight variation on Pettit’s conception of domination, see the ‘arbitrary power conception’ of domination in Lovett (2010, 2012).
obvious when we consider what it is that makes a slave unfree. Suppose a slave has a kindly master who affords the slave the freedom to choose or do what he likes. In other words, the master does not actually interfere with the slave's choices. For republicans, simply by virtue of the fact that the slave occupies the position of a slave in the master/slave relation – in other words, simply be virtue of the master retaining the potential capacity to interfere in the slave's choices – the slave is said to be unfree. Put differently, it is the capacity or arbitrary power that the master has to interfere in the slave's choices – a power that he possesses even when he does not actually use it – that constitutes a dominating social relation for republicans.

Second, just like we can have domination without actual interference, republicans hold that we can also have interference without domination. In other words, while on the negative account of freedom as non-interference all forms of interference necessarily imply a reduction in our freedom, on the republican account of freedom as non-domination this constant conjunction does not follow. For republicans, in contrast to Bentham's claim that all laws are necessarily abrogative of freedom, it is possible to have a form of legitimate or non-arbitrary interference, say, a suitably controlled system of public law, which actually protects or extends citizens freedom. 10 This idea is perhaps best expressed by Blackstone when he writes: ‘laws, when prudently framed, are by no means subversive but rather introductive of liberty’ (cited in Lovett, 2010, p. 156). Accordingly, there has been much debate among republicans on how we ought to go about configuring the relation between citizens and the state such that citizens of the state might control the exercise of public power for the common good, rather than the state operating as an alien will or dominating power in their lives. 11

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10 See Pettit (2009).
Finally, if a suitable system of public law provides the institutional or legal framework through which citizens enjoy their freedom as non-domination, then republicans also claim that citizens will experience a higher degree of this freedom if there has been widespread cultivation of civic-minded dispositions or civility in society (Pettit, 1997, p.246-251; Lovett, p.216-217). There are two principal reasons for this claim. First, the legal framework represents a blunt instrument for reducing domination in citizens’ lives. If citizens are not suitably civic-minded, then their respect for the law will be contingent on whether and to what extent the law benefits them. In this crude cost-benefit type of scenario, citizens will have a prima facie reason for non-compliance with the law if the law conflicts with their own self-interest. If there are no excessive costs, say public disapprobation and so on, in failing to comply with the law, then it becomes increasingly likely that citizens might wilfully act against the law when the opportunity arises. This is particularly problematic when this sort of self-interested rationale arises amongst the elected officials of a state. Accordingly, the extent of citizens’ non-domination is likely to be increased if citizens and their public representatives are sufficiently civic-minded in their actions. Second, if the public system of law ought to be constituted to protect the basic interest citizens have in being free from domination in their lives, then this requires a civic-minded citizenry to press claims against the state on behalf of its more vulnerable citizens. In other words, it will require citizens to shed light on important areas of potential or actual domination which the state’s legal rules might miss.

In all these discussions, Rousseau remains a somewhat marginal figure. While his republican credentials are not in doubt when it comes to the central republican claim that citizens ought to be free from the arbitrary interference in their lives, his radical break with republican theory is seen to derive from his endorsement of a majoritarian process of democratic

12 On the question of whether norms of civility ought to be grounded in the national culture of a particular state or its political culture, see Miller (2008), Viroli (1995) and Andronache (2006).
decision making. However, it is my claim that this critique of Rousseau’s republicanism obscures an important insight. While his account of popular sovereignty is problematic in its anti-pluralist implications, Rousseau’s foundational claim that freedom and equality in the social world exists at three levels (the interpersonal, the structural and the symbolic) is a normative hypothesis worth including in contemporary republican theory. It is my claim, and a central pillar on which this thesis is built on, that we ought to revive Rousseau’s key insight, that the next ethical step for republicans is to widen their account of constraints in our lives to include not only the constraints that make us unfree at a purely intersubjective and structural level but the kinds of constraints that make us unable at a more cultural or symbolic level.

0.4. Taking Rousseau’s Republicanism off the Couch: Freedom’s 2nd Face

Do we need to endorse Rousseau’s dubious moral psychology in order to reach the conclusion that symbolic equality matters? And, supposing that we can agree that symbolic equality matters, do we need to endorse Rousseau’s republican nationalism? In both cases, I think we do not. As I will show in the next chapter we can re-conceptualise symbolic inequality in terms of a lack of freedom or social power. As this is a key conceptual foundation on which this thesis rests, allow me to make a few brief comments about this now. On my view, evaluating a citizen’s freedom and equality in a republic requires that we evaluate that citizen’s unfreedom in a choice – their possible subjection to arbitrary interference in a choice – and their non-freedom in a choice (Savery, 2015). Non-freedom here is synonymous with lacking the power or ability to make a choice. So, as I will outline in later chapters, often I may not be rendered unfree in a choice – I may not be subject to arbitrary interference in a choice – but I may be non-free in that choice – I may not have the power to make a choice. Again, on the unfreedom dimension of freedom, I am unfree in a choice if another agent or agency has the power to interfere in that choice. In other words, this dimension of freedom is agent specific. By contrast, on the non-freedom dimension, I do not
have the freedom to make a choice if I am not able to make a choice – my freedom to do X, in this sense, is dependent on my powers.

This distinction between unfreedom and non-freedom is a central part of the neo-republican understanding of freedom (Pettit, 2012, p.26-74). Indeed, for advocates of the orthodox republican position, there are two important reasons why we need to make this distinction in our normative theorising. First, if we do not distinguish a constraint that makes a person unfree from a constraint that make a person unable, we may incorrectly describe a lack of power – that is, an unintentional constraint – as an intentional constraint. In other words, we might assign responsibility for my not being able to do X to another agent or agency where no responsibility resides. Suppose I sign up to the local athletics’ club and decide to try out for the pole vault. Suppose, however, I am not very good at pole vaulting. In fact, suppose I can barely jump ten inches from the floor. Not surprisingly I fail miserably at ‘try-outs’. In this case, we would want to say that I was not unfree to pole vault, rather, I was simply unable (non-free) to pole vault. Now consider a second case in which I am perfectly able or have the power to pole vault. However, suppose in this case and unbeknownst to me, I am tied back by some sort of intentionally placed invisible elastic band rendering me unfree to jump high. Whereas in the former case I lack the ability to pole vault, in this case I am unfree to pole vault. Put differently, in the former case I suffer a non-intentional disabling constraint to my actions, in the latter case I am subject to an intentional unfreedom constraint to my actions. For orthodox republicans, we ought to be concerned with removing the latter form of constraints when it comes to republican justice.

The second reason neo-republicans distinguish a constraint that makes us non-free from a constraint that makes a person unfree is that a lack of power can often make a person vulnerable to a dominating social relation. In this sense, non-freedom may become relevant from the standpoint of republican justice. Here it is important to recognise that although a
lack of power may involve the lack of a natural ability to do X, as in the pole vault case mentioned previously, it may also include the way in which certain background social conditions give some citizens more power to do things than others. This tends to happen when the background societal conditions or social structures work to the advantage of some individuals or groups over others. Consider the case of workers working in zero-hour contracts, for example. These types of contracts give employers the capacity to arbitrarily interfere in the lives of their employees. So, for example, one week an employee on zero-hour contracts may be offered a lot of hours; another week she may be offered merely a few; and in other weeks she may be offered none at all. In this case the structural features of society facilitate or aid in the domination of employees by employers. In other words, individuals may find themselves in relations of domination because they lack power.

If neo-republicans have hitherto been concerned with relations of non-freedom only and insofar as they facilitate or aid in relations of domination, then I claim they ought to be concerned with relations of non-freedom for purely independent reasons. Unequal power relations can limit a person’s ability to lead a worthwhile life for reasons that go beyond merely rendering that person unfree. This is particularly the case when it comes to the unequal distribution of cultural or symbolic resources in society. Indeed, this very idea - the idea that power might operate beyond the intersubjective level and extend into the socio-structural or symbolic level - has been a key area of investigation for a number of important social theorists since the 1960’s onwards, for example in the works of Norbert Elias and Pierre Bourdieu among others. In *The Established and the Outsiders* (1994), Elias makes the important observation that power relations are frequently structured around insider and outsider relations. In contrast to Marx’s claim that the path to equality lays in eradicating material inequality, Elias argues that individuals occupy networks of social relations or

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‘figurations’ which produce and reproduce established-outsider relations in which the ownership of cultural resources is also constitutive of an individual’s position in the social order. On Elias’s account, by virtue of being a member of the superiorly situated established group, the established tend to construct an image of themselves as superior to that of the outsider. In the particular case of insiders and outsiders investigated by Elias and Scotson (1994) – the two working class groups in ‘Winston Parva’, a pseudonym for a suburb somewhere in Leicester – what was truly remarkable was that the two groups were virtually identical in both class and ethnic terms. Their difference was a sustained self-fulfilling perception of inferiority and superiority. The insiders had, to use Bourdieu’s terminology, cultural capital that gave them distinction. Moreover, not only does this create an image of superiority in the eyes of members of the established group, but it also creates an image of inferiority in the minds of members of the outsider or stigmatised group:

‘As the established are usually more highly integrated and, in general, more powerful, they…can often impose on newcomers the belief that they are not only inferior in power but inferior by ‘nature’ to the established group. And this internalisation by the socially inferior group of the disparaging belief of the superior group as part of their own conscience and self-image powerfully reinforces the superiority and the rule of the established group’ (Elias and Scotson, 1994, p.144).

Similarly, and as I explain in chapter one, in Bourdieu’s account of fields, habitus and capital, we see an explanation of the very same social process in operation. For Bourdieu, individuals occupy positions in the social order which create established-outsider relations, or, what he terms, relations of symbolic domination. Those that have the dominant symbolic or cultural competencies in a particular social domain have a certain degree of additional social power vis-à-vis others. And, just as in Elias’s work, Bourdieu notes the way in which the uneven distribution of cultural resources has a twofold function: on the one hand, it enables those with these resources to do more in a certain social domain; and, on the other, it causes those without these resources to adapt to their subordinate position in this domain.
The distinction between unfreedom and non-freedom gives us the conceptual resources to be able to evaluate these kinds of cases. Indeed, as we shall see in chapter two, I claim that the distinction between unfreedom and non-freedom also provides the basis for a uniquely relationally egalitarian conception of social justice. In contrast to the minimal relational egalitarianism of the orthodox view – the view that says that we stand in relations of equality if we enjoy the basic functioning capabilities constitutive of a non-dominated citizen – focusing on citizens’ unfreedom and non-freedom, I claim, promises to provide a more comprehensive relationally egalitarian conception of social justice which coheres with our considered convictions on what it means to stand in relations of equality with others. This conception of social justice I call by the shorthand ‘republican equality’. While ‘republican equality’ might be more demanding than the orthodox neo-republican account of ‘equal freedom as non-domination’, I claim that it is also more in keeping with what it means to have the basic functioning capabilities to look other citizens in the eye.

If the distinction between unfreedom and non-freedom provides the basis for a more comprehensive relationally egalitarian conception of social justice, I claim it also provides a normatively attractive basis for dealing with some of the more intractable problems that contemporary political theorists have encountered in recent times. Here I am thinking of the debate over the reasonable accommodation of minority cultural practices in free and equal societies. In contrast to a priori liberal and republican theories of multiculturalism and more deliberative-centred theories of multiculturalism, the commitment that republican equality has to freedom as non-domination and symbolic equality implies an approach to the reasonable accommodation of minority groups in which minorities are given a fair hearing in putting forward their claims for recognition. Opening up of the democratic process is central to this aim. When it comes to debating issues concerning the reasonable accommodation of cultures, minorities ought not to be disadvantaged by having to assimilate to the dominant discursive
rules and practices of this domain. Republican equality provides a framework which promises to respect the fundamental interest that citizens have in having their freedom as non-domination protected, while respecting the right that minority groups have to voice their claims for state recognition.

0.5. An Outline of the Thesis

In chapter one I argue that even though political theorists are right to hold a special place in their normative theorising for the kinds of constraints that come about via the intentional actions of other agents, there are good reasons for incorporating a concern with the kinds of constraints that derive from the indirect, aggregate action of independently motivated social actors into their theories. These latter types of constraints I generally refer to as disabling constraints or being non-free. Indeed, from a republican standpoint, if we are committed to delivering on the commitment to ‘structural egalitarianism’, then these disabling constraints – constraints derived solely from being non-free in a choice – are morally significant. I claim that in failing to fully appreciate the importance of non-freedom, Pettit’s ‘eyeball test’ – the yardstick for republican justice – leaves in place certain disabling constraints to action which render some citizens structurally unequal vis-à-vis others.

In chapter two I argue for a relationally egalitarian conception of social justice, which I call by the shorthand ‘republican equality’. In contrast to more distributively-centred theories of social justice, I argue that the problems of social justice are much more socially and institutionally embedded than those working in the distributive paradigm allow for. However, while neo-republicans have more recently viewed security in the basic functioning capabilities as providing the basis for a conception of social justice which secures citizen relational equality with one another, I claim that the connection between the capabilities
approach and republican justice ought to run much deeper, particularly when it comes to addressing some of the insidious forms of non-freedom and symbolic inequality outlined in the previous chapter.

I apply this account of republican equality to the reasonable accommodation of cultural minorities in chapters three and four. In chapter three I examine some of the more influential attempts in liberal theory to tackle this very same issue, namely, Rawls’s political liberalism, Kymlicka’s liberal multiculturalism and Kukathas’ libertarian multiculturalism. As we shall see, each of these accounts is vulnerable to a number of important objections, particularly when it comes to adjudicating cases where the state’s recognition of a minority culture’s distinct social practice threatens to undermine the individual freedom of some of the more subordinately situated members of minority groups. In contrast to these liberal accounts of multiculturalism, I argue that minority cultures have a prima facie case in favour of state recognition in a republic where the state’s public institutions unfairly privileges one ethno-cultural group over another and de-ethnicization of the state’s public institutions is too costly or simply impracticable. However, here I also provide some important grounds by which we can distinguish a national minority group’s claim to state recognition from that of immigrant groups.

In chapter four I address the question of how we ought to adjudicate cases where the demands for individual freedom as non-domination and the demands for the state recognition of a minority group’s burdened social practice run into conflict. Here I provide something of a rapprochement between a priori non-domination approaches to this issue and more deliberative-centred approaches to the politics of recognition. I argue that while citizens have a fundamental interest in having their individual freedom as non-domination protected in a republic, the commitment that republican equality has to symbolic equality requires that minorities are given a fair hearing in putting forward their claims for recognition. This
implies an opening up of the democratic process to allow minorities to voice these claims. However, rather than this merely implying that minorities ought to articulate their claims in the dominant discursive norms of public reason, a fair hearing, on this account, implies the welcoming of plural forms of communication in the democratic process when debating these issues. I claim that this account avoids many of the objections levelled at other theories of multiculturalism, particularly when it comes to the tendency that these theories have to reify and essentialise cultures.

In chapter five, contra republican nationalists, I argue that while nations and nationality have provided an important basis for establishing a ‘people’ in republican societies, they are not the only motivationally efficacious basis for encouraging citizens to act according to reasons of social justice. Here I claim that the state has an obligation to promote new forms of solidarity based on citizens’ connections with one another qua co-citizens in a republic. This, I claim, involves a re-imagining of citizens’ relations with one another from one based on a shared national narrative or ethnie to one based on patriotic loyalty or patrie.

In the concluding chapter I provide some general comments about how the particular position developed in this thesis compares with some other recent attempts to address the perceived inadequacies of republican theory.
Chapter One: Unfreedom, Non-freedom and the eyeball test

1.1. Introduction

According to Philip Pettit’s republican conception of freedom as non-domination, A dominates B, and therefore renders B unfree, to the extent that A has the capacity or power to interfere with B on an uncontrolled or arbitrary basis (2012, p. 50). On this account, to be unfree does not imply that one is merely interfered with in choosing an option X or Y – the standard liberal, negative account of freedom – rather, it implies that one is not subject to domination in this option-set. The paradigm case of unfreedom, on this neo-republican account, is the relationship between the master and the slave: whereas the master is free to do X or Y, the slave can only choose an option at the grace or leave of his master, thus rendering him unfree. Even if the master allows the slave to choose an option, the simple fact of living under his permission, cum permissu in the old republican language, is enough to make him unfree.

For Pettit, ensuring that citizens’ are not unfree in their choices requires that they are sufficiently empowered and protected in their choices. This anti-power, as Pettit (1996) calls it, provides citizens with the necessary resilience or protection against possible sources of unfreedom: it repels dominating power in the same way that anti-matter repels matter (1996, p. 589). If republicans have mainly focused on the question of what it means to be unfree in a choice, and the correlative question of what empowering citizens to secure the conditions of avoiding unfreedom implies, they have said less about another important variety of

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14 A version of this chapter was recently published in Savery (2015).
15 I will use the terms “arbitrary” and “uncontrolled” interchangeably throughout the rest of this chapter.
constraints to action, namely, non-freedom or disabling constraints to action. To suffer a disabling constraint to action or to be non-free in a choice is not to be subject to some sort of intentionally imposed constraint. Rather, it is to be rendered unable to do something. It is a non-intentional, impersonal constraint on action. In other words, being non-free in a choice has less to do with the intentionally imposed constraints of other social actors – constraints which render us unfree – and more to do with how certain background features of society give some individuals or groups more power to achieve outcomes than others.

A citizen’s overall or combined level of freedom as non-domination is, then, a function of their unfreedom in a certain domain of choice – their resilience against arbitrary interference in that choice – and their non-freedom in that choice – their power to make a choice. While in his more recent writings Pettit seems more willing to discuss the freedom-limiting effects of lack of power (non-freedom), he does this in the context of its connection with intentionally imposed constraints on action (Pettit, 2012, p. 35-74). In other words, he stops short of providing a full account of the way in which power differentials in societies social structures might affect citizens’ freedom for purely independent reasons – reasons that have nothing to do with domination, as he understands it.¹⁶ This is surprising given the fact that he earlier described his account of republican social justice as committed to the idea of ‘structural egalitarianism’ (Pettit, 1997, p. 113-117). It is my claim that if we ought to be concerned with improving citizens overall level of freedom as non-domination, as Pettit suggests, then we need to analyse the way in which social-structural processes – the structured system of social positions by virtue of which different individuals have differing degrees of power to – both aid in the reproduction of relations of domination and, crucially, limit citizens’ power to achieve outcomes for purely independent reasons. Indeed, if structural egalitarianism is our aim, as Pettit claims, then this would seem like an obvious move.

¹⁶ For Pettit’s brief account of why not being non-free might be important, see (2014, p. 37-38; 2012, p. 36-43).
This chapter is broken up into three sections. In the first section I analyse the republican conception of freedom as non-domination. Here, pace republicans, I focus on what it means to be unfree as opposed to non-free in a certain domain of choice. In section two I focus on what it means to be non-free and how lacking power (non-freedom) can affect citizens overall level of freedom as non-domination. In this section I emphasise how social-structural processes can reduce citizens’ power to, rendering them, in certain cases, vulnerable to social relations of domination. However, I also claim that we have important independent reasons – reasons not associated with being unfree – for being concerned with power. In the final section I claim that Pettit’s ‘structural egalitarianism’ fails to fully appreciate the freedom-reducing effects of social-structural processes or lack of power. This, I claim, is evident in his attempt to ground the ‘eyeball test’ – the yardstick for republican social justice – in the local, cultural standards of a given society.

1.2. Being free, unfree and dominated

In this section I want to focus on two distinct but related issues when discussing freedom in social and political philosophy.17 The first is the common assumption that when we are talking about not being free or non-free and when we are talking about being unfree we are saying a similar if not the same thing. The second is the connection between being unfree and a particular type of freedom limiting constraint, namely, domination.

Consider the recent discussion between republicans and Matthew Kramer concerning how we ought to go about understanding the connection between freedom, unfreedom and domination (Laborde and Maynor, 2008). According to Kramer, freedom and unfreedom are not contraries. Rather, when we talk about freedom we say something like the following: [a] person is free to φ if and only if he is able to φ’ (Kramer, 2003, P. 3). In other words, person

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17 Following most writers, I will use the words “freedom” and “liberty” here interchangeably.

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P has the freedom to φ if he has the ability or power to φ. Lacking the power or ability to do something, then, implies not ‘being free’. By contrast, Kramer defines unfreedom or being unfree in the following manner:

A person is unfree to φ if and only if both of the following conditions obtain: (1) he would be able to φ in the absence of the second of these conditions; and (2) irrespective of whether he actually endeavours to φ, he is directly or indirectly prevented from φ-ing by some action(s) or some disposition(s)-to-perform-some-action(s) on the part of some other person(s) (2003, p. 3).

Importantly, Kramer does not understand unfreedom to include a mere inability or lack of power to do X or Y. This, after all, would simply make unfreedom coterminous with our inabilitys. For Kramer, if we have no way of distinguishing my unfreedom to do X from my inability to do X, then we have no way of distinguishing a constraint that makes me unfree from a constraint that makes me unable. So, for instance, without this distinction, my inability to run the one hundred metres in less than ten seconds would be indistinguishable from my being unfree to run the one hundred in less than ten seconds. Unfreedom, for Kramer, implies the presence of an obstacle or constraint to action that is causally brought about by, whether directly or indirectly, the action of another agent or agency. In other words, when we are talking about unfreedom, we are talking about the presence of some kind of external constraint that some other agent or agency can be held causally responsible for; when we are talking about not ‘being free’, we are talking about a lack of power or ability to do something, which cannot be causally attributed to some other agent or agency. According to Kramer then, we might say that Sophie’s overall freedom/unfreedom is a function of her power or ability and the lack of any particular agent or agency’s constraint(s). Consequently, Kramer thinks that we can begin to measure an individual’s overall freedom according to the following formula: 

\[ F^2 / (F+U) \]

The value F here stands for the ‘range of each individual’s conjunctively exercisable liberties’ and the value U stands for ‘each person's combinations of consistent unfreedoms’ (Kramer, 2003, p. 359). In other words, the measurement of Sophie’s
overall freedom is a ratio of the acts that she is free to do, and the acts she is free and unfree to do.

Similar to Kramer, in republican theory, Philip Pettit draws a similar distinction between being *unfree* and being *non-free*. Pettit captures this distinction best with his account of invasive and vitiating hindrances to freedom (2012, p. 38). For Pettit, our freedom can be hindered in either of two different ways. On the one hand, we might suffer an invasion to a free choice if another agent or agency has the uncontrolled power to interfere in that choice. On the other hand, we might suffer a vitiating hindrance to a free choice if we do not have the ability or power to make that choice. Crucially, what separates an invasive hindrance from a vitiating hindrance to freedom is the presence of an intention on the part of some other agent or agency. In other words, an individual suffers an invasive hindrance to a free choice if it comes about via the intentional or quasi-intentional interference of another agent or agency.18 An individual suffers a vitiating hindrance to a free choice if there are certain unintended factors that condition that choice. For Pettit, while an invasive hindrance is inherently inimical to freedom – it makes an individual unfree – a vitiating hindrance is more incidental to our being free – it makes an individual non-free. As Pettit writes:

\[\text{[t]}\text{o suffer the vitiation of choice is to be denied a precondition for enjoying freedom of choice: to lack the required resources. To suffer invasion is to be denied the very condition by which freedom is identified: to be thwarted in making the choice according to your will (2012, p. 43).}\]

Due to the sheer complexity of trying to give relative weights to both aspects of our unfreedom/non-freedom – although he does state that invasive hindrances (unfreedom) deserve priority – Pettit is less sanguine than Kramer in claiming that we can provide an accurate measure of freedom for the following two reasons: first, the extent to which A may

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18 To call an invasive hindrance quasi-intentional, for Pettit (2005), means that it comes about via the negligence of some other agent or agency.
have the capacity to invade B’s choice – the extent to which A may be dominated or controlled by B – is a matter of degree, and these differing degrees are not commensurate for Pettit; second, trying to accurately measure differing degrees of conditioning factors or vitiating hindrances to freedom, according to some sort of algorithm, is also problematic because, as we shall see in our next section, vitiating hindrances can condition a choice in myriad different ways (2012, p. 47). So, instead of arguing for an overall measurement of freedom, pace Kramer, Pettit prefers to talk about the idea of equal freedom or a sufficiency threshold of freedom, which we ought to secure for each citizen. On this account, each citizen’s freedom can be compared to the extent that it meets, or does not meet, the particular republican standard of the ‘eyeball test’ – a republican yardstick for measuring the requisite amount of freedom to function as a non-dominated citizen.

1.2.1. Slavery: On what it means to be unfree

If Kramer and Pettit disagree over the measurement of freedom question, it is the question to what extent a social relation might count as a dominating social relation that represents the central point of division between these two accounts. For Kramer, when it comes to actually evaluating Sophie’s overall freedom, if she is free to perform a certain action but performing this action will dramatically reduce her future prospects to act freely, then this initial freedom to act in the first instance does not add anything to her overall freedom. In other words, her overall freedom – that is, the combination of conjunctively-exercisable-liberties available to her – is greatly diminished in this case. Suppose Sophie is dominated in some respect, say, by living at the grace and leave of a more powerful school bully. By being dependent on the bully, Sophie’s conjunctively exercisable liberties, according to Kramer, will be reduced except for those freedoms that allow her to suck up or flatter the bully in the hope that she can escape the wrath of this individual. On Kramer’s account, such a relationship of domination, as he calls it, reduces Sophie’s liberty. It reduces Sophie’s freedom by restricting or curtailing
the range of conjunctively exercisable opportunities available to her. Similarly, when a slave engages in patterns of behaviour to curtail the threat of interference from a master – such as toadying, kowtowing, fawning and so on – this also reduces the conjunctively exercisable opportunities that are available to him. It reduces the slave’s liberties except for those liberties that allow the slave to suck-up and flatter the master. According to Kramer then, we do not need to go beyond his account of freedom in order to incorporate the negative effects of domination. Moreover, in contrast to the republican view that being subject to the power of a more powerful agent or agency can result in unfreedom, Kramer contends that living in subjection to a benign master – such as a non-tyrannical gentle giant, for instance – does not necessarily reduce an individual’s overall freedom. As he puts it in the following thought experiment:

Suppose that, in a community not far from some hills, a gigantic person $G$ is born. From adolescence onward, $G$ is far larger and stronger and swifter and more intelligent than any of his compatriots. If he wished, he could arrogate to himself an autocratic sway over his community by threatening to engage in rampages and by coercing some of the residents into serving as his henchmen. Were $G$ so inclined, no one would dare to resist his bidding. … In fact, however, he loathes the idea of becoming a tyrant; his principal desire is to seclude himself altogether from his community. He does indeed depart therefrom, in order to reside in a cave among the nearby hills where he contentedly feeds off natural fruits and wildlife and where he spends his time in solitary reflection and reading and exercise. (Kramer, 2008, p. 47)

For Kramer, the probability that the gentle giant will interfere in this case is entirely negligible. As such, if the members of the community live with little to no interaction with this powerful individual, it is erroneous to claim that they are unfree simply by virtue of this person being so powerful. What matters, according to Kramer, is the probability that interference will occur. In other words, we are not made unfree simply by virtue of someone having more power than us. When it comes to unfreedom, for Kramer, we need to determine whether there is a likelihood that interference will occur.
Importantly, Kramer understands domination to imply a *readiness* to interfere on the part of some agent A with some agent B. If there is no readiness to interfere for Kramer, domination cannot be said to occur. Hence his conclusion that we are not made unfree if it is *improbable* that a more powerful individual or group will interfere. However, in contrast to this view, for republicans like Pettit, even if there is no readiness to interfere on the part of the dominator, the mere fact of living with the possibility that interference *could* occur is enough to make an individual unfree. In contrast to Kramer’s account, then, to be dominated according to a republican view, implies being part of a social relation in which some agent or agency has the capacity, ability or power to interfere with you on an arbitrary or uncontrolled basis, even if this capacity remains unexercised. What matters, in other words, is the *possibility* of uncontrolled interference, not the probability as Kramer argues. For republicans, then, even if it is highly improbable that the master will interfere, the simple fact that he has the capacity to do so makes the slave unfree. Ultimately, for republicans, we ought to be concerned with the non-interfering master, the agent or agency who has the power, ability or capacity to interfere if he/she wishes but refrains from doing so simply because he/she chooses not to.19

Republicans, then, generalise their account of domination from the master/slave dichotomy: Sophie is dominated insofar as Liam has a *capacity* to interfere on an uncontrolled basis in her affairs. As Kramer’s Gentle Giant is not part of a social relation with *any* members of the community, this is not an example of domination for republicans. After all, the fact that he lives a secluded life eating ‘natural fruits and wildlife’ means that he no longer interacts with anybody whatsoever. However, *if* the giant decides to re-enter the community and retains the

19 For the distinction between a non-interfering master and a non-mastering interferer, see Pettit (1997, p. 23).
capacity to interfere at will, say, in the fundamental freedoms, of some citizens, then this would be a form of domination in the republican sense. As Quentin Skinner puts it:

If…the freedom of the community remains dependent…on the disposition and inclinations of the giant, then a republican will want to insist that the community is wholly enslaved. If the giant could interfere at will and with impunity, then the community remains in his power; and the essence of the republican argument is that living in such a state of subjection is equivalent to living in servitude (2008, p. 97).

In contrast to Kramer’s view that domination necessarily implies a readiness to interfere, the conception of domination that republicans generally use is the idea of being in someone else’s power – the classic Roman jurisprudential idea of power as potestas. As Pettit puts it in an earlier formulation of the idea: ‘what constitutes domination is the fact that in some respect the power-bearer has the capacity to interfere arbitrarily, even if they are never going to do so’ (1997, p. 63). Or, as he writes elsewhere: ‘[d]omination is subjection to an arbitrary power of interference on the part of another – a dominus or master – even another who chooses not actually to exercise that power’ (Pettit, 2002, p. 340) So, to say that Sophie is dominated, for republicans, is to say that she lives in subjection to the power of another agent or agency – she is potestate domini in the old republican language.

Accordingly, it should not be surprising, then, that throughout the classical republican tradition, we find the slave depicted as the archetype of unfreedom; the simple fact that his will is dependent on the will of a master makes him unfree. As Algernon Sidney writes in his *Discourses Concerning Government* in the late 17th Century, ‘liberty solely consists in an independency upon the will of another, and by the name of slave we understand a man, who can neither dispose of his person nor goods, but enjoys all at the will of his master’ (1990).

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20 It is worth pointing out that republicans are not concerned with your freedom from domination in all areas of life. Rather, freedom as non-domination is to be sought across a particular domain of fundamental freedoms, or basic liberties; see Pettit (2008). This domain requirement freedom we can also see, for example, in Rawls’s first principle in his *A Theory of Justice* (1971).

21 It is worth pointing out that there are subtle differences between Skinner’s and Pettit’s account of domination; see Pettit (2002). However, this difference need not affect the point being made here.

22 For more on the Roman jurisprudential notion of power as potestas, see Skinner (1998, p. 40-41)
p.33). And as Trenchard and Gordon write in *Cato’s Letters* in the early 1800s, to live as a slave is ‘to live at the mere mercy of another; and a life of slavery is, to those who can bear it, a continual state of uncertainty and wretchedness’ (1971, p.430).

1.2.2. Republican Unfreedom, Morrissian Power and Anti-power

The account of *power over* or domination that Pettit uses – it should be added that these are not equivalent terms for republicans, nor for scholars writing on social and political power – resembles Morriss’s account of *power to* in his *Power: A Philosophical Analysis* (1987), namely, the view that power reflects a capacity or ability to bring about a desired outcome.\(^{23}\)

For republicans, A dominates B to the extent that A has the uncontrolled ability, capacity or power to interfere with B. That is to say, A has power over B – in this case, A dominates B – to the extent that A has the capacity to interfere in B’s affairs – a capacity to interfere which is not controlled by B. In contrast to domination then, non-dominating power over – that is, legitimate power over for republicans – is a power that A has over B that is in B’s control.

The paradigm case of legitimate power over, for republicans, is the law that one gives to oneself, or the non-arbitrary regime of law.

Consistent with Morriss’s analysis, power is a dispositional concept for republicans. For Morriss, in contrast to episodic concepts, which describe events, dispositional concepts describe ‘relatively enduring capacities of objects’ (2002, p. 14). Consider, by way of analogy, the dispositional property of sugar to be soluble: this describes a property of sugar such that given its exposure to water the sugar will dissolve. Importantly, this is a property that the sugar lump continues to possess even if it is never exposed to water. In other words, it is an enduring *capacity* of the object. Equally, for Morriss, power is a disposition, a capacity.

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\(^{23}\) It is now something of an orthodox view in the literature on social and political power to draw the distinction between *power over* and *power to*, which, to my knowledge, was first fully articulated by Pitkin (1972). Whether power can be understood in more ways than this is the subject of great debate for those writing on social and political power. See, for instance, Haugaard (2010) and Allen (1998).
To define a person as having power is to describe a state of affairs in which, given the right conditions, this person can do the things that he/she wants to. Put simply, power reflects an ability or capacity of an actor to bring about a desired outcome. Moreover, in opposition to the view that power is an observable phenomenon – here we might think of Dahl’s (1957) famous definition of power as A getting B to do something that he would not otherwise do – Morriss argues that such a view commits the exercise fallacy. That is to say, in claiming that an individual has power only when we can observe it is to fail to account for the capacity certain individuals have to effect outcomes. As Morriss writes:

[T]he American Congress has the power to override a presidential veto (by a two-thirds majority), even when there is no veto to override. It would be quite wrong to think that the 107th Congress lacked this power, just because – since George W. Bush vetoed no legislation – it never had an opportunity to exercise it (2006, p. 131)

Similarly, for republicans, individuals do not have power over other individuals only when we observe it. Rather, it is the capacity that individuals have to affect outcomes – in this case other people – that constitutes a social relation of domination.

If domination is constituted by a capacity that A has to arbitrarily interfere with B, then guarding against this capacity requires that there are certain safeguards put in place which reduce or eliminate A’s capacity for domination. For Pettit, we can reduce or eliminate domination by improving B’s capacity for action. In other words, we can secure B’s freedom by ensuring that he/she has, what he calls, ‘anti-power’ against all others. Having anti-power, for Pettit, does not imply that you have power over other citizens. It requires having the power – the capacity or ability – to control your own destiny (Pettit, 1996). Having anti-power, then, implies having the required resources and protections in place which provide citizens with a sufficient amount of resilience against possible domination. In short, for Pettit, citizens have anti-power in their choices if they have the ‘capacity to command non-interference’ in these choices (1996, p. 589).
Notice, however, that in this case having the capacity to do X – having anti-power against all others to do X – is connected to not being unfree to do X. In other words, for republicans, citizens ought to have sufficient anti-power to the extent that it secures their freedom from the arbitrary of others. This still leaves the issue of securing the conditions of being non-free as a separate question. In other words, for republicans, ensuring that citizens have the capacity to withstand domination in their choices – ensuring that they are not unfree in a choice – is a separate question from having the capacity or power to exercise a choice independent of the threat of domination – for non-freedom independent reasons, we might say. I will return to this point in the next section. For now let us clarify the republican position as follows: for republicans, your freedom to perform X is a function of your freedom from the arbitrary power of others to perform X – that is, your freedom from the intentional or quasi-intentional constraints of another agent or agency – combined with your ability to perform X – that is, your power to perform X. Having the ability to perform X may be connected to ensuring that you are not unfree to do X but we may also have independent reasons – reasons of non-freedom (reasons not associated with anti-power) – for evaluating your power.

Purely in terms of what it means to be unfree, then, it is important to note that the source of unfreedom that concerns republicans, namely, A having the capacity to arbitrarily interfere with B, is what marks republican freedom out from many alternative accounts. Indeed, the argument with Matthew Kramer has largely been centred on the question of what ought to count as a source of unfreedom on action – namely, is it interference simpliciter, arbitrary interference, the probability of arbitrary interference, the possibility of arbitrary interference and so on.24

24 For another version of the non-interference model, see Carter (1999)
1.3. Disabling Constraints and being non-free

So far we have made some preliminary observations on the connection between freedom, unfreedom and domination. We have seen that power is a necessary condition for being free on both the Kramerian and Pettitian accounts. Moreover, we have seen that the kinds of constraints which make an individual unfree is a key point of contention between these two accounts. For Pettit, you are unfree if another agent or agency has the uncontrolled capacity or power to interfere in your affairs at will. For Kramer, on the other hand, you are not made unfree simply by virtue of another agent or agency having the capacity to interfere in your affairs. When it comes to unfreedom, for Kramer, what matters is the likelihood that interference will occur. In this section I want to shift the focus away from the kinds of constraints which make an individual unfree and focus, instead, on the kinds of constraints which make an individual non-free, or what I prefer to call disabling constraints to freedom.25

As I am broadly sympathetic to the republican point of view, I will focus my attention on the republican conception of freedom throughout the rest of this chapter. However, some of what follows could also be applied to competing negative conceptions of liberty; that is, we might say, so long as we are interested in making negative liberty effective.26

While the debate concerning what ought to count as an invasive hindrance to freedom has received much attention in the republican tradition, an analysis of disabling constraints – the kind of constraints which render us non-free – has not featured as prominently. Indeed, there is a general assumption that it is far worse to be unfree than non-free. That is to say, being subject to the intentional constraint(s) of another agent or agency is generally seen to be more

25 The notion of a disabling constraint can also be found in the work of Young (1990, ch. 2).
26 The distinction between formal and effective freedom is an important one. We can realize an individual’s negative liberty in, say, freedom as non-interference, in a purely formal sense, by ensuring that that individual is merely free from interference in a certain choice. However, if we are concerned with making this freedom effective, we will want to ensure that there are limited non-intentional disabling constraints to his freedom in this choice. For more on this distinction, see Pettit (1997, p. 76-77). In the context of Kramer’s writings, see his distinction between non-normative freedom and normative freedom (2003, ch. 2)
insulting than being subject to a non-intentional, disabling constraint. As we shall see shortly, while we might want to hold on to this distinction in our normative evaluation of constraints, on occasion a lack of power or non-freedom to do X will mean that I am vulnerable to being unfree to do X. In this sense we have unfreedom-dependent reasons for being concerned with non-freedom – reasons associated with securing anti-power against all others. However, the point I want to make in the latter part of this section is that often we will have non-freedom independent reasons for being concerned with non-freedom – reasons that have nothing to with domination, as republicans understand it. Before I can make this connection, however, let us first examine the notion of a non-intentional, impersonal, disabling constraint to action.

1.3.1. Disabling constraints: On what it means to be able

We can analyse what it means to lack the capacity or power to do something in the non-intentional, disabling sense by using Morriss’s important distinction between two different ways of understanding our ability or power to do something in the non-intentional, disabling sense by using Morriss’s important distinction between two different ways of understanding our ability or power to do something: the distinction between power-as-ability and power-as-ableness, (2002, p. 80-85). To say that someone has an ability to do something, for Morriss, is to say that that person has a general ability or disposition to do something over an extended period of time. Abilities, in other words, refer to what you can in general do. Ableness, on the other hand, for Morriss, refers to what you can do at a specified time and place. So, to take a fairly straightforward example, while citizens of famine-ravaged societies certainly have the ability to eat food (they could eat food, if food was provided), it is due to a lack of food supply that they lack the ableness (they cannot actually eat food, as no food is provided). Similarly, while I might have the

27 Morriss (2012) sums up this intuitive difference nicely when he writes: ‘the difference between lacking the power to act and lacking the freedom to act is (very roughly) that lack of power injures (for you cannot do things) whilst lack of freedom insults (you cannot do things because of a constraint which demeans you)’ (2012, p. 16).
general ability to cycle a bike (I could cycle a bike, if a bike was provided), it is due to a lack of a bike, here and now, that I lack the ableness (this could be for myriad reasons: I do not own a bike; no bike is provided; there are certain legal prohibitions surrounding the appropriate use of bikes in our society; and so on).  

Crucially, in most cases, the things that we are able or unable to do are more often a feature of the structure of the society in which we live rather than a function of our particular natural endowments. Indeed, when political theorists talk about the basic structure of society as the relevant site of justice – the thing that we should apply our principles of justice to – they do so in recognition of the fact that having the ableness, the contextualised ability, matters.

Morriss further clarifies his notion of ableness by distinguishing between time-specific ableness and generic ableness. The former refers to what an individual ‘can do at certain stated or implied times’, the latter refers to what an individual can do under usual conditions (Morriss, 2002, p. 85). So, for Morriss, when it comes to actually evaluating a citizen’s power to in society vis-a-vis other citizens, it is generic ableness that we are chiefly concerned with. In other words, we want to know what citizens ‘can’ do under ‘usual’ conditions.

Ableness, then, we might say, refers to the ability plus the opportunity to X (Dowding and Van Hees, 2008, p. 311). An opportunity, in this sense, represents the required means in order to X. To say that I have the ableness to drive a car means that I can drive a car – I have the ability to drive a car – and I have the opportunity to drive a car – a car is provided. An individual’s opportunity set then – the range of feasible options available to that person – can be limited by certain physical or natural constraints, but, equally, it can also be limited by certain disabling, structural features of his or her

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28 Although some restrictions have been lifted, in the case of Saudi Arabia it seems that there are still certain restrictions on women cycling bikes in public. See Ramdani (2013).

society. So, for example, I may have the ability to drive a car, but there may be certain legal or economic reasons preventing me from driving it. In other words, under usual conditions, I am unable to drive one. Again, notice that in both cases these are not constraints intentionally imposed by another agent or agency; they are, instead, the result of certain unintended, disabling constraints to action.

1.3.2. On the connection between disabling constraints and being unfree

If, as we have seen, non-intentional constraints matter to leading flourishing lives, why do we privilege intentional constraints in our normative theorising? Moreover, to return to the question at start of this section, are we right to view these two kinds of constraints as completely distinct? Pettit’s own view on this is clear in places. Early on in his republican writings, he claims that being subject to the arbitrary interference of another agent or agency affects your status as a person, while being exposed to certain non-intentional disabling constraints only affects the extent of your freedom of choice. For Pettit, then, the former represents a higher ‘grade’ of restriction as it involves disrespecting an agent’s status as a person, while the latter is less significant as it only implies a non-intentional, non-agential restriction – something which another agent cannot be held responsible for. He puts this point unambiguously in the following passage:

If nondomination is used to conceptualize liberty…it leads us to distinguish between primary and secondary restrictions on liberty. The primary form of restriction is domination by another person or group: in this case the person or group has more or less ready access to more or less arbitrary interference across a more or less substantial range of choices. The secondary form of restriction is the limitation imposed by nonintentional forces and the interference practiced by intentional but nonarbitrary agencies. It seems right and intuitive to me that this distinction is made between these two different grades of restriction, since only the primary form is inimical to an agent’s status as a person; one is not de-authorized or disrespected by nonintentional or nonarbitrary influences in one’s life (Pettit, 2005a, p. 108).

30 Thanks to Cillian McBride for pressing me on this point.
It is worth pointing out, however, that here we have two forms of non-intentional restrictions that do not render a person unfree: the first is the kind of restriction that comes about due to ‘nonintentional forces’, say, a natural or social inability to do X; the second is the kind of restriction that comes about due to a ‘controlled form of interference’, say, the non-arbitrary regime of law, which we mentioned in the last section. Elsewhere, he says the following about intentional and nonintentional restrictions:

Freedom as non-domination is compromised by domination and by domination alone. But while my freedom is not compromised, therefore, by a limitation in my ability to exercise it, that limitation is still significant; it conditions the freedom that I enjoy. We can increase the intensity and extent of people's freedom as non-domination by reducing the compromises to which they are subject: that is, by reducing domination by others. But we may also increase the extent of people's freedom as non-domination by reducing the influence of conditioning factors and by expanding the range or ease of the undominated choices that they enjoy (Pettit, 1997, p. 76).

Here, Pettit claims our overall freedom as non-domination is co-dependent on the absence of compromising (intentional) and conditioning (non-intentional) factors. However, the latter are only significant to the extent that they condition a person’s capacity or power to make a choice. Again, for Pettit, only those constraints that compromise our freedom affect our status as persons. In some of Pettit’s more recent writings, however, he argues that non-intentional (vitiating) constraints of the conditioning kind may, in some cases, be connected to intentional (invasive) constraints of the compromising kind:

[I]nvasion of free choice is worse on the whole than its vitiating. But it is important not to downplay the impact of vitiating hindrances factors. Such factors affect the range of choices in which you can hope to enjoy the absence of invasion. And, more than that, they may put such limits on your range of choice that you are subject, as a result, to a greater degree of invasion on the part of others (2012, p. 44).

This is an important point. So, what might explain this particular emphasis on the connection between non-intentional and intentional constraints to freedom? Undoubtedly, Pettit has started to see how non-intentional, disabling constraints are more variegated than he previously assumed. While they certainly include natural or physical obstacles to my doing X
or Y, they may also include the kind of constraints that come about due to the ‘unintended, aggregate consequence of how people are independently motivated to act’ (Pettit, 2012, p. 44). In other words, they may also include the way in which certain structural features of a society indirectly facilitate some to dominate others. Put differently, because the background conditions of a society may favour certain individuals or groups – they give some more power or ableness to do things than others – some citizens will be in a position to dominate others. Thus, according to republicans, for the reason that certain structural features of society are connected to citizens’ unfreedom, neutralising these structural features of society represents a necessary step in ensuring that citizens’ are not unfree free in their choices – a necessary step in ensuring that citizens have anti-power against uncontrolled interference in their choices.

1.3.3. Structural Domination and Structural Egalitarianism: Some cases

Consider the current structure of employment law in Ireland as an example of the way in which social structures facilitate domination: as it stands, section 37 of the Republic of Ireland’s Employment Equality Act 1998 exempts state-funded denominational schools from discriminating against employees where it is ‘reasonable’ to do so to uphold the religious ‘ethos’ of the school. This gives the board of management in Irish state schools a great level of power that, if they wished, they could use at whim, say, by terminating the contract of teachers who are deemed to fall outside or contradict the particular ethos of the school. The discretion that this law affords boards of managements in Irish schools makes it extremely

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31 Section 37.1 of the Employment Equality Act 1998 states the following: ‘A religious, educational or medical institution which is under the direction or control of a body established for religious purposes or whose objectives include the provision of services in an environment which promotes certain religious values shall not be taken to discriminate against a person for the purposes of this Part or Part II if— a) it gives more favourable treatment, on the religion ground, to an employee or a prospective employee over that person where it is reasonable to do so in order to maintain the religious ethos of the institution, or b) it takes action which is reasonably necessary to prevent an employee or a prospective employee from undermining the religious ethos of the institution. For some general background on this piece of legislation and a republican critique, see Daly and Hickey (2011).

32 Possibly the most famous example of this use of power is the 1982 dismissal of Eileen Flynn from a secondary school in New Ross, Co. Wexford. As she was pregnant with a child by an unmarried man, the school deemed her to be in conflict with its Catholic ethos. The Irish courts ultimately vindicated the right of the school to terminate her contract in this case.
difficult for openly non-religious – in most cases this means non-Catholic – teachers to get a job in a state school.\textsuperscript{33} This is all the more problematic where one denomination, namely, the Roman Catholic Church, is, at present, the patron of nearly 90\% of current Irish state primary schools (Coolahan et al., 2012, p. 29). For republicans, then, the existing legal framework surrounding employment law in Ireland gives the board of management in Irish schools a \textit{dominating} power – a power of arbitrary interference – over its employees and prospective employees. It provides the background conditions which makes domination possible.

Consider the on-going process of urban gentrification taking place in the Irish capital, Dublin, as another example. Due to a lack of affordable housing and governmental rent controls, many low-income families can no longer afford to rent property in this area.\textsuperscript{34} Indeed, combined with a housing supply problem in many parts of Dublin, landlords have the unchecked capacity to raise rental rates, even if this means that they raise them to such an extent that many prospective tenants on lower incomes are ultimately priced out of the market. Again, the legal framework surrounding landlord/tenant relations gives landlords an unchecked capacity to interfere in the lives of tenants. The upshot of all this is that it has resulted in a number of displaced families having to avail of accommodation supplied by various charitable organisations in the city.\textsuperscript{35} In other cases, it has resulted in some families having to sleep rough on the streets.\textsuperscript{36}

In both cases, then, there are clear structural features of Irish society which facilitate the domination of some by others. In other words, citizens may find themselves in \textit{relations} of domination due to the \textit{structural} features of their society. While some citizens have sufficient anti-power to resist arbitrary interference in their choices – society favours their particular

\textsuperscript{33} This also affects the lives of parents and children in these schools. Eoin Daly (2014) describes the treatment of non-Catholic teachers and children as an urgent human rights issue.

\textsuperscript{34} For more on the Dublin housing crisis, see Holland (2014) and the recent survey conducted by NABCO (2014).

\textsuperscript{35} The work in this area by Focus Ireland is worthy of mention here.

\textsuperscript{36} See Holland (2015).
conception of the good in marriage law or employment law, or whatever, or some citizens have the requisite economic capital to pay exorbitant rents in certain parts of inner-city Dublin – many others are much more likely to be subject to the whim of dominators in their lives.

So, for republicans, when it comes to our overall freedom as non-domination, having the ableness or power to matters. Indeed, due to this connection between ableness and domination, Pettit argues that republicans ought to pursue, what he terms, ‘structural egalitarianism’ (1997, p. 113-117).37 This implies altering the structural features of society that facilitate some in dominating others. In the case of Ireland’s patronage model of education and equal access to employment, it would prescribe a revised model of public education in which your particular, sectional, ethical view does not render you vulnerable to arbitrary interference. In the case of landlord/tenant relations, it would prescribe measures such as rent controls, rent allowance, affordable housing and so on, to ensure that tenants were not subject to the arbitrary whim of landlords. In short, structural egalitarians prescribe altering the structural features of society which place some citizens at the mercy of others.

Structural egalitarians, then, recognise the importance of neutralising the impact that social structures have in placing citizens in social relations of domination. Consider the case in which a majority culture dominates the political institutions of a particular state: the norms and values of this particular culture are privileged in the state’s public institutions; the state does its business in this culture’s particular language; public holidays are organised around an affinity the state has had with one particular conception of the good; and so on. In this case, members of minority cultures are structurally unequal vis-à-vis members of the majority

37 In his more recent writings, Pettit replaces the idea of structural equality with the term expressive equality; see Pettit (2012, p. 78). Some recent writers have started to argue what it might mean to be structurally equal, in a republican sense, with other citizens; see, for instance, Garrau and Laborde (2015), Schuppert (2015), Krause (2013) and Thompson (2013). In a non-republican context, Young argues for a similar idea of structural equality when she writes: ‘[s]tructural injustice…exists when social processes put large groups of persons under systematic threat of domination or deprivation to develop their capacities, at the same time that these processes enable others to dominate or to have a wide range of opportunities for developing and exercising capacities available to them (2013, p. 52).
culture, thus rendering them vulnerable to arbitrary interference in their choices. From a republican point of view, then, justice requires that we do our best to accommodate burdened minority cultures. This may involve the introduction of certain bilingual policies; the de-ethnicizing of the state’s public institutions; the reasonable accommodation of certain group rights; and so on (Laborde, 2008; Bachvarova, 2014).

1.3.4. Disabling Constraints and Bourdieuian social-structural processes

If republicans have unfreedom-dependent reasons for being concerned with non-freedom, then I will now show why there are also important independent reasons for being concerned with non-freedom. The following type of constraints fall outside the republican emphasis on unfreedom for the simple reason that they have less to do with domination, as republican understand it – less to do with securing anti-power against all others in a choice – and more to do with the way in which certain non-intentional features of society constrain our powers independent of any connection to the intentional interference of other agents. In the rest of this section, then, I will confine my analysis of disabling constraints to the way in which socio-structural processes can constrain our powers. I do this for one simple reason, namely, I want to challenge the claim that securing your freedom from the arbitrary interference of others implies you are structurally equal with others. Furthermore, to illustrate the constraining effects of socio-structural processes, I will limit my examination of this type of disabling constraint to the analysis provided by the French sociologist Pierre Bourdieu (1990b).

However, it is worth making two quick points before we proceed: first, Bourdieu is certainly not the only theorist to provide an analysis of the constraining effects of socio-structural processes. 38 Notice that the argument for the reasonable accommodation of culture does not derive from the idea that culture provides citizens with a ‘context of choice’ (Kymlicka, 1996, ch. 5; Raz, 1994), or on an account of the proper relation to self (Taylor, 1994; Honneth, 1996). Rather, the recognition of different cultures is tied to eradicating structural domination. However, as it is focused on citizens’ non-domination, distinguishing what we owe to citizens from what we owe to non-citizens is still required; see Kymlicka (1996, p. 26-33). For a discussion on what non-domination might imply for non-citizens, see the collection of essays in Honohan and Hovdal Moan (2014).
processes; second, nor does socio-structural constraint exhaust the possible types of disabling constraints to action.\textsuperscript{39}

Central to Bourdieu’s analysis of the constraining effects of socio-structural processes is his account of \textit{habitus}, field and capital. The emphasis here is on social-structural processes as dynamic, fluid, evolving things rather than as static entities. \textit{Habitus}, for Bourdieu, describes the system of embodied dispositions that social actors use to ‘go on’ in different domains/fields of the social world, which are themselves derived from social experience (1977, P. 72).\textsuperscript{40} As a dispositional property of social actors, \textit{habitus} is both the internalization of social reality and the externalization of this reality in the act of social practice. To put it simply, \textit{habitus} reflects how social structure is inside us, as it is something we both learn from past experience and project on to future experience. Following Weber (1978), Bourdieu views modernity as increasingly parcelling up the social world into differentiated and semi-independent areas of action. Each area or \textit{field}, for Bourdieu, has its own internal rules and logic (Bourdieu and Wacquant, 1992, p. 94-98). The analogy with games is useful here (Bourdieu, 1990a, P. 61; Bourdieu and Wacquant, 1992, p. 98-100). I can read the rules of football, for example, and discover what a corner is, a free-kick is, the off-side rule is, and so on, but I won’t know how to actually play the game. Actually playing the game requires a sense of the game. This sense of the game is discovered through playing the game. The more I actually play the game the more I know when to anticipate a pass from my team-mates, a tackle from my opponents, or when to play off-side. In other words, the strategies that I have

\textsuperscript{39} On the first point, see Giddens (1984) account of structuration and Lukes (1974) third dimension of power. The preference I have for Bourdieu’s account over Giddens stems from the fact that Bourdieu gives more weight to the effect that structural constraint has on the body. He also explains the actual mechanism by which social actors internalise structural constraint more comprehensively than Lukes’s third dimension of power.

\textsuperscript{40} Or as Bourdieu puts it: \{s\}ystems of durable, transposable dispositions, structured structures predisposed to function as structuring structures, that is, as principles of the generation and structuring of practices and representations which can be objectively “regulated” and “regular” without in any way being the product of obedience to rules, objectively adapted to their goals without presupposing a conscious aiming at ends or an express mastery of the operations necessary to attain them and, being all this, collectively orchestrated without being the product of the orchestrating action of a conductor (Bourdieu, 1977, 72).
are bound up with the game itself, and these strategies are developed through playing the game. As with games, fields have their own distinctive rules and taken-for-granted structure. This taken-for-granted structure works to produce and reproduce the *habitus* specific to that field. For Bourdieu, if one examines the fields of law, science, politics, and so on, we see that they also have their own internal rules and logic. Indeed, one can read the general rules concerning the duties of members of the British House of Commons, for instance; however, with large numbers of parliamentarians being men, and large numbers of these men being educated in elite private schools, those parliamentarians who share these characteristics invariably have the requisite cultural competencies that are deemed appropriate for this field.\(^{41}\) Those who don’t have these cultural competencies often speak about the difficulty they experience in having their ‘style’ valued by their parliamentary colleagues:

A premium is put on what is predominantly a male style of political practice, which is quite aggressive and quite confrontational...[a] debating style of presentation which men are often much better at, have more confidence in doing, taught more to do and doesn’t necessarily make for any greater government (Childs, 2004b, p. 182).\(^{42}\)

There is an immediate connection here between Bourdieu’s notion of field and *capital*. Capital describes the specific kinds of resources social actors accumulate in various fields (Bourdieu, 1991, p. 229-231). This capital can be economic, social, cultural, and so on. The cultural capital I have in one field for example – the linguistic and cultural competencies I possess in the field – may make it easier for me to attain a level of high-standing in the field. Fields, in other words, represent the ‘social space’ in which social actors struggle for the accumulation of capital. The amount of capital a person has in a field determines the status of that person in the field. Thus, as we just saw in our previous example, those parliamentarians who do not have the requisite cultural capital that comes with being members of the House of

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\(^{41}\) Research by the Sutton Trust (2015) shows that one third of parliamentary candidates attended private schools compared to just 7% of the overall adult population. At present, only 23% of the members of the House of Commons are women.

\(^{42}\) See Childs (2004a) for more on this.
Commons often speak about their inability to gain the respect of their fellow members. In short, they lack status in the eyes of their fellow members.

Fields, for Bourdieu, represent a structured system of social positions. Positions in the field, being dependent on the accumulated capital within the field, determine the social standing of each member. However, crucially, the ‘naturalisation’ of habitus, for Bourdieu, blinds us to the fact that fields are important sites in the struggle for power (1977, p. 164). By misrecognising the social world as merely doxic or taken-for-granted, we fail to recognise how the cultural capital accumulated within fields translates into symbolic capital (Bourdieu, 1990b, p. 68). This symbolic capital represents the power to impose the legitimate vision of the social world upon individuals and groups such that the structured system of social positions within the field is perceived as legitimate. Famously, Bourdieu gives the example of the way in which bourgeois culture is reproduced through the French education system (1998). Culture, in this setting, for Bourdieu, becomes a form of capital which confers power on those who possess it. Knowledge of bourgeois culture, in other words, becomes a form of distinction in the education system – a certain status – which makes its possession a valued form of capital. To this we can also add upper-middle class masculine domination in parliament, as in our previous example. With reference to Elias and Scotson (1994), the ‘insiders’ had a certain manner, mode or dispositions of behaviour that made them distinct from the ‘outsiders’, even if both groups were ‘working class’ as defined economically.

In both cases, then, possession of the natural, physical and social resources and/or the requisite capital in a field ensures that an individual has the ableness – the contextualised ability – to achieve outcomes. Lacking capital, in other words, implies that an individual lacks part of the requisite means to perform X. Habitus then, we might say, can both positively and negatively affect an individual’s power to. Positively, if I have the dominant habitus in a particular field, I have a certain degree of power to achieve outcomes. Negatively, however, it
may affect a social actor’s power to for two reasons. First, a field may favour a particular habitus rendering those that do not share this habitus with less ability to achieve outcomes than others – they do not possess the necessary cultural competencies that are dominant in the field. 43 Second, and perhaps more insidiously, individuals may be complicit in their own domination by constraining their own behaviour when attempting to fit their habitus within the field – they lower their expectations and adjust to their subordinate status within the field. 44 Indeed, in the Elias and Scotson study (1994), it was notable that outsiders internalized the view that they were somehow less civilized than the insiders. This made them more diffident in joining local clubs and community facilities, which in turn gave them less access to the local habitus of distinction, which fed back into their diffidence.

Consider, again, what it means to be unfree for republicans: Citizen Sophie is unfree in a choice if some other agent or agency has the uncontrolled power to interfere in that choice. Now, consider what it means to be non-free in a choice: Citizen Sophie is non-free in choice if she does not have the power (ableness) to make a choice. Now suppose we focus primarily on Sophie’s unfreedom, as republicans do, ensuring that no other agent or agency has the capacity to interfere in her choices. In other words, we ensure that she has sufficient anti-power to withstand arbitrary interference in her choices. As Bourdieu’s analysis makes clear, by merely focusing on the intentional constraints of other agents, we leave out a whole variety of ways in which Sophie might adjust to her subordinate position in society independent of the intentional interference of others. In other words, what can constrain Sophie’s choice is the fact that she is subject to a disabling constraint – in this case, a structural constraint – which renders her unable (not unfree) to see this as a choice for her. Crucially, then, while we might want to preserve a special place in our normative theorising for ensuring that citizens

43 Lacking the requisite emotional capital may also be a problem, see Heaney (2011, p. 271).
44 Bourdieu describes this as symbolic violence: ‘the violence which is exercised upon a social agent with his or her complicity’ (1992, p. 167). Importantly, this exercise of symbolic violence is not agent (coercion) specific. Rather, it is an indirect (structural) form of constraint.
are not unfree in a choice, often we may have independent reasons for ensuing that citizens are not non-free in a choice. Crucially, if ‘structural egalitarianism’ is our aim, as Pettit claims, then we cannot afford to ignore the effects of socio-structural constraints on citizens’ overall level of freedom.

1.4. Structural Constraint and the Eyeball Test

In the last section, we saw that there are certain disabling constraints that render citizens non-free and facilitate in their being un-free. Importantly, I claimed that there are disabling constraints to action bound up with socio-structural processes, which need to be taken account of independently of any connection to un-freedom. Furthermore, I claimed that these kinds of constraints are particularly relevant for republicans to the extent that they describe their account of social justice as ‘structural egalitarianism’. In this final section I want to look at a specific piece of evidence illustrating Pettit’s lack of concern with disabling constraints. I do this by briefly analysing his account of the ‘eyeball test’ – the republican yardstick for social justice.

In some of his more recent work, Pettit (2014; 2012) tries to spell out what it might mean to be free from domination and enjoy the status of a free person in the modern world. For Pettit, in order to enjoy the freedom to function as a free citizen or liber in a republic, each citizen will have to be resourced and protected to a sufficient degree in order to pass, what he calls, ‘the eyeball test’ (2012, p. 84-88; 2014, p. 98-101). According to Pettit, this is a useful guide for what it means to have the status of a free citizen. Generally speaking, it implies that each citizen has a sufficient amount of resources and protections in place – sufficient anti-power in their choices – so that they can look each other citizen in the eye without fear or deference. Pettit says the following about the eyeball test:
The test is grounded in the image of the free citizen – the liber or freeman – of republican tradition. It says that people will be adequately resourced and protected in the exercise of their basic liberties to the extent that, absent excessive timidity or the like, they are enabled by the most demanding local standards to look one another in the eye without reason for fear or deference’ (Pettit, 2014, p. 99)

The eyeball test, then, represents a rough-and-ready guide for measuring social equality (Pettit, 2014, p. 100). If Citizen Eoin has a sufficient amount of resources and protections relative to Citizen Sophie, then, as far as the test goes, they can look one another in the eye – they are structurally equal, so to speak. If Citizen Eoin lacks these resources and protections, then he fails to pass the test and cannot ‘walk tall’ among his fellow citizens. In short, a citizen passes the eyeball test, according to Pettit, if they have enough resources and protections in place enabling them to exercise their basic liberties free from arbitrary interference.

Unfortunately, however, if we return to the above quotation, we can understand the sense in which Pettit uses the word *local* in two different ways. While the first is unproblematic from the point of view of non-freedom and citizens’ structural equality, the second is deeply problematic. In the first sense, ‘local standards’ may refer to the general amount of resources and protections available to citizens within a given society. In the second sense, it may refer to the local ‘cultural’ standards of a society. While the first sense is an important issue to consider when we operationalise the republican account of freedom in actually-existing societies, and an issue worthy of closer attention, this is not the sense of local which Pettit is referring to here. It is the second sense, where the local standards refer to the cultural norms of a particular society, and how the eyeball test is set according to these standards, that Pettit is referring to.

If it is unclear whether Pettit is referring to the local standards of culture and not just the local level of resources in a particular society, he clarifies this potential ambiguity in interpretation here, when he writes:
The reference to the standards of their society is necessary since there is likely to be cultural variation in what counts as mere timidity rather than rational fear or deference... if there is cultural variation on this front, then it is clearly local standards that should provide the relevant benchmark for determining when fear or deference is irrational and when prudent’ (Pettit, 2012, p. 85).

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On this view, then, the eyeball test is set according to the local, ‘cultural’ standards of a particular society. However, given everything I said in the last section about the neo-republican concern with non-freedom and structural equality, this seems an odd claim to make. As we saw, the cultural norms of a particular field may lead to reduced levels of power for many citizens within that field, which may, in certain cases, result in citizens constraining their own behaviour in line with the way in which their social group is structurally positioned in the field. A failure to account for these different levels of power would, in other words, mean that we fail to fully analyse the extent to which citizens are structurally equal with one another.

Now, to give Pettit his due, his worry is that unless we set the eyeball test according to some shared cultural standard, we will end up compensating some citizens for their irrationality or peculiar preferences. However, such a view unnecessarily throws the baby out with the bathwater. Some citizens may be perceived as ‘timid’ or ‘irrationally fearful’ precisely for the reason that they are part of a social group which has been historically excluded from a particular domain of social life, say, because they are female, black, homosexual, working class, part of an ethnic minority, and so on. In other words, timidity or fear may be less a result of a lack of nerve and more a function of a particular social group’s historical or continued social exclusion. As argued by Gaventa (1980) in his classic study of Appalachian mining communities, the most exploited communities never resisted because they had internalized a demeaning and fatalistic view of themselves and their situation. As argued by

45 Thank you to Eoin Daly for pointing out this quotation to me.
TenHouten (2016), powerlessness is often reinforced by the emotional habitus. In short, what may be perceived as mere ‘timidity’ or ‘irrational fear’ from one perspective may actually be a symptom of living in a structurally unequal society.

Excessive timidity has often been used as a ground for the continued exclusion of social groups from certain areas of social and political life. Consider Rousseau’s claim in *Emile* that men are by nature ‘strong and active’, while women are ‘weak, passive and timid’ (1979, p. 358). Accordingly, for Rousseau, women are by their very nature excluded from politics. They do not have the natural competencies required for this domain. Instead, for Rousseau, woman ought to resign herself to this fact and accommodate herself to her natural, domestic role. Later, both Mary Wollstonecraft in her *A Vindication of the Rights of Women* (1992) and John Stuart Mill in his *The Subjection of Women* (2006) take up the point that women’s exclusion from political life has less to do with a natural inclination for the domestic life but, rather, is due to centuries of habitual adjustment to an overwhelmingly patriarchal social structure. Once we secure a social group’s freedom from the intentional constraints of other agents, the major problem in terms of non-freedom is the extent to which the internalisation of a subordinate status in society can continue to negatively affect a social group’s capacity for action. Wollstonecraft was deeply conscious of this problem. For her, woman’s liberation comes from an absence of a *dominus* in her life, to be sure. However, it also implies having the power to actively challenge, rather than passively internalise, the way in which women are represented in society.

Recall, for Bourdieu, individuals often adjust their own behaviour when attempting to fit their habitus within a particular field. So, what is often perceived as mere ‘timidity’ or ‘irrational fear’ from one perspective is often a socially conditioned response to a lack of social parity. By taking the ‘local’ cultural standards as providing the relevant context for the eyeball test, we run the risk of explaining away an unjust structural inequality as some sort of collective
lack of nerve. If republicans are going to deliver on their aim of structural equality, then evaluating the extent to which social groups are not subject to disabling constraints in their choices is required. In other words, if we want the eyeball test to be an effective measure of citizens’ structural equality, then we need to go beyond merely looking at the extent to which citizens are not unfree in their choices. Structural equality is a much more demanding ideal.

1.5. Conclusion

For neo-roman republicans, what it means to be unfree and what it means to be non-free are both relevant when evaluating a citizens overall level of freedom as non-domination. As we have seen, while we might want to preserve a special place in our normative theorising for the kinds of constraints which render us unfree, an analysis of constraints that render us non-free is a worthwhile task. It is particularly worthwhile when we consider that citizens live out their lives with differing degrees of power to in society. This lack of power may be injurious for its own sake – it may not enable an individual to do the things that he/she want to – but it may be doubly frustrating if it renders that individual vulnerable to a social relation of domination. Accordingly, in the first section of this chapter, I focused on what it means to be unfree rather than non-free in a certain domain of choice. In the second section, I analysed the notion of non-freedom and showed how there are disabling constraints to action which can render citizens unable to do certain things independent of any connection to unfreedom. In the final section, we saw that a truly ‘structurally egalitarian’ account of social justice cannot afford to ignore the ways in which socio-structural processes limit citizens capacity to make choices.

Being free from the intentionally imposed constraints on our choices is but one dimension in a citizen’s total freedom.
2. Chapter Two: Republicanism, Capabilities and Relational Equality

2.1. Introduction

In the previous chapter I outlined the two components of social and political freedom, namely, unfreedom and non-freedom. I suggested that while we might want to prioritise constraints that render us unfree in our normative theorising, there are reasons – both dependent on and independent of unfreedom – for taking into account non-freedom or disabling constraints to action. As I noted, if structural equality is our aim, as republicans claim, then we have very good reasons for pursuing the kind of analysis undertaken in the last chapter. In this chapter I want to move away from a conceptual analysis of freedom as non-domination and turn to what this wider concern with relations of unfreedom and non-freedom implies for a republican conception of social justice.

In recent years, the dominant normative paradigm in the literature on social justice has been the distributive paradigm. For those working within the distributive paradigm, when we are asking the question ‘what is it that constitutes a just society?’, we are asking the question ‘what is the particular good or set of goods that we ought to be distributing?’ Social justice, on this account, is simply a distributive exercise. Though the distributive paradigm has undoubtedly provided the dominant framework within which theories of social justice have mainly been conceived, more recently the distributive paradigm has come under criticism for failing to account for the way in which challenging unjust relations of power, securing an individual’s social status and so on cannot be reduced to a mere distribution of a good or set
of goods.\textsuperscript{46} For \textit{relational egalitarians}, by contrast, a just society is one in which citizens’ stand in relations of equality to one another.\textsuperscript{47} While they recognise that a certain distribution of goods may enhance relations of equality, they hold that an individual’s position in society cannot be reduced to the mere acquisition of some good or set of goods. In short, as much as distributive egalitarians might claim otherwise, relational egalitarians hold the view that the problems of social justice are much more institutionally and socially embedded than the distributive paradigm allows for.

If contemporary theorists of social justice have disagreed regarding the extent to which their theories are sufficiently sensitive to relational inequalities in society, they have also disagreed regarding the extent to which their theories ought to be sufficiently sensitive to certain non-relational goods in society. For luck egalitarians, for example, when we are talking about what it is that constitutes a just society we also need to factor in certain non-relational goods such as personal responsibility into our theories.\textsuperscript{48} On their view, from the standpoint of justice, responsibility for the poor choices we make should not unfairly burden those who have not made these choices. Instead of passing the buck, so to speak, to other members of my society to compensate me for the bad choices I have made, the adherents of so-called ‘responsibility-sensitive’ approaches to social justice argue that the buck should stop with me.

In some of his most recent writings Pettit has argued for a particular version of republican social justice or relational equality, namely, ‘equal freedom as non-domination’ (2012, p.75-129). As a number of neo-republican writers have pointed out, the ‘deep connection’ or ‘intimate similarity’ between the republican conception of freedom and Sen and Nussbaum’s capability approach provides an important conceptual ally in delivering on this status-centred

\textsuperscript{46} See especially Young (1989, Chapter 1). See also Forst (2013, Chapter 1).
\textsuperscript{47} See, for example, Anderson (1999) and Scheffler (2010, p.175-235; 2015)
\textsuperscript{48} For the most prominent adherents of this view in the literature on social justice, see Cohen (1989, 2000) Dworkin (2002, 2003) and Arneson (1989, 2004).
or relationally-focused idea of equality. For them, as for Pettit, a just society is one in which citizens enjoy the ‘basic functioning capabilities’ constitutive of an undominated citizen or free-person. However, if delivering on the relational status of equal freedom as non-domination has a deep connection with Sen and Nussbaum’s capability approach it is deeply at odds with more non-relationally focused approaches to social justice such as luck egalitarianism. For republicans, equal freedom as non-domination implies a sufficientarian rule or pattern to justice. In other words, rather than arguing for a society in which citizens enjoy strict equality, a just society is one in which citizens have a enough of the ‘basic functioning capabilities’ in order to enjoy the status of a free citizen. In attempting to penalise citizens for the poor choices they have made, republicans claim that responsibility-sensitive approaches to social justice threaten to undermine the very thing that republican justice aims to protect, namely, citizen’s vulnerability to relations of domination.

In this chapter I will argue for a particular version of a relational approach to social justice which I shall call by the shorthand ‘republican equality’. Like the orthodox republican view of equal freedom as non-domination, republican equality prescribes that citizens of a republic ought to have enough of the ‘basic functioning capabilities’ to enjoy freedom from domination in their lives. In this sense, my version of republican equality also shares the ‘intimate similarity’ between the orthodox republican view of equal freedom as non-domination and Sen and Nussbaum’s capability approach. However, on my account, following on from the analysis of disabling constraints and structural inequality in the last chapter, I claim that if we want something other than merely a minimal relational egalitarian account of republican social justice then we ought to understand the connection between republican equality and the capabilities approach as something which runs much deeper. On my view, part of what makes the capability approach such a useful ally for a republican

See, for example, Pettit (2001), Alexander (2010) and Alexander (2010).
conception of social justice is the way in which it provides us with the conceptual tools to evaluate what citizens are effectively able to do and be independent of domination. In contrast to the orthodox republican view – the view that citizens ought to have sufficient capabilities to ward off domination – republican equality prescribes that citizens ought to have sufficient capabilities to stand in relations of equality at three distinct but often related areas: the interpersonal, the structural and the symbolic. I argue that while ‘equal freedom as non-domination’ delivers fairly well on the first two levels, ‘republican equality’ is much more efficacious in delivering on all three.

This chapter is broken up into four sections. In the first section I discuss some of the more influential distributive accounts of social justice in the literature on social justice, namely, Rawls’s social primary goods account and Dworkin’s equality of resources account. As I will show, these distributive accounts of social justice are vulnerable to a number of important objections. In this section I also look at whether and to what extent Sen and Nussbaum’s capability approach might provide some of the solutions to these objections. In section two I explore the connection between the capabilities approach to social justice and Philip Pettit’s relationally egalitarian account of social justice: equal freedom as non-domination. I argue that while republicans are right to see various points of commonality between the capabilities approach to social justice and the idea of equal freedom as non-domination, the connection between republican equality and basic functioning capabilities ought to run much deeper. In section three I develop my own account of republican equality. Here I claim that republican equality demands a relational status in society in which citizens have the basic functioning capabilities to be free from domination and symbolically equal vis-à-vis one another. I examine two cases in which my conception of republican equality is superior in delivering on relational equality than Pettit’s. Finally, I offer a few brief remarks on the pattern or rule of republican justice: equality, priority or sufficiency.
2.2. Equality of what?

In the contemporary literature on social justice, a number of political theorists have provided a range of metrics or currencies which they see as essential in distributing for a just society. For these writers, when we are asking the question ‘what is a just society?’ we are asking the question ‘what is the particular good or set of goods that we ought to be distributing?’ Social justice, on this account, is a distributive exercise. If the presumption in favour of equality – the idea that all persons are morally equal – is firmly established in the literature, then the currency or metric that citizens ought to be equal in is not. This ‘equality of what?’ debate, as Sen (1980) describes it, or the search for the appropriate distributive metric, has attracted political theorists from both the left and the right of the political spectrum. Indeed, when it comes to the question of what kind of metric ought to be distributed for a just society, there are a whole range of possibilities on offer, including: welfare, social primary goods (Rawls, 1971), resources (Dworkin, 2002), opportunity for welfare (Arneson, 1989), access to advantage (Cohen, 2011), and so on. For the purposes of this chapter, I will only focus on what I consider to be the most salient currencies for our discussion.\(^{50}\) However, it will be useful to begin with some introductory remarks concerning distributive metrics or currencies of justice in general.

2.2.1. The why and what of equality

The foundational or basic starting point for a conception of social justice is the equal moral worth of persons. Indeed, a common objection to utilitarian approaches to social justice is that they fail to meet this basic moral equality requirement. As Rawls points out, by merely

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\(^{50}\) Nor will I present the various accounts of distributive justice in specifically chronological order here. Rather, I aim to give a more general account of the debate.
aiming to maximise aggregate welfare, ‘utilitarianism does not take seriously the distinction between persons’ (1971, p.27). In other words, utilitarian approaches to social justice – at least those utilitarian approaches more in common with Bentham’s original formulation of this view – in accepting that the happiness of the many can be had at the expense of the few, fail to account for the equal dignity and respect we owe to persons *qua* persons (Bentham, 1996). If respecting the moral equality of persons is the basic price of admission for entry into our reasoned deliberations about social justice, then critics claim that utilitarianism fails to make it past the first door. There is widespread consensus that any approach to social justice worth considering needs to start from the foundational presumption of the equal moral worth of persons. By merely aggregating individual preferences, utilitarianism fails this basic, foundational presumption in favour of equality, and is not in keeping with what we understand social justice to entail.

If the question concerning *why* we should favour equality remains largely uncontested in the literature on social justice, it is the question concerning *what* we should be equal in that is not.51 This question regarding the appropriate distributive metric or currency of justice shall be the focus of this section.52 Consider the right libertarian currency of justice, namely, the equal distribution of individual property rights, as an initial example. On Nozick’s (1974) account, as self-owners, individuals have an equal right to themselves and an equal right to acquire property. However, this does not imply any further egalitarian measures, such as taxation, as this fails to respect the foundational equal right of individuals to be self-owners. What matters, above all else for Nozick, is that individuals are free from interference to use their individual property rights as they see fit. In this sense, right libertarianism is a starting-

51 For more on the ‘why equality?’ question, see Carter (2011).
52 While a hugely interesting question in its own right, I will not focus on the question of the scope of justice here. Suffice it to say that I confine my discussion of distributive justice to the domestic level: the level at which citizen’s share in the basic structure of society. Contrary to some views, I do not think the basic structure exists at the global level. For more on this, see, Beitz (1979) and Pogge (1989). For an interesting recent account of global justice, which argues for different ‘grounds’ of justice at the domestic and global levels, see Risse (2012).
gate theory of justice, which favours a just distribution of property rights, in the first instance, and allows inequalities to emerge only and insofar as they satisfy the conditions of a just transfer.⁵³ In other words, for libertarians, if the initial acquisition is just and each subsequent transfer is just, then any outcome that results is just – even if the final outcome is far from equal.⁵⁴

As Sen has quite rightly pointed out regarding the equal distribution of differing metrics of justice: ‘demanding equality in one space…can lead one to be anti-egalitarian in some other space’ (Sen, 1992, p.16). So, as in the case of right libertarianism, an initial equal distribution of individual property rights can lead to gross inequalities in other domains, once these property rights are combined with an individual’s powers. While libertarians respect the foundational presumption in favour of the moral equality of persons, they are less concerned with the extent to which, starting with a baseline of equal property rights, human diversity and individual abilities and talents can affect the power of persons to use these property rights. This, we might want to say, will inevitably lead to unfair outcomes or results in society. However, it is worth restating, libertarians are egalitarian in the distributive sense I am referring to here insofar as they start with an equal distribution of property rights as the metric or currency of justice. Unfortunately, however, by claiming that the equal distribution of property rights alone is sufficient when it comes to justice, libertarian approaches fail to account for such morally arbitrary features in a person’s life such as the chance distribution of abilities and natural talents, considerations we might see as relevant from the standpoint of justice when distributing a particular good or set of goods in society.⁵⁵

⁵³ Although originally used in a slightly different context, I borrow the phrase ‘starting-gate theory’ from Dworkin (2002, p. 89).
⁵⁴ For a slightly different libertarian account of ‘just transfer’ to Nozick’s, see Narveson (2001)
⁵⁵ In A Theory of Justice (1971) Rawls uses the term ‘system of natural liberty’ to refer to a libertarian social order in which individuals enjoy full and equal liberty and are free from government interference to use their individual abilities and natural talents so far as they are able. On the injustice of such a system of natural liberty, particularly with regard to the way in which it rewards those with more luck in the distribution of natural
2.2.2. Social Primary Goods

As John Rawls’s *A Theory of Justice* (1971) has been the most influential attempt to provide an answer to the currency of justice or ‘equality of what?’ debate we shall turn to this now. *Prima facie*, the intuitive appeal of Rawls’s account is the way in which it seeks to take account of morally arbitrary features in a person’s life such as the chance distribution of natural talents and personal abilities, which we noted were largely absent from Nozick’s account of libertarianism. This intuition is cashed out in the manner in which he presents his two principles of justice. Rawls’s (revised) two principles of justice are as follows:

1. Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle)

(2001, p.42 & p.43)\(^{56}\)

Rawls applies his two principles of justice to the basic structure of society: society’s main social, economic and political institutions. The metric, or currency of justice, on Rawls’s endowments to take more advantage of this freedom, he writes: ‘Intuitively the most obvious injustice of the system of natural liberty is that it permits distributive shares to be improperly influenced by these factors so arbitrary from a moral point of view’ (Rawls, 1971, p. 72).

\(^{56}\) Rawls revised his first principle from ‘each person is to have an equal right to the most extensive total system of equal basic liberties’ (1971, p. 302) to ‘each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties’(2001, p.42 & p.43) to deal with a criticism from, most notably, H.L.A Hart (1973) concerning how we ought to go about measuring the extent of an individual’s freedom and how we go about adjudicating between conflicting varieties of freedom.
account, are social primary goods. These include: basic rights and liberties, freedom of thought and free choice of occupation, powers and prerogatives of offices and positions of authority, income and wealth, and the social bases of self-respect (Rawls, 2001, p.58 & p.59). Rawls describes his list of primary goods as ‘all-purpose means’: goods that are necessary for the development of the two moral powers, namely, goods required for the development of a sense of justice and a determinate conception of the good.

Situated in the ‘original position’, which serves as an expository device for devising principles of justice, and placed behind a ‘veil of ignorance’, in which we possess limited information about our own ends, place in society and natural talents, Rawls argues that we would be motivated to have ‘more primary goods rather than less’ (1971, p.142). Accordingly, for Rawls, we would reach agreement, under these ideal conditions, on his two principles of justice. The first principle he refers to as the equal liberty principle; the first part of the second principle he refers to as the fair equality of opportunity principle; the second part of the second principle he refers to as the difference principle.

Central to Rawls’s account of social justice is the ‘priority of liberty’. In other words, for Rawls, the equal liberty principle ought to have ‘lexical priority’ over the second principle. On this account, individuals constitutionally enshrined basic freedoms cannot be sacrificed for greater equality of opportunity or greater material equality. That is to say, basic freedoms on this account are inalienable. They include: ‘freedom of thought and liberty of conscience; the political liberties and freedom of association, as well as the freedoms specified by the liberty and integrity of the person; and finally, the rights and liberties covered by the rule of law’ (Rawls, 1996, p.291).

In attempting to maximise their share of social primary goods, Rawls argues that individuals behind the veil of ignorance would be as much concerned with reaching agreement
concerning the priority of certain basic or fundamental liberties as they would with providing a mechanism to ensure that these liberties were of ‘equal worth’. Consequently, he argues, given the limited information individuals have in the original position, the parties would agree to the second principle for two reasons: first, to ensure that individuals were not discriminated against due to any morally arbitrary factors, and second, to ensure that they possess the material means to take advantage of these basic freedoms. On the first point, according to Rawls, persons should not be privileged or disadvantaged by such morally arbitrary factors as the chance distribution of natural talents and personal abilities. He writes:

‘Those who have been favored by nature, whoever they are, may gain from their good fortune only on terms that improve the situation of those who have lost out. The naturally advantaged are not to gain merely because they are more gifted... No one deserves his greater natural capacity nor merits a more favorable starting place in society’ (1971, p. 101 & p.102).

Similarly, persons ought not to be privileged or disadvantaged by such arbitrary moral factors as one’s social circumstances. A person’s race, sex or position in the class hierarchy, in other words, ought not affect the kinds of opportunities that are available to that person. For Rawls, if we are concerned with equalising opportunities in a liberal society, then any attempt to do so must necessarily involve extinguishing the chance of morally arbitrary factors affecting citizens’ capacity to exercise these opportunities.

On the second point, Rawls introduces the important caveat that not only would the parties in the original position be ignorant of their own place in society and natural talents, but they would know some ‘general facts’ about the social, biological and physical sciences. This fits in with Rawls’s wider view on the place of the sciences in moral philosophy (1971, p.46). In the context of our discussion of A Theory of Justice, however, we can give two salient reasons why he adopts this strategy. First, without this knowledge, the parties in the original position would have no shared knowledge to guide their deliberations in choosing principles of justice;
as such, the desirable would vastly outweigh the feasible. Second, and related, shared knowledge will help to balance equality with efficiency.

Supplied with these general facts from the physical and social sciences and cognizant of trying to achieve the equal worth of liberty, Rawls argues that the parties would adopt a maximin approach to the distribution of social primary goods (1971, p. 152). This would ensure that we would always endeavour to maximise the minimum share. In other words, the difference principle (second part of the second principle) stipulates a presumption in favour of the equal distribution of income and wealth, unless inequalities would improve the position of the worst off in society.

To recapitulate: suppose you were one of the parties trying to devise principles of justice which would establish the fair distribution of social primary goods in society. Suppose further that you did not know what your subsequent position in that society would be. Provided with limited information about the social, biological and physical sciences, on Rawls’s account, you would devise principles of justice that would: first, establish the inalienability of basic freedoms; second, ensure equality of opportunity for all; and third, have a presumption in favour of equality only and insofar as equality maximises the share of primary goods for the least well off.

2.2.3. Social Primary Goods: Three Objections

As we can see, Rawls’s ‘justice as fairness’ is an attempt to eradicate ‘luck’ from the distribution of primary goods in society—hence his use of the veil of ignorance in the original position as a heuristic device for eliminating unjust inequalities when devising principles of justice. If right libertarians can be accused of failing to account for the variability in individual abilities and natural endowments, Rawls recognises the ‘brute luck’ in some being born more naturally talented than others. On Rawls’s account, if we accept that how a person
comes to possess their natural talents is part of the natural lottery of life and, therefore, undeserved, then this luck ought not benefit or burden that person alone. Accordingly, it is the difference principle that provides a corrective to the chance distribution of natural endowments. This is something we would be led to agree on, according to Rawls, given the limited information we would have in the original position. In short, for Rawls, it would be fair.

For Rawls, then, we define the position of the worst-off in society in terms of their possession of social primary goods. In effect, those who have less once the veil of ignorance is lifted and their position in society is revealed are in a worse-off position. The difference principle kicks in to address these inequalities, if they are not to the benefit of the least advantaged. But, we might ask, does this still not allow a person’s position in society to be influenced by any additional arbitrary factors? As Will Kymlicka (2002) rightly points out, Rawls seems to ignore the extent to which each individual’s natural primary goods when combined with their allocation of social primary goods will produce very unequal outcomes in society. He writes:

‘Two people are equally well off for Rawls (in this context) if they have the same bundle of social primary goods, even though one person may be untalented, physically handicapped, or mentally disabled. Likewise, if someone has even a small advantage in social goods over others, then she is better off on Rawls’s scale, even if the extra income is not enough to pay for extra costs she faces due to some natural disadvantage—e.g. the costs of medication for an illness, or of special equipment for some handicap’ (Kymlicka, 2002, p. 70-71).

In other words, if Mary has the same bundle of social primary goods as John, they are equally well off for Rawls, even if Mary has a disability which requires her to spend most of her income to bring her up to the same ‘functioning level’ as John. For Kymlicka, if we find this outcome unfair, then surely we would want to say that a person’s natural primary goods ought to be factored in to how we assess the least well-off in society. Indeed, as Martha Nussbaum (2006) has also argued, Rawls’s social contract approach seems to be built on the
assumption that the parties in the original position are persons who have mental and physical abilities all within the ‘normal range’. So, in effect, ‘the parties are designing principles for citizens who, like themselves, are human beings possessed of no serious mental or physical impairments’ (2006, p.17). To give Rawls his due, his response has been to suggest that the issue of disabilities can be addressed once the veil of ignorance has been lifted, at the legislative stage (1996, p. 183-184). For Rawls, this is not to deny that the position of persons with disabilities is not a serious consideration of justice. Rather, it is only to recognise that it is a justice consideration distinct from distributive justice. On Rawls’s account, the position of citizens with disabilities is an issue for remedial justice, not distributive justice. Whereas the focus of the latter is on the principles that regulate the basic structure of society, the focus of the former is on the duty of assistance that persons with disabilities are owed as a matter of equal dignity and respect. In short, for Rawls, once they know the level of wealth and resources that are available in society, it is the role of state’s democratically appointed legislators to determine what this duty of assistance implies for citizens with disabilities,

While some have viewed the distinction between remedial and distributive justice as a sufficient response to the issue of disabled persons in society, for others Rawls seems to be missing the central point of this objection. As Amartya Sen (1980) has argued, the issue is not simply one over disabilities per se. On the contrary, the criticism can be applied more widely to include all instances of variations in individual abilities and talents. He writes:

‘If people were basically very similar, then an index of primary goods might be quite a good way of judging advantage. But, in fact, people seem to have very different needs varying with health, longevity, climatic conditions, location, work conditions, temperament, and even body size (affecting food and clothing requirements). So what is involved is not merely ignoring a few hard cases, but overlooking very widespread and real differences’ (Sen, 1980, p.215 & p.216).

As we have already noted, people are different and any metric that we are going make the currency of justice needs to take account of this fact. For Sen, a social primary goods
approach or a purely resourcist approach to social justice needs some way of accounting for important variations in individual abilities – variations which can lead to unequal outcomes once these abilities are combined with an individual’s resource allocation. Let us call this problem the fact of individual variations in abilities and natural talents.

A second objection focuses less on the substance of Rawls’s theory and more on its form, namely, on its uncritical use of the distributive paradigm for solving the problems of social injustice. According to Young, by reducing social justice to distribution, distributive egalitarians like Rawls encounter two major problems which are relevant from the standpoint of justice. First, they neglect the extent to which distribution takes place within an institutional and socio-structural context which itself may be unjust. Second, when distributive egalitarians extend their theories beyond the equal distribution of material goods to non-material goods, they tend to misrepresent these goods as if they were static things, instead of seeing them as a function of social relations (Young, 1990, p.15-16).

On the first point, although Rawls recognizes the importance in having the ‘equal worth’ of freedom, Young claims he ignores the extent to which cultural norms and social or institutional biases, say, surrounding ethnicity, race, gender or class, can sustain social hierarchies. Indeed, instead of focusing on the wider institutional and socio-structural context in which distribution occurs, Rawls narrowly assumes that if we attend to inequities at the level of the ‘political’ or ‘basic structure’ of society, then this will be sufficient when it comes to justice. As Young argues, challenging misogynistic images of women in the media or culturally biased representations of certain racial or ethnic groups in society are issues that cannot be resolved by simply focusing on distribution. Indeed, distribution and the narrow
focus on basic structure of society as the subject of justice are doubly insufficient in this respect.⁵⁷

On the second point, while Rawls does not refer to self-respect as something which itself can be distributed, he does suggest that the distributive arrangements he is proposing provides the background conditions for self-respect. However, as Young rightly points out, while the distribution of certain goods may provide some of the conditions for self-respect, they certainly do not provide all of the conditions required for self-respect. On Young’s account, self-respect is as much a function of culture as it is of the ownership of certain goods (1990, p.27). In other words, if, from the standpoint of justice, we are really concerned with individuals having self-respect, then we ought to move beyond the distributive paradigm with its narrow focus on individuals as social atoms to a wider focus on the dominating and oppressive social relations in which these individuals are embedded.⁵⁸

A third objection concerns the significance of non-relational goods such as personal responsibility in Rawls’s theory. For luck egalitarians such as Ronald Dworkin (1981; 2002), G.A. Cohen (1989; 2011), Richard Arneson (1989; 2004) and others, Rawls fails to recognise the qualitative distinction between being worse-off due to circumstances beyond a person’s control (chance) and being worse off due to one’s own choices. This is the distinction that luck-egalitarians draw between ‘brute luck’ and ‘option luck’. Suppose that we both choose to gamble some money on two different horses. While my horse romps home, yours falls at the first fence. We both knew the risks involved in gambling. Fortunately I won; unfortunately you lost. As this risk can be traced to a choice, this is an instance of option

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⁵⁷ Of course, liberal feminists like Okin (1989) have claimed that a concern with the ‘personal’ or non-political can be incorporated into Rawls’s view by simply widening our understanding of the basic structure. Like Young, I do not find this argument convincing. For a more general critique of Rawls’s use of the social contract and its insensitivity to racial injustice, see Mills (1997).

⁵⁸ As Young pithily puts it: ‘social justice means the elimination of institutionalized domination and oppression. Any aspect of social organization and practice relevant to domination and oppression is in principle subject to evaluation by ideals of justice’ (1990, P. 15).
luck: good option luck for me, bad option luck for you. By contrast, suppose I suffer an accident which I cannot be held responsible for, say, by a careless motorist who crashes into my car while driving under the influence of alcohol beyond the legal limit. Whereas in the first case luck can be traced to a choice I made, bet on a horse or not bet on a horse, in the second case I am not responsible for the bad luck which befalls me. This latter sense of luck is what luck egalitarians call ‘brute’ luck. It is inequalities brought about by brute luck, for luck egalitarians – the type of luck brought about by unchosen circumstances – which should be the subject of distributive justice. Hence the often used alternative titles: responsibility-sensitive egalitarianism or equality of fortune (Anderson, 1999).  

Suppose, for now, we agree with luck egalitarians that the idea of choice and responsibility is a salient moral consideration when theorising about justice, let us see how personal responsibility or luck affects Rawls’s theory. Consider the following example: suppose Ronald and Richard are equally matched in terms of resource holdings, natural endowments and University qualifications. However, Ronald, who has a penchant for yoga, decides to leave his promising career as a hedge fund manager for a life of solitary meditation and contemplation; teaching the odd yoga class here and there to sustain his chosen lifestyle. Meanwhile, Richard, who does not have the same proclivity for yoga as Ronald, decides to pursue a career in the lucrative world of hedge fund management. Not surprisingly, Richard soon comes to possess much more resources than Ronald. In fact, Ronald loses most of his initial resource holding and has just enough to sustain his chosen lifestyle. Now recall that Rawls’s difference principle permits inequalities in resource holdings if, and only if, it is to the advantage of the least well-off. In this case, the difference in resource holdings can only persist if it can be shown to be to the advantage of Ronald. If Ronald fails to benefit from this

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59 This is somewhat similar to Carl Knight’s (2009) account of luck egalitarianism. For Knight, ‘variations in the levels of advantage held by different persons are justified if, and only if, those persons are responsible for those levels’ (2009, p. 1).
inequality, then the presumption in favour of equality permits the state to intervene in order to equalise resources – thus depriving Richard of his hard-earned income. From a luck egalitarian perspective this is morally unacceptable. The object of justice should not be to compensate individuals for a chosen disadvantage. The choice made by Ronald to pursue a life of yoga was a calculated gamble: he knew the risks involved. In other words, it was an instance of option luck not brute luck and, therefore, something for which he alone should be held responsible for.

2.2.4. Dworkinian Resources

Political and legal philosopher Ronald Dworkin has developed a theory of equality of resources as the currency of justice in which bad brute luck in the distribution of natural assets is compensated for, and, contra Rawls, personal responsibility is given due consideration. 60 Central to the Dworkinian approach are his two principles of justice: the principle of equal concern and the principle of personal responsibility (2002, p. 7; 2011, p. 2). 61 For Dworkin, in order for a government to be legitimate, it must show equal concern for the lives of all citizen’s (first principle) and it must also hold people responsible - as far as this is possible - for the choices they make (second principle). To illustrate the intuitive appeal of these two principles, Dworkin asks us to imagine a group of individuals shipwrecked on a desert island rich in resources. Assuming for now that each person on the island has the same level of natural endowments, the immigrants decide to divide the

60 As G.A Cohen writes: ‘Dworkin has, in effect, performed for egalitarianism the considerable service of incorporating within it the most powerful idea in the arsenal of the antiegalitarian Right: the idea of choice and responsibility’ (2011, p. 32).
61 Brian Barry makes a similar distinction to Dworkin when he writes: ‘[a] just society is one whose institutions honour two principles of distribution. One is a principle of compensation. It says that the institutions of a society should operate in such a way as to counteract the effects of good and bad fortune. In particular, it says that the victims of ill luck should as far as possible be made as well off as those who are similarly placed in all respects other than having suffered this piece of bad luck. The other principle is one of personal responsibility. It says that social arrangements should be such that people finish up with the outcomes of their voluntary acts…if something is a matter of (brute) luck (chance), that means it is beyond your control; if it is a matter of choice, that means it is within your control’ (Barry, 1991, p. 142 & 143)
resources up equally among themselves. This is done through an auction: each individual is
given the same number of clamshells as bidding tokens, in order to bid on the island’s natural
resources. So that each individual is given equal concern in the distribution of resources,
Dworkin introduces an ‘envy test’ (2002, p. 67). The ‘envy test’ stipulates that an initial
distribution must satisfy the condition of no one wanting to trade their bundle of resources for
any other immigrant’s bundle of resources.

Each immigrant bids for the clamshells that they deem to be most suited for their life goals.
However, if we relax our first assumption, we see that the envy test soon fails. Some
immigrants fall sick, some are more talented than others and some make responsible choices
that unfortunately fail. Here, Dworkin draws a distinction, derived from economics, between
equality would, as far as it is possible, aim to compensate its citizens for falling sick, having
less talent, and so on. A government that favours ex ante equality, by contrast, aims to
provide citizens with the opportunity to insure themselves against these contingencies from
an initial position of equality. Dworkin rejects the ex post idea of compensation as it fails to
respect the principle of personal responsibility. On his account, it is ex ante equality that
would respect the principle of equal concern and personal responsibility. As such, and
returning to our stranded desert islanders, Dworkin specifies insurance as one of the resources
made available to immigrants for auction. Placed behind a veil of ignorance, immigrants buy
insurance to cover themselves for any unexpected distribution in natural assets. Those
immigrants who fare poorly in the distribution of native endowments will, insofar as they
have bought insurance, receive compensation from the collective insurance fund.

To recapitulate: from an initial position of equality, in which resources are up for bidding, a
just distribution of resources is satisfied if, and only if, each individual is happy with their
initial resource bundle, relative to others, and each individual has the opportunity to buy insurance in case of bad luck in the distribution of native endowments, falling ill, and so on.

2.2.5. Dworkinian Resources and Luck Egalitarianism: Objections

Contra Rawls, Dworkin’s egalitarianism provides room for each individual’s possession of natural primary goods to be factored into the distribution of resources. For Dworkin, situated behind a thin veil of ignorance, immigrants are to buy insurance in order to cover themselves for any unexpected distribution in natural assets. So, if John, once the veil of ignorance has been lifted, finds himself with a certain disability, he is entitled to compensation under the *ex ante* insurance scheme he bought into. Those that fare better in the natural lottery of individual abilities and talents have no need to claim from the insurance scheme, thus providing ample funds for those that fare less well. In addition, by providing citizens in society with the same opportunity sets, citizens are free to be held responsible for the choices that they make. In effect, if I prefer Yoga to hedge fund management, then I ought to bear the consequences of this choice. In short, for Dworkin, I should not expect the state to compensate me for my expensive tastes.

If we recall Sen’s individual variations in abilities and natural talents objection mentioned earlier, it appears that Dworkin’s hypothetical insurance model goes some way to answering this objection. However, this would be to move too fast. As a purely empirical matter, given the inevitable *range* of abilities persons possess on the island once the veil has been lifted – this was Sen’s fundamental point, after all – it is questionable whether Dworkin’s insurance scheme would provide the kind of cover that he thinks it would. Even if Dworkin’s insurance scheme can withstand this charge, there is a stronger objection concerning the manner in which Dworkin views disabilities as divorced from their socio-structural or institutional
context. My being born without the ability to walk will have a deleterious effect on my life to the extent that society is structured to favour those who do walk. This is bad brute luck, then, only to the extent that society continues to favour those who have the ability to walk. As we saw in our last chapter, my power to do X or Y is a function of my abilities plus the external societal conditions. By failing to place abilities in the wider socio-structural context (ablleness), Dworkin’s luck egalitarianism neglects the extent to which the broader socio-structural context arbitrarily informs our understanding or what it means to be able to do something. As Anderson points out, the upshot of all this is that Dworkin ‘makes the basis for citizens’ claims on one another the fact that some are inferior to others in the worth of their lives, talents, and personal qualities’ (1999, p.289). The institutional or cultural context which continues to inform the general understanding that this is some sort of inferiority never comes up for discussion, on Dworkin’s account. In short, such a view encourages putatively ‘superior citizens’ to express pity on the less fortunate and those deemed inferior to be envious of the more fortunate, thereby reproducing the culturally codified assumption that to be born with a disability is to be born as some sort of substandard person (Anderson, 1999).

Even if Dworkin can in some way respond to these objections, it is the importance that he gives to his principle of personal responsibility that many consider most objectionable. As we saw in our last chapter, even if we can ensure that a person is not unfree from making a choice, there may be certain disabling features of society which render her unable to see this as a choice for her. For political theorists who share this view on the nature of a free choice, this hard-and-fast distinction between chance and choice is deeply problematic. As Samuel Scheffler quite rightly points out, for example, ‘unchosen personal traits and the social

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62 For a critique of Dworkin’s account along somewhat similar lines, see Young (2013, p. 27-35).
63 As the Union of the Physically Impaired Against Segregation (UPIAS) point out, there is a big difference in being impaired to do X and being disabled to do X: ‘In our view it is society which disables physically impaired people. Disability is something imposed on top of our impairments by the way we are unnecessarily isolated and excluded from full participation in society. Disabled people are therefore an oppressed group on society (UPIAS, 1976, p. 14).
circumstances into which one is born are importantly...constitutive of one’s identity’ and, furthermore, ‘voluntary choices are routinely influenced by unchosen features of [people’s] personalities, temperaments, and the social contexts in which they find themselves’ (2003, p. 18). Clare Chambers also makes a similar point when she writes:

‘Individuals’ choices can never be assessed in isolation from the cultural context in which they take place, and a particular practice cannot be considered in isolation from the meaning it has for the community as a whole. More specifically, the justice of a practice or a choice is not usually determined by the individual who initiates it, but relies in large part on the role it plays in the overall system of (in)equality. Liberal focus on the individual fails to notice how individual actions fit into social structures of (in)justice’ (2008, p. 44).

If Dworkin’s luck egalitarianism fails to appreciate the extent to which an individual’s culture or social position informs their basic understanding of a choice, Anderson argues that we ought to reject luck egalitarianism for at least two more reasons. First, by failing to compensate citizens for bad option luck, luck egalitarianism ‘excludes some citizens from enjoying the social conditions of freedom’ (Anderson, 1999, p.289). In fact, on a luck egalitarian account, for those who lack the ‘social conditions of freedom’, the buck stops with them. Suppose an uninsured driver crashes into a wall leaving her with life-threatening injuries. Suppose further that the police are the first on the scene and establish that the driver is uninsured. For strict luck egalitarians, according to Anderson, as the driver has no insurance cover, she is not entitled to the requisite life-saving medical attention. Anderson calls this ‘the problem of abandonment of negligent victims’ and, for her, it is entirely compatible with luck egalitarianism (1999, p.296).

Second, luck egalitarianism, ‘in attempting to ensure that people take responsibility for their choices, makes demeaning and intrusive judgements of people’s capacities to exercise responsibility and effectively dictates to them the appropriate uses of their freedom’ (1999, p.289). By compensating individuals for unchosen disadvantage, the state plays a central
evaluative role in determining whether an individual is the victim of bad brute luck or could have done otherwise. In other words, determining whether an individual smokes or drinks due to choice or wider social pressures becomes the business of states in a luck egalitarian framework. As such, the state makes ‘moralizing judgements’ over individual’s personal preferences, which goes against the fundamental liberal and republican idea that individuals should be free to pursue their own conception of the good. Citizens, in this regard, would have to toady, flatter and fawn – dispositions anathema to real freedom – in the hope that the state would see them in sympathetic terms and award compensation.

In contrast to Dworkin’s focus on the non-relational good of personal responsibility in his theory, Anderson claims that what ought to ground a conception of social justice in the idea of relational equality. On her account, the purpose of justice should not be reduced to simply distributing the benefits and burdens of society as we find in Rawls, nor should it involve punishing citizens for the make poor choices they make like we find in luck egalitarianism; rather, the basic point of social justice should be to end relations of domination and ensure that citizens stand in relations of equality with one another. As we shall see shortly, on this score, Anderson has much in common with republican theory.64

2.2.6. The Capabilities Approach

In recent years the capability approach has emerged as an important alternative or supplement to many of the normative theories of social justice previously mentioned.65 While not, strictly speaking, a ‘full-blown normative theory of justice’ in its own right, it does provide us with

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64 Interestingly, Anderson comes close to endorsing a republican understanding of freedom when developing her version of ‘democratic equality’. She writes: ‘equals are not subject to arbitrary violence or physical coercion by others. Choice unconstrained by arbitrary physical coercion is one of the fundamental conditions of freedom…equals are not dominated by others; they do not live at the mercy of others’ wills. This means that they govern their lives by their own wills, which is freedom’ (1999, p. 315)

65 For a discussion along these lines, see the collection of essays in Brighouse and Robeyns (2010).
some important conceptual tools for evaluating what citizens are effectively able to do and be in society (Robeyns, 2013). Indeed, insofar as the capability approach is sensitive to variations in individual abilities and talents and the social and institutional context in which individuals are embedded, here I tend to agree with Sen (1980), Nussbaum (1999), Robeyns (2000) and others that the capability approach represents a major improvement in our basic understanding of social justice. As we shall see in the rest of this section, however, the extent to which the capability approach is sensitive to these structural and institutional forms of injustice very much depends on the particular, pre-existing normative framework in which we are working. Rather than seeing this as an important weakness with the approach, however, I agree with neo-republicans that this makes it an important conceptual ally in the fight against injustice. As we shall see in the next section, my disagreement with neo-republicans largely concerns the extent to which we ought to endorse the capability approach in removing social injustice.

As we saw with Rawls’s approach to social justice, each person is to have access to a standardized bundle of goods – his social primary goods – which are instrumental to leading a good life.⁶⁶ In this sense, Rawls is concerned with providing citizens with the means to achieving a valuable or flourishing life. In addition, simply any resources will not do. Primary goods, on this account, are things that enable citizens to live the life that they choose. Similar to Rawls’s account, the capability approach is concerned with providing citizens with the means to achieve a flourishing life, where these means are instrumental to leading a life that one chooses. However, the capability approach goes much further in its sensitivity to both the variegated natural, social, cultural and environmental means that individuals have at their disposal, and the ends to which these means are instrumental toward – again, something which we found largely absent from our previous discussion. In other words, according to

⁶⁶ As Rawls writes, ‘primary goods…are things citizens need as free and equal persons living a complete life; they are not things it is simply rational to want or desire, or to prefer or even to crave’ (2001, p. 58).
capability theorists, we ought to be concerned with an individual’s power or capability to convert these means into valued ends or functionings. Notice here, however, that we have two components to this approach: first, for capability theorists, we ought to be concerned with the actual powers (capabilities) that individuals have to achieve outcomes; and second, we ought to be concerned with the ends which these capabilities are instrumental toward. Let us take the second ‘ends’ or ‘functioning’ component first. According to Sen, we can describe a functioning as follows:

‘A functioning is an achievement of a person: what he or she manages to do or to be. It reflects, as it were, a part of the ‘state’ of that person. It has to be distinguished from the commodities that are used to achieve those functionings. For example: bicycling has to be distinguished from possessing a bike. It has to be distinguished also from the happiness generated by the functioning, for example, actually cycling around must not be identified with the pleasure obtained from the act. A functioning is thus different both from (1) having goods (and the corresponding characteristics), to which it is posterior, and (2) having utility (in the form of happiness resulting from that functioning), to which it is, in an important way, prior’. (1985, p.10 & 11)

In other words, functionings are those ‘beings’ and ‘doings’ that an individual manages to achieve throughout their lifetime. They may include the following: being adequately nourished, being in good health, being educated, taking part in politics, having self-respect, and so on.

If functionings are those achievements that an individual goes on to realize, capabilities – the first component above – are those opportunities or ‘real freedoms’ that a person has. They are, in other words, the power or capability to perform valued functionings. Here it is important to draw the distinction we made in our last chapter when discussing power to between power-as-ability and power-as-ableness. Recall, for Moriss (2002), abilities refer to what you can in general do; ableness refers to what you can do at specified time, t. Having the capability or power to perform X, therefore, implies having the general ability to perform X

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67 Sen defines our capability or ‘real freedom’ as ‘the real opportunity that we have to accomplish what we value’ (1992, p. 31).
combined with the background societal conditions or ableness to perform X. In other words, having a capability to do something is a function of your combined abilities, namely, your ability and your ableness. Capability theorist Martha Nussbaum makes a similar distinction when she writes: ‘[w]hat are capabilities?...they are not just abilities residing inside a person but also the freedoms or opportunities created by a combination of personal abilities and the political, social and economic environment’ (2011, p. 20).

It is by distinguishing ability from ableness in the locution capability and capability from functioning, that the capability approach gives us the analytical resources to be able to factor into our conception of social justice the various individual, societal and cultural conversion factors which affect an individual’s functioning – conversion factors which are largely absent from Rawls’s primary goods approach and resourcist approaches more generally. For Robeyns (2005, p. 99), these conversion factors may be grouped into the following three broad categories. First, the capability approach is sensitive to personal factors influencing the conversion of capabilities into valued functionings. These include things such as: intelligence, health, sex, general physical abilities, and so on. So, if we consider the case of a pregnant expectant mother having the capability to be well-nourished, this means that we will factor into the distribution the extra resources she requires to reach the functioning level of being well-nourished. Second, the capability approach is sensitive to institutional and cultural conversion factors impacting upon an individual’s functionings. These include the manner in which certain background social and cultural conditions work to the benefit of some individuals over others. It also includes the way in which the state often favours one particular conception of the good over others. Or it may also include the manner in which social norms surrounding gender, race, disabilities and so on, negatively affect the lives of particular groups of social actors. Third are the environmental conditions that influence the capability to function. These include anything from the climate of a given society to the
general geography or physical layout of the region. Crucially, however, as Robeyns points out, these conversion factors may be emphasised or deemphasised depending upon the particular normative framework in which we interpret the capability approach, say, whether it is liberal, feminist or republican framework, and so on. I will return to this point shortly.

Capability theorists focus on the capabilities that individuals possess – what people are effectively able to do and be – rather than on the functionings themselves. In other words, they focus on providing individuals with the means or opportunity to achieve certain outcomes rather than on them actually achieving those outcomes. This, we might say, situates the capability approach in a broadly ‘freedom-centred’ framework. That is to say, for capability theorists, citizens are free to choose the functionings they want to realize – they have the capability or real freedom to function – and it is not the state’s business to ensure that these functionings are actually realized.68

However, this does not mean that capability theorists are not concerned with the question of how we might go about specifying the relevant functionings. Accordingly, there has been much debate among capability theorists concerning what an actual list of relevant capabilities might look like; or, whether capability theorists should be in the business of specifying lists at all. Indeed, much of this debate concerns whether the capability approach is a theory of justice in its own right or something which ought to be adopted by a more comprehensive account of justice.69

Martha Nussbaum’s recent work on a list of ten ‘central human functional capabilities’ provides an interesting attempt to prescribe such a list. For her, the provision of her open-ended list of ten functional capabilities is a minimum requirement for a life worthy of human

68 However, crucially, we may be more inclined to focus on achieved functionings when it comes to the case of children.
69 As Robeyns writes: ‘One should not take the capability approach for being more than it is: an evaluative approach that draws our attention to people’s being and doings, and their real freedom to be who they value being, and do the things they value doing’ (2009, p. 118).
dignity and, *ceteris paribus*, a minimum requirement for justice. Her list includes things such as: being able to live a healthy life, being able to form a conception of the good, being able to participate in politics, and so on (Nussbaum, 2006 p. 76-78). She describes her version of the capability approach as a ‘thick vague’ conception of the good which she sees as compatible with different individual’s moral, religious and philosophical doctrines (Nussbaum, 1990, p. 217).\(^7\) Crucially, however, she claims that her list is not a full theory of justice. Rather, it provides only ‘a partial and minimal account of social justice’. That is to say, it is something which all governments of the world ought to adopt, say, as something similar to the adoption of the European Convention on Human Rights (ECHR).

In contrast to Rawls’s account of social primary goods, which relies on a ‘thin theory of the good’, Nussbaum’s account of the ‘ten human functional capabilities’ and it’s corresponding ‘thick vague conception of the good’ has been open to the charge that it relies on a conception of the good too thick to sit alongside different individuals moral, philosophical and religious doctrines. Accordingly, some capability theorists, like Amartya Sen (2004), have been less willing to specify an alternative list and see the process of arriving at a list of desirable capabilities as a matter of reasoned democratic debate. In other words, selecting the relevant capabilities for a given society, for Sen, ought to involve an ‘act of reasoning’ and should not be specified *a priori*, as Nussbaum’s account does. However, Nussbaum (1999; 2001) has responded to Sen’s scepticism on this issue by suggesting that without an *a priori* list to guide deliberation there may be certain pre-existing institutional or cultural biases bound up with the democratic process which may have a negative impact on the list, particularly when it comes to issues of gender equality and so on. In other words, for Nussbaum, leaving the

\(^7\) Nussbaum traces the roots of her account of human functioning back to Aristotle: ‘The Aristotelian uses a conception that is not “thin”, like Rawls’s “thin theory” – that is, confined to the enumeration of all-purpose means to good living, but “thick” – dealing, that is, with human ends across all areas of human life. The conception is, however, vague and this in a good sense. It admits, that is, of many concrete specifications; and yet it draws, as Aristotle put it, an “outline sketch” of the good life’ (1990, p. 217).
specification of the relevant capabilities entirely to the democratic process, while satisfying the principle of democratic legitimacy, may ultimately produce an unjust result. More recently, Ingrid Robeyns (2003, p. 70-71) has argued along the same lines as Sen – namely, along the lines that we ought to allow the democratic process to specify the relevant capabilities. However, she adds to her account the important caveat that there ought to be certain procedural guidelines – norms of democratic deliberation, and so on – which ensure certain biases do not negatively impact upon the list. For Robeyns, these procedural guidelines ought to include things such as methodological justification, cultural sensitivity and so on.

As I have alluded to already, the debate over the search for the relevant capabilities highlights a major shortcoming of the capability approach, namely, without some additional normative considerations, the capability theory has difficulty giving us answers to a number of important questions. These questions might include: 1) what kinds of capabilities do we want the state to promote?; 2) how do we go about arriving at a particular list of desirable capabilities?; 3) how far should the state go in promoting these capabilities?; 4) how seriously ought we to take the various conversion factors which effect an individual’s capability to function?; and so on. Accordingly, the capability approach has often been added as a useful supplement to more comprehensive accounts of social justice, which can provide the answers to these important questions. As we shall see in the next section, establishing this connection with a more comprehensive normative theory of social justice is precisely what neo-republicans have also sought to do.

### 2.3. Capabilities and Republican Equality

A number of contemporary republican writers have already described the capability approach as something which shares many of the central concerns of republican theory and freedom as
non-domination.\textsuperscript{71} A central point of similarity between the republican account of freedom and the capability approach, for these writers, is the claim that there is more to the idea of freedom than being merely free from interference. As we have just seen with our analysis of the capability approach, what matters is our ‘real freedom’ or power to perform certain functionings – our capability to function. Simply being free from interference, for capability theorists, is insufficient if we want to have the capacity to be able to freely choose the good life. As we saw in our last chapter, this is also a central feature of the republican conception of freedom as non-domination. In this sense, both approaches are sensitive to the notion of meaningful human agency and not simply focused on interference as a constant impediment to free choice.

While there is broad agreement among republicans and capability theorists on this score, some critics claim that the capability approach is insensitive to the unfreedom dimension as republicans understand it. However, for Pettit (2001b), this objection does not necessarily follow.\textsuperscript{72} Rather, on Pettit’s reading, Sen’s account of freedom shares the republican commitment to free choice absent dominating social relations. On the one hand, Sen’s capability approach promotes free choice which is content-independent; on the other, it promotes free choice which is context-independent (Pettit, 2001b). In other words, for Sen, I am \textit{unfree} in a certain choice if two conditions obtain. First, I am unfree in a choice between two options A and B, if I am only free to choose the option that I prefer. In other words, if, say, A and B are options and I happen to choose option A, then it should have been the case that I could also have chosen option B. Second, I am unfree in a choice if my making this choice is dependent upon the goodwill of another agent or agency. In other words, if my choosing A comes at the grace and leave of a more powerful agent or agency, I am unfree. For Pettit, while Sen emphasises the former ‘content-independent dimension’ of free choice,

\textsuperscript{71} For more on this connection, see Pettit (2001), Laborde (2010) and Alexander (2010).
\textsuperscript{72} See also Alexander (2010)
he sees no valid reason why he should not also emphasise the latter ‘context-independent dimension’ of free choice. Indeed, this latter dimension can easily be derived from Sen’s account of freedom, according to Pettit. For this reason, Pettit sees a great deal of similarity between the capability approach and the republican approach on what it means to be unfree in a choice. In short, for Pettit, combining the two approaches is logically coherent (2001b).

More recently, Pettit (2001a) has further elaborated on this claim of logical coherence. On his account, having sufficient capability to do X or Y will mean that I am not dependent on the goodwill of others for doing X or Y - I am not dominated in my choice to do X or Y. On this account, being secure in the ‘basic functioning capabilities’ gives citizens’ a certain kind of resilience against the intentional interference of other agents or agencies in their choices (Pettit, 2012, p. 87). Having the basic capability to read, write, have shelter and so on, will ensure that I am not subject to the whim of potential dominators who might otherwise take advantage of this lack of capability. In this sense, having access to a certain set of basic capabilities will help to ensure that citizens are in control of their lives. It gives citizens a certain degree of security against the uncontrolled interference of others. If capability theorists have been less willing to pronounce the capability approach as a normative theory of social justice in its own right – hence, the often used term ‘approach’ as opposed to ‘theory’ - Pettit sees it as an important conceptual ally in the republican fight against domination.

For Pettit, on a neo-republican account, security in the ‘basic functioning capabilities’ ought only to extend to the fundamental freedoms or basic liberties. The basic liberties, on this account, provide the domain of freedom – the specific area or set of choices in which freedom as non-domination ought to be preserved. As Pettit writes: ‘[t]o be a free person you must have the capacity to make certain central choices – choices about what religion to practice, whether to speak your mind who to associate with, and so on – without having to seek the permission of another. You must be able to exercise such basic or fundamental
liberties…without having to answer to any master or dominus’ (2014, p. xiv-xv). Indeed, the fundamental freedoms or basic liberties are often cited as the specific set of choices which citizens ought to be free. We might think of Nussbaum’s list of ten human capabilities as containing a number of these fundamental freedoms.\textsuperscript{73} Similarly, this domain requirement for freedom of a set of equal basic liberties we can also see, for example, in Rawls’s \textit{A Theory of Justice} (1971). For liberals and republicans, then, the basic liberties represent those basic choices which citizens have a ‘fundamental interest’ in being able to exercise freely. On Pettit’s account, however, the basic liberties must satisfy three important constraints: first, they must be maximally extensive or as numerous as is feasible; second, they must be personally significant or important to the lives of every citizen; and third, they must be co-enjoyable or capable of enjoyment by each citizen in the society (2008, p. 201). In short, they include things, such as: freedom of thought, freedom of conscience, freedom of association, the freedom to own property, freedom of movement, and so on.

For republicans, then, citizens ought to have the capability to exercise their basic liberties free from arbitrary interference. In other words, republican justice requires that citizens have sufficient anti-power against all others – in this case, sufficient capability – to exercise their fundamental freedoms free from the arbitrary whim of others. Republicans differ from liberals in ensuring that citizens are not merely free from interference to enjoy these liberties, but free from the threat of arbitrary interference or domination in the exercise of these choices. While Rawls views the difference principle as providing the essential egalitarian mechanism by which citizens will have the ‘equal worth’ of their basic freedoms, republicans argue that citizens will only have the equal worth of their freedom if they have sufficient capability to exercise these freedoms. In this sense, freedom as non-domination goes much further than ‘the high liberal tradition’ in securing citizens freedom in the domain of the basic

\textsuperscript{73} For more on the connection between Nussbaum’s list of ten human capabilities and basic freedoms, see Nussbaum (1997).
liberties. It prescribes providing citizens with enough of the ‘basic functioning capabilities’ to exercise these freedoms free from arbitrary interference.

Ensuring that citizens have the capability to exercise their basic liberties free from domination implies a number of important social and institutional measures. In the first instance, it will require that the state does not arbitrarily favour one conception of the good over another. It will also require that the state does not favour one particular culture over another. If the state favours one particular culture over another, then it renders members of minority cultures vulnerable to domination in the exercise of their fundamental freedoms. If the state ought to be equally accommodating of all cultures, then it should also require that citizens with disabilities are not rendered vulnerable to domination simply by virtue of their disability. Health care, public transport and other public goods are required so that citizens are not dependent on more powerful private interests when it comes to the provision of these goods. A republican interpretation of the capability approach gives us the evaluative tools to determine what is needed for citizens to be free from domination in their lives. In other words, by examining the various conversion factors that might limit a citizen’s capability to function we can determine in what areas of their lives citizens are lacking the basic capability to exercise their fundamental freedoms free from domination. For Pettit, perhaps chief among the institutional measures which will help to secure citizens freedom from domination in the domain of the basic liberties is the provision of a civically-minded public education. If citizens have the essential skills and knowledge required for exercising their basic freedoms, then they are less likely to fall into dominating social relations at the hands of more assertive and superiorly educated citizens: ‘[l]et people be lacking in such developmental ways, and they will be incapable of asserting themselves with others, or assuming the status of free persons’ (Pettit, 2012, p.111).

74 Freeman (2011) contrasts the ‘classical liberal tradition’ of Adam Smith with the ‘high liberal tradition’ of Dewey and Rawls.
The notion of *status* is crucial to Pettit’s understanding of republican equality. For Pettit, though distribution might help to secure a citizen’s equal relational status as a freeperson, this status cannot be reduced to distribution. As we have seen, having the basic functional capabilities to exercise the basic liberties free from domination implies that certain structural or institutional features of society are scrutinised. For republicans, the value in combining a focus on basic functioning capabilities with republican theory is that the capability approach provides us with some important evaluative tools in securing this relational status among citizens.\(^{75}\) However, as attractive as such a view as this might be, I claim that this is still only a minimally relationally egalitarian conception of social justice. If we want a more comprehensive relational conception of social justice which is sensitive to inequality at the various levels I outlined in the introduction, namely, the interpersonal, the structural and the symbolic, then we need to recognise that the connection between republicanism and the capability approach is capable of running much deeper.\(^{76}\)

### 2.3.1. Capabilities and Republican Equality: A Radical Reinterpretation

Whether non-intentional constraints on action ought to be factored into a republican conception of social justice cuts to the heart of the issue we raised in the last chapter, namely, that our overall freedom, so to speak, is dependent on our not being unfree and our not being non-free in a choice. By merely focusing on securing citizens basic functioning capabilities to avoid arbitrary interference in their choices – the capability to have anti-power against all others in their choices – Pettit undercuts a major part of what it means to be relationally equal with others. Recall, as we noted earlier, the capability approach has the conceptual tools to be able to incorporate a number of different conversion factors which limit our capability to

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\(^{75}\) See, for example, Schuppert (2014).

\(^{76}\) While Sen does not make this exact claim, he does make a somewhat similar claim when he states that although republican freedom is an important dimension of freedom, it is only one dimension of freedom. On Sen’s account, we need to evaluate both dimensions of our freedom: our capability and our non-domination. For more on this point, see Sen (2010, p. 306).
function. These, again, are the various personal, socio-structural and environmental conversion factors. In other words, they are the kinds of factors which ought to be taken account of if we are concerned with a wide understanding of what it means to provide citizens with the capability to function as equals. Now, to take the example of socio-structural conversion factors, as we noted in our last chapter Pettit has a rather narrow view on the importance of these kinds of factors to justice. As we saw, from the standpoint of neo-republican justice, social structures are morally relevant only to the extent that they facilitate domination – to the extent that they facilitate the intentional interference of other agents. However, as we also saw, I can be free from the intentional interference of other agents but there may still exist certain non-intentional cultural or institutional impediments to my freedom and equality in society. While Pettit pays lip-service to these kinds of constraints in his more recent work, he largely ignores their independent relevance to our overall freedom and equality in society.

If republicans are going to endorse the capability approach as an important feature of republican justice, then I claim they need to recognise the importance that socio-structural conversion factors can have on our capability to function independent of their connection to domination. In other words, if republican freedom demands both content and context independence in how we make our choices as Pettit claims, then I claim that it also demands that we take seriously the various conversion factors which limit our capability to function – our capability to look others in the eye - independent of their relation to arbitrary interference. Simply focusing on citizens’ capability sets in relation to their unfreedom is insufficient if we want to a more radical relationally egalitarian conception of social justice.

Put simply, then, republicans can take a rather narrow interpretation of the capability approach – one that connects our basic functioning capabilities to our unfreedom – or they can opt for a wider, more radical interpretation of the capability approach. The normative
resources and agency values which republicanism provides, say, over what it really means to be free to make choice, provide republicans with the conceptual resources for quite radically different interpretations of how far we want this connection to run. We can opt for the narrow concern with securing citizens capabilities to function in terms of the intentional interference of other agents or we can widen this connection to incorporate the way in which non-intentional institutional or socio-structural background limit some citizens’ capability to function in society. Ingrid Robeyns sums up this basic point of possible interpretations of the capability approach when she writes:

‘The underspecified character of the capability approach requires that, before the capability approach can be applied for specific normative analyses, it has to be supplemented with additional theories. These theories include ontological theories about certain aspects of social and individual lives, and explanatory theories giving accounts of why states and processes are the way they are and how we should understand them. These supplementary theories also include normative accounts of the three conversion factors in the capability approach, and a normative theory of choice and personal responsibility. In sum, a wide range of ontological, explanatory and normative accounts that are added to the capability framework before it can be fully operationalised has an impact on our normative analysis in terms of functionings and capabilities’ (2008, p. 94).

For Robeyns, if the capability approach depends in large part on this wider theory of value, then it is possible to interpret the approach along a number of different lines. Indeed, the underspecified character of the capability approach means that it is possible to have a variety of interpretations which are radically different from one another. As we have seen, in the context of republican theory, we can make the theory more or less radical to the extent that we interpret the various conversion factors and what it means to be able to make a free choice. By merely focusing on the basic functioning capabilities to the extent that they protect us against the intentional interference of others in our choices, Pettit’s account of republican social justice is not as radical as it might otherwise be. It leaves in place certain capability limiting constraints – disabling constraints or socio-structural constraints – which may hinder
citizens’ capacity to look others in the eye. The approach that I favour is, on the one hand, more radical than the existing republican interpretation, to be sure. However, it is arguably more consistent with very idea of what it means to have the capability to do something. In short, on my reading, combining the two approaches offers much more than the orthodox republican view allows for.

2.3.2. Symbolic Inequality and the Capability to Look Others in the Eye: Two cases

Consider the example of the symbolic representation of persons with disabilities as a paradigmatic case of the kind of institutional or symbolic inequality that is excluded as an issue of social justice for the neo-republican view, but is morally relevant from the standpoint of my conception of republican equality. As we saw with Dworkin’s equality of resources and luck egalitarianism, the disabled are merely reduced to dependent recipients of extra ‘compensatory’ resources. The fact that society is structured to render their impairment a significant form of social disadvantage does not come up for question, on this account. On Pettit’s account, by contrast, the disabled ought to have enough of the basic functioning capabilities so that they can exercise their basic liberties free from the uncontrolled interference of others. While this is a significant improvement on Dworkin’s account, what of the institutional or cultural stigma that disabled persons experience in fully participating in society as a consequence of having a disability? The social marginalization that results from the stigma of having a disability, I claim, cannot be resolved by a conception of justice which merely relies on securing citizens basic functioning capabilities to enjoy equal freedom as non-domination.

According to a 2008 online poll commissioned by Disaboom, 52% of Americans would rather be dead than disabled (Reuters, 2008). This statistic contradicts a lot of recent research which tells us that persons with disabilities consistently report experiencing a good quality of
life (van Leeuwen et al., 2012). The problem here is that for the majority of the population having a disability has a particular symbolic meaning in society: it is a life not worth living. Albrecht and Devlieger describe this contradictory account of what a life with a disability amounts to as the ‘disability paradox’:

‘The disability paradox exists in two forms: first, people with disabilities report that they have serious limitations in activities of daily living, problems in performing their social roles and experience persistent discrimination, yet they say that they have an excellent or good quality of life; and, second, the general public, physicians and other health care workers perceive that persons with disabilities have an unsatisfying quality of life despite that fact that over 50% of these people report an excellent or good quality of life’ (1999, p.982)

The disability paradox serves as a useful reminder that an individual’s socialisation into a particular cultural habitus largely frames their understanding of another form of life in those terms. In these kinds of cases, I claim the republican state is under a special justice obligation to remove the type of stigma that is a result of this social process. This can be done through education, increased levels of political inclusion or deliberation or through the media. Again, the aim here should not simply be to ensure that citizens have the basic functioning capabilities to ward off domination in their choices; rather, the aim should be to ensure that citizens’ capability to look others in the eye is not hindered due to a symbolic inequality that exists in society. My account of republican equality is much more sensitive to these kinds of cases than the neo-republican conception of social justice.

Consider also the recent controversy over the refusal by some publicly funded universities to remove racist and imperialist iconography from their campus buildings. The prevalence of this kind of racist symbolism on university campuses is troubling on a number of levels, not least when it comes to their banality or taken-for-granted acceptance by many. Of course, I strongly agree with those who argue that universities ought to be centres of critical thought.

77 Recent statistics show that 22% of Americans have a known disability (2015).
78 Two recent examples of this kind of symbolic inequality immediately spring to mind: first, the call to remove British colonialist and racist Cecil Rhode’s Statue from a university in Cape Town in South Africa; and second, Yale University’s decision to keep white supremacist John A. Calhoun’s name as part of Yale’s ‘Calhoun College’.
and freedom of expression. However, this does not preclude us from removing these kinds of symbols of racism from what are effectively public buildings. If we want citizens to have the capability to look each other in the eye without deference, then our public spaces ought to foster this kind of interaction, not act against it. While equality in the basic functioning capabilities to ward off domination is an important mechanism for addressing racism in society, removing these kinds of banal reminders of racism is better addressed by a conception of social justice which is also sensitive to the manner in which the unequal distribution of symbolic resources in society can negatively affect a citizen’s social status. I believe that my conception of republican equality is better suited to this task than the idea of equal freedom as non-domination.

2.4. A Final Word on the Pattern of Republican Equality

So far we have been discussing the advantages of combining the capability approach with the account of republican freedom developed in the last chapter. We have seen that the capability approach is an important conceptual ally in delivering on the idea of republican equality, as I understand it. In this final section I want to make a few brief clarificatory remarks about the rule or pattern of republican equality. As I have alluded to in the previous section, republican justice stipulates a sufficiency baseline as the rule or pattern of republican equality. Here I think it is important to recognise that the sufficiency baseline is not a distributive rule or pattern of justice; rather, it is rule or pattern that aids in the process of delivering on relational equality.

2.4.1. Equality, Priority, Sufficiency

In the context of our discussion of theories of distributive justice, we can identify three approaches in the literature to what the pattern or rule of justice should be, namely, equality,
On the first egalitarian (equality) approach, what matters is that, from an initial starting-point, everyone should have equal shares of the particular metric in question. In other words, according to this rule, it matters intrinsically whether A has more than B. A distributive order of (1, 1) is more just, on this view, than an order of (1, 2) – relativities in the good distributed matter intrinsically. On the second prioritarian approach, what matters is that we give priority to the least advantaged members of society in the distribution (Parfit, 1997). In other words, a just distribution is one that gives special weight to the less well-off in society. One version of prioritarianism, a version that we have already encountered with Rawls, is maximin. Recall, for Rawls, a just distribution is one in which inequalities must work to the benefit of the least advantaged. In effect, this means that a distribution of (3, 4) is more just than a distribution of (2, 100) – even though in the latter distribution the total or absolute amount is vastly greater than the former. Finally, on the sufficiency approach, what matters is that everyone should have enough of the particular currency question (Frankfurt, 2003). To recapitulate: first, on the egalitarian (equal shares) approach, what matters is the intrinsic relativities in distribution; second, on the prioritarian approach, what matters is giving special weight to the least fortunate in society, and finally, on the sufficientarian approach, what matters is that each individual should have enough of the good(s) in question.

We have already seen that prioritarianism in its Rawlsian form was susceptible to one major objection – namely, by giving priority to the least advantaged, we fail to account for the way in which some may be worse off than others due to their own choices. For luck egalitarians, a just distribution ought to be sensitive to the kinds of choices that people make. If prioritarianism is unattractive, for luck egalitarians, for this reason, then the equal shares or

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79 As Anderson writes, ‘theories of distributive justice must specify two things: a metric and a rule. The metric characterizes the type of good subject to demands of distributive justice. The rule specifies how the good should be distributed’ (2010, p. 81)
strictly egalitarian approach is often objected to for the importance it puts on intrinsic relativities. In other words, if we take a strictly egalitarian approach, then it follows that a distribution of (99, 100) is less just than a distribution of (1, 1). What matters is the relative distribution not the absolute distribution. In other words, according to the equal shares approach, if we are concerned with a just distribution, then we ought to ‘level down’ to a distribution in which everyone has the same, even if an unjust distribution makes everyone better off.\textsuperscript{80} If luck egalitarians object to prioritarianism on the grounds that it is insensitive to the kinds of choices that make individuals less well-off, they object to the equal shares approach on similar grounds.

We have already seen a number of objections to luck egalitarianism (LE) and its distinction between brute and option luck in section one. These include: LE encourages the more fortunate to take pity on the less fortunate; LE makes moralising judgements over individual’s choices; LE has a largely socially atomistic account of how individuals make choice. Furthermore, and as Anderson correctly pointed out, LE ‘excludes some citizens from enjoying the social conditions of their freedom’. This latter objection to LE is essential to understanding the importance of a sufficientarian rule or pattern of rule. In a republic, citizens ought to have enough or sufficient capabilities such that they are able to walk tall among their fellow citizens – they are able to look other citizens in the eye. However, rather than a sufficiency baseline simply implying a distributive rule or pattern of justice, it captures an important of what it means to deliver on relational equality in society. Republican equality, as I understand it, guarantees enough or sufficient capabilities to function as a free and equal citizen in society. This relational status of equality is set by the eyeball test. Citizens’

\textsuperscript{80} For more on this critique of egalitarianism see Parfit (1997).
capability to walk tall and look other citizens in the eye implies having enough of the basic functioning capabilities to avoid the possible arbitrary interference of other agents and agencies in their lives, but it also implies removing institutional or symbolic barriers to equality in society. Though the sufficiency baseline set by the eyeball test will certainly involve the distribution of material goods, the importance that republican equality puts on equality of status also implies that the republican state will remove these non-material barriers to equality. As I will show in the coming chapters, I believe that republican equality with its sufficiency baseline of the eyeball test is very much up to the task of delivering on relational equality.

2.5. Conclusion

I started out this chapter by exploring the dominant normative paradigm for addressing issues of social injustice in contemporary political theory, namely, the distributive paradigm. As we saw, while some egalitarians maintain that the distributive paradigm provides the best normative framework for reducing social injustice, for relational egalitarians the distributive paradigm fails to provide the conceptual tools for removing a number of important forms of injustice. For these writers, the distributive paradigm is insensitive to the institutional or social context in which distribution takes place and fails to provide a framework for addressing institutionalised power relations which might negatively affect an individual’s status in society. While distributive egalitarians have tried to respond to these objections by claiming that a particular distributive metric can provide the conditions for delivering on non-material goods such as self-respect, many remain unconvinced.

As we have seen, for neo-republicans, a just society is one in which citizens enjoy the ‘basic functioning capabilities’ constitutive of an undominated citizen or freeperson. On this account, citizens have a claim to a sufficient amount of capabilities to ward off possible
domination. As I have tried to show, this neo-republican account fails to deliver on its aim of securing citizens relational equality in society. In fact, I have claimed that the neo-republican account of social justice fails to draw on the full set of resources that the capability provides in alleviating relational inequalities in society. In contrast to this account, I have argued for a conception of republican equality which is sensitive to capability deficiencies on a number of important levels that go beyond the orthodox republican conception of equal freedom as non-domination. In the next chapter I take this account of republican justice and apply it to the area of the reasonable accommodation of minority cultures in a republic. As we shall see, I think that the account of republican equality sketched here provides a normatively attractive way for dealing with some of the many vexing issues germane to the politics of multiculturalism.
3. Chapter Three: Liberalism, Multiculturalism and Republican Equality

3.1. Introduction

In the previous chapter I outlined my conception of republican equality. I claimed that citizens are socially equal with one another if they have sufficient basic functioning capabilities to look one another in the eye. In contrast to Pettit’s neo-republican account, I argued that this ability to look others in the eye requires that we are equal on three dimensions: the interpersonal, the structural and symbolic. In this chapter and the next I want to focus on a particular issue that is challenging for any account of social justice, namely, the accommodation of a minority group’s distinct social practices. As I will show, I claim that the account of republican equality sketched in the previous chapter provides a normatively attractive way for dealing with some of the many vexing issues germane to the politics of multiculturalism. As this chapter is the first part of two, my principal aims in this chapter are as follows: first I will examine how liberal theorists have expanded the scope of their theories to incorporate the demands for minority group recognition and the problems that such an expansion has encountered, and second, I will explore the prima facie reasons that a minority culture might have for recognition in a republic.

Few questions have received as much attention in liberal theory during the last few decades as the question of how liberals ought to respond to the fact of cultural diversity in liberal democratic states. Nor, arguably, has there been an issue as divisive. According to Rawls’s
ideal-theoretical conception of justice, the liberal state provides fair background conditions for all its citizens when it remains neutral or impartial over the good life. One of the basic theoretical assumptions for Rawls’s (1996) anti-perfectionist political liberalism is that although free and equal citizens in his idealised well-ordered liberal society will inevitably come to hold different moral and philosophical views about the world, and this ‘ethical diversity’ is morally relevant from the standpoint of liberal justice, the fact that the well-ordered liberal society coincides with a self-contained national community renders ‘cultural diversity’ morally irrelevant from this point of view.

In contrast to Rawls’s anti-perfectionist idealised conception of liberalism, for the more fact-sensitive perfectionist liberalism of Will Kymlicka (1989, 1996), cultural rights are owed to minorities as a matter of liberal justice. On Kymlicka’s account, to be neutral over culture is, in effect, to offer preferential treatment to the majority and denies citizens an important ‘context of choice’ which enables them to make autonomous choices about the good life. On this account, while neutrality might be desirable when it comes to the plurality of conceptions of the good in a liberal society, it is both impractical and normatively undesirable when applied to the plurality of different cultures.

If Kymlicka has sought to redraw the boundaries of liberal theory to include a moral concern with culture, for those like Brian Barry (2001) who continue to work in a broadly Rawlsian political liberal approach - albeit in a non-ideal, externalised conception of this approach - we can only ever have pragmatic reasons for being concerned with culture. For Barry, as for Rawls, when the liberal state remains neutral over culture it provides all its citizens with fair background conditions for the pursuit of their own idea of the good life. However, if the liberal state happens to favour the dominant national culture, then rather than this being a form of injustice for Barry, it can serve to create the necessary trust and social solidarity required for liberal redistributive policies. In short, if neutrality is the problem for many
liberal multiculturalists like Kymlicka, it remains the solution for proponents of noncultural forms of liberalism like Barry.

How should republicans respond to the fact of cultural diversity in modern republics? In contrast to the political liberal approach, in this chapter I argue that minority cultures have a prima facie case in favour of state recognition where the state’s public institutions unfairly privilege one ethno-cultural group over another and de-ethnicization of these institutions is too costly or simply impracticable. As we shall see, however, there are a number of additional fine-grained distinctions that need to be made to this account before we can examine the kind of cases where state recognition of a minority culture’s distinct social practices threatens to leave more vulnerably situated members of that group at a more serious disadvantage. This more vexing question will be explored more fully in the following chapter.

This chapter is broken up into three sections. In the first section I explore the dominant approach in political theory for addressing the issue of diversity, namely political liberalism. Contra Rawls, I claim that political liberalism and republicanism are fundamentally opposed on the issue of the state recognition of minority cultures. While certain idealised assumptions render culture morally insignificant from the political liberal point of view, I claim that republicans recognise that having one’s culture unrecognised or misrecognised can leave an individual at a distinct disadvantage when it comes to their relational equality in society. In section two I set the stage for a republican argument for the state recognition of minority cultures by examining some of the more influential theories of cultural recognition in the literature on the political theory of multiculturalism. Here I claim that while much of the existing literature on multiculturalism provides us with many of the core concepts underlying a more culturally sensitive approach to social justice, these accounts are open to a number of important criticisms, most notably ‘the paradox of multicultural vulnerability’ or the ‘minorities within minorities’ problem. In section three I lay out the case for state recognition
of minority groups in a republican equality framework. I claim that cultural minorities have a prima facie case in favour of state recognition in a republic if a cultural minority is at a structural disadvantage vis-à-vis the majority and ‘de-ethnization’ of the state’s public institutions is too costly or simply impracticable. Crucially, however, I claim that this prima facie case in favour of recognition must be limited in cases where the individual freedom as non-domination of members is at risk. In the chapter that follows this, I explain how republicans ought to adjudicate cases where the demands for cultural recognition and the protection of individual freedom come into conflict.

3.2. Political Liberalism: Toleration, neutrality and anti-perfectionism

In this section I want to look at the dominant approach in political theory for addressing the issue of diversity, namely, political liberalism. As some of the theories of recognition we will discuss in this rest of this chapter may be viewed as a direct response to the political liberal approach, it will be useful to sketch some of its core features. I will limit my discussion to Rawls’s account of political liberalism, in this section.81 There are two main reasons for this: first, and simply at the level of analysis, an explication of Rawls’s account provides us with many of the core concepts underlying the political liberal approach in general; second, and more at the level of argument, I want to challenge Rawls claim that there is no ‘fundamental opposition’ between republicanism and political liberalism (1996, p.205).

As we saw in our last chapter, Rawls’s ‘justice as fairness’ was an attempt to provide a rival conception of justice to the reigning utilitarian tradition to which all members of society could be reasonably expected to endorse.82 Situated behind the ‘veil of ignorance’ and

82 ‘In presenting justice as fairness I shall contrast it with utilitarianism… because the several variants of the utilitarian view have long dominated our philosophical tradition and continue to do so… no constructive
supplied with limited information about their own ends, place in society and natural talents, it was Rawls’s claim that the parties to the original position would reach agreement on his two principles of justice in distributing the benefits and burdens of society. As an expository device for devising principles of justice, the parties would come to recognise that, from the standpoint of the original position, a society based on the principle of aggregate social utility should be rejected for failing to respect individual rights and providing a workable conception of justice to which all persons could reasonably be expected to endorse. In other words, for Rawls, the parties would see the unfairness and instability that utilitarianism provides as a possible conception of justice and, instead, choose to internalize his two principles of justice as regulative of their conduct in society. Some years later, however, Rawls came to realise a major problem with this view: by setting justice as fairness up as a rival comprehensive conception of justice to utilitarianism, it merely represented another conception of the good in competition with alternative conceptions of the good. For the later Rawls, in a free society characterized by a plurality of religious, philosophical and moral doctrines, the likelihood that all citizens would come to affirm a single comprehensive conception of the good in this way was unrealistic and its imposition unjustified (1996, p. xvi - xvii).

Accordingly, in Political Liberalism (1996), Rawls opts for a different approach. Given the fact of a plurality of reasonable but incompatible comprehensive doctrines – what Rawls calls the ‘fact of reasonable pluralism’ – in any free and democratic society, political principles should not be viewed as in competition with these conceptions of the good but, rather, should reflect an ‘overlapping consensus’ among reasonable citizens. In other words, whenever individuals are free to think for themselves and choose to believe in what they wish, the inevitable outcome is deep disagreement over major religious, philosophical, and moral issues; as a result, for Rawls, the establishment of any single religious, philosophical or moral alternative theory has been advanced which has the comparable virtues of clarity and system… Intuitionism is not constructive, perfectionism is unacceptable’ (Rawls, 1971, p. 52).
doctrine can only be maintained in society through the coercive use of state power and, as
such, is unjust – this he refers to as the ‘fact of oppression’ (Rawls, 1996, p.37). The only just
response to this reasonable disagreement, for the later Rawls, is to agree on ‘political
principles’ which each reasonable citizen can endorse for his/her own reasons. In other words,
in his later writings, principles of justice are presented as a political conception of justice, not
a comprehensive conception. (Rawls, 1996, p. 147). 83 This political conception of justice,
being ‘free-standing’ of the various philosophical, moral, and religious doctrines that citizens
hold, provides citizens with a non-sectional, political basis for justice rather than the unjust
imposition of a single, sectional, comprehensive conception of the good.

On Rawls’s account of political liberalism, reasonable persons accept the basic idea of
political society as a fair system of social cooperation for mutual advantage. They recognise
that, due to what Rawls terms the ‘burdens of judgement’ – reasonable disagreement over
basic facts such as the complexity of scientific evidence and so on – reasonable and rational
persons will come to possess different comprehensive doctrines (1996, p.54). In accepting the
burdens of judgement and the resultant fact of reasonable pluralism, reasonable citizens
demonstrate their commitment to living on equal terms with other citizens. They agree to live
by political principles, which must be publicly justifiable to all reasonable citizens. To do
otherwise, according to Rawls, would represent an attempt to use the coercive power of the
state for sectional ends and would be unreasonable. In other words, such a move would fail to
meet the liberal principle of legitimacy to which all reasonable citizens are, by definition,
expected to endorse. This is the principle that states: the exercise of political power is
legitimate ‘when it is exercised in accordance with a constitution the essentials of which all
citizens as free and equal may reasonably be expected to endorse in light of principles and
ideas acceptable to their common human reason’ (Rawls, 1996, p.137).

83 For an argument that principles of justice ought to reflect a modus vivendi among competing interests, see
Gauthier (1986).
The roots of the political liberal approach to ethical pluralism can be traced back to Locke’s *A Letter Concerning Toleration* (2010a). For Locke, writing during a time of religious conflict and civil unrest in the aftermath of the Reformation, the question was how to maintain a stable political society in the face of deep disagreement over religious values. Anticipating Rawls, on Locke’s account the state should remain neutral over issues of faith as to do otherwise would make the exercise of political power illegitimate. In other words, religious belief should be viewed as a *private* matter distinct from the *public* business of government. Indeed, as Locke goes on to explain: the attempt by any religious order to claim the state for its own ends and force its citizens to profess this faith as the one true faith is irrelevant from God’s point of view. For God, what matters is that each individual exhibits a sincere and inner belief in His existence; only the latter will bring about salvation. For Locke, this is not something that can be imposed coercively from the outside. On the contrary, ‘true and saving religion consists in the inward persuasion of the mind, without which nothing can be acceptable to God. And such is the nature of the understanding, that it cannot be compelled to the belief of anything by outward force’ (Locke, 2010b, p.64). If religious belief cannot be altered by coercion, then religious persecution is irrational both at the individual and political level. Consequently, intolerance of religious belief on the part of the state cannot be justified, for Locke.

Unsurprisingly, contemporary political liberals do not seek to justify state neutrality in terms of an argument from God. On the contrary, and as we have seen, state neutrality is deemed the only legitimate response to the fact of reasonable pluralism which the intractable obstacles of the burdens of judgement bring about. The higher-order-interest citizens have in forming,

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84 As Jeremy Waldron has pointed out, however, Locke’s claim that religious belief cannot be altered by coercion is mistaken. He writes: ‘censors, inquisitors and persecutors have usually known exactly what they were doing, and have had a fair and calculating idea of what they could hope to achieve. If our only charge against them is that their enterprise was hopeless and irrational from the start, then we perhaps betray only our own ignorance of their methods and objective’ (Waldron, 1993, p. 113).
revising and pursuing a conception of the good and living on equal terms with others gives them sufficient reasons to live on fair and equal terms with other reasonable citizens. The modern liberal state, on this view, for political liberals, should be restricted to providing a fair framework of rules and institutions within which citizens can pursue their own conception of what makes life valuable. In this respect, *pace* Locke, toleration becomes the guiding idea of the political liberal project (Rawls, 1996, p.9-10).  

Citizens agree to tolerate one another’s conceptions of the good, within certain liberal constraints, as to do otherwise would contradict the basic liberal principle of legitimacy to which all reasonable citizens are, by definition, expected to endorse.

The final piece of Rawls’s political liberalism is the idea of public reason (1996, p.212). Public reason refers to the common mode of political deliberation that citizens, legislators, and judges use when they discuss matters of public concern such as constitutional essentials and matters of basic justice. For Rawls, citizens ought to use public reasons when debating these issues as to use non-public reasons based on individual conceptions of the good would not be publically justifiable to citizens. As such, for Rawls, all citizens are under a ‘duty of civility’ to adhere to the norms of public reason when discussing these issues (1996, p.217). The idea of public reason, then, emerges out of the liberal principle of legitimacy referred to earlier. That is to say, reasonable citizens recognise that it would be unreasonable to use non-public reasons in these contexts, as it would demonstrate an attempt to use the coercive power of the state to promote for their own sectional ends. In other words, by using public reasons as opposed to non-public reasons in their political debates, citizens demonstrate their commitment to the fundamental liberal principle of legitimacy.

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3.2.1. Liberalism: Political or Perfectionist?

The political liberal approach can be contrasted with the liberal perfectionist conception of justice. Unlike political liberals, liberal perfectionists recognise that some ways of life are intrinsically more valuable than others and, on this basis, deserve to be promoted. Contra political liberals, for liberal perfectionists, the considerable power that the liberal state has at its disposal should be used towards ensuring that people lead better lives. As Jonathan Quong puts it, liberal perfectionists endorse the view that ‘it is at least sometimes permissible for a liberal state to promote or discourage particular activities, ideals, or ways of life on grounds relating to their inherent or intrinsic value, or on the basis of other metaphysical claims’ (2011, p.27). This he refers to as the ‘liberal perfectionist thesis’ (Quong, 2011, p.27). For liberal perfectionists, like Joseph Raz (1986), autonomy is the guiding idea of the liberal perfectionist project. In other words, the value of autonomy should be promoted by the state as it represents a ‘pre-eminent value or virtue in any flourishing life’ (Quong, 2011, p.24). This is not to deny that toleration is no longer an important idea for liberal perfectionists. However, contra Rawls, rather than toleration being justified as a response to an ‘epistemological abstinence’ on the part of reasonable citizens to the intractable obstacles of the burdens of judgement, toleration, on Raz’s account, is justified on the grounds of its instrumental value to personal autonomy.86 In other words, for Raz, autonomy requires a wide range of options that citizens are able to choose from. This variety of options in the liberal perfectionist state will inevitably produce ‘competitive value pluralism’, meaning that citizens pursuing different forms of life will tend to be intolerant of one another (Raz, 1986, p.407). This makes a political principle of toleration necessary, for Raz, as it facilitates in providing the range of options that citizens require in order to pursue the autonomous life. The upshot of this approach, however, is that only those ways of life that are compatible with autonomy

86 For a critique of Rawls’s ‘epistemic abstinence’, see Raz (1990).
ought to be tolerated. As David Heyd succinctly puts it, for the liberal perfectionist, ‘the object of state toleration is thus restricted to the (competitive) plurality of “good” options, those which although incompatible with each other cultivate personal autonomy’ (2008, p. 179).

3.2.2. Political Liberalism: From ethical diversity to cultural diversity

On the face of it, political liberalism seems to provide a wider interpretation of the limits of toleration than merely the narrow perfectionist view which prescribes that only those conceptions of the good that are compatible with the principle of autonomy ought to be tolerated. However, this interpretation is not (or should not be) as wide as some would suggest. On one interpretation of political liberalism, toleration should only be granted to reasonable comprehensive doctrines (Rawls, 1996, p. 58-62). In other words, persons who hold unreasonable comprehensive doctrines – that is, those persons who do not accept the burdens of judgement and the fact of reasonable pluralism – should not expect to have their beliefs and values tolerated. On this view, the limits of toleration are set where intolerance begins. That is to say, toleration is a simple matter of reciprocity between reasonable citizens.

According to Quong, however, it is also possible to widen or narrow the limits of liberal toleration by drawing a distinction between a modest internal conception of political liberalism and a more ambitious external conception (2011, p.138-145). For Quong, the distinction between the internal and external conception of political liberalism arises out of two different ways of understanding the central question which political liberalism tries to solve. That is: in light of reasonable pluralism, how can liberal rights, principles and institutions be justified to citizens who disagree in intractable and permanent ways about the good life? For the external conception of political liberalism, pluralism or disagreement about

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87 For a brief analysis of Quong’s argument for political liberalism, see my review in Savery (2013).
the good is an actual *fact* about the world. As such, for advocates of the external conception, liberalism must accommodate itself to the diverse constituency of individuals that actually inhabit modern liberal states. On a second, more modest internal conception, pluralism is understood less as an actual *fact* about the world and more as a *consequence* of liberalism itself. In other words, pluralism, on this interpretation, is a product of an idealised, well-ordered liberal society. The more modest aim of the internal conception of political liberalism does not aim to justify liberal rights and principles to persons who do not endorse any basic liberal norms or values. On the contrary, political liberalism, on this account, focuses justification on the specific constituency of an idealised liberal citizenry – that is, on a citizenry who already endorse liberal values (Quong, 2011, p.139-140). In this sense, for proponents of the internal conception, only those reasonable comprehensive doctrines that accept the burdens of judgement are to be included in the constituency of public justification. Furthermore, because they are reasonable, they should be tolerated. However, unreasonable persons – that is, those non-liberals who do not accept the burdens of judgement and the fact of reasonable pluralism – are to be tolerated only to the extent that they do not infringe upon the rights of others. In other words, for the internal conception of political liberalism, containment of unreasonable doctrines becomes a legitimate political objective. As Quong writes, ‘a justification for containment can be grounded…on the fundamental importance of normative stability in a well-ordered liberal society’ (2011, p.300). In short, those unreasonable comprehensive doctrines that threaten the stability of the state, on this account, ought not to be tolerated.

If proponents of the internal and external conceptions disagree over the constituency of public justification, they agree that the object of toleration concerns individual conceptions of the

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88 Toleration may be much easier here when it comes to unreasonable ‘partial citizens’, such as the old order Amish, who are happy to live outside of the mainstream society. For more on the notion of a ‘partial citizen’, see Spinner Halev (1999).
good. While the external conception aims to justify liberalism to liberals and non-liberals, the more modest internal conception aims to justify liberalism to an idealised liberal citizenry. For both accounts, however, because individuals are free to choose the life that they deem best, the state should remain neutral or impartial over conceptions of the good. Indeed, for political liberals, this is what it means to treat citizens in an even-handed way. However, if we accept Quong’s distinction, it is interesting to note a major difficulty with the extension of this approach as an external conception to the issue of diversity in the real-world. If the original aim of Rawls’s political liberalism was the more modest aim of justifying liberal political principles to those who already endorse liberalism, it would appear that some of these idealised assumptions may exclude some important differences which are morally relevant from the standpoint of justice and fairness in the real-world, say, differences along the lines of culture. On this point, advocates of the internal conception would see no major problem. After all, on their account, political liberalism is simply an ideal theory of justice: compliance to basic liberal principles is simply presumed and we can simply add the further idealised assumption that the constituency of citizens share one national culture. However, when political liberalism is generalised as an external conception to deal with issues of diversity in the real-world, some of these same core theoretical assumptions – theoretical assumptions derived from its original manifestation as an ideal, internal conception of justice – only aid in reducing these important justice based considerations to more pragmatic considerations. Accordingly, when it comes to justice in the real-world, instead of treating the diverse constituency of citizens in an even-handed way – the principal aim of political liberalism, after all – political liberalism ends up giving preferential treatment to some citizens over others.

Consider Rawls’s idealised assumption that a well-ordered liberal society coincides with ‘a self-contained national community’ (1971, p.457). For advocates of the internal conception,
as citizens are considered to belong to the same national culture, the subject matter of toleration need only ever extend to conceptions of the good. As each citizen shares the same national culture and borders are closed, the toleration of the beliefs and practices of distinct cultural groups never becomes an issue for the internal conception. Again, the subject matter of toleration only concerns reasonable disagreement over conceptions of the good which emerge out of the burdens of judgement. However, when this approach is applied, as an external conception, to the fact of pluralism in the real-world, restricting the subject matter of toleration to conceptions of the good fails to take into account how minority cultures are markers of inferiority in many societies. In other words, it appears simply arbitrary to pick differences in ethical views as important from the standpoint of justice and not cultures.

Political liberals have responded to this criticism of their view by arguing that the liberal state has no special moral obligation to recognise the distinct cultures of its citizens. Indeed, they argue, insofar as the liberal state protects the individual freedoms of its citizens, giving its citizens the means to be able to freely chose and revise their own conception of the good, then this is all that is required when it comes to justice. However, as critics point out, the political liberal approach of ‘benign neglect’ when it comes to culture – allowing citizens of different ethno-cultural groups to live as they wish, within certain liberal constraints – allows the particularism of the modern nation-state – the particularism of one national culture – to masquerade as a universal (Kymlicka, 1996). Accordingly, some citizens are provided with more preferential background conditions for the exercise of their freedom than others. While neutrality might be desirable in the case of ethical diversity, merely assuming that this does not matter to the same extent – or does not matter at all – when it comes to culture is problematic from a moral point of view.

89 For the most forceful argument along these lines, see Barry (2001).
As we have seen in previous chapters, the idea of neutral background conditions is crucial to a republican understanding of the just society. Citizens are rendered vulnerable to all sorts of constraints when a particular culture is given preferential treatment in a polity. Put simply, it renders some citizens structurally or relationally unequal vis-à-vis others. Insofar as republicans recognise, and seek to remedy, the freedom-limiting effects of more structural or cultural inequalities in society, this puts the republican account of social justice deeply at odds with the Rawlsian approach. However, this tension between the two accounts has not always been obvious to many, not even to Rawls. In a rare comment on republicanism, Rawls makes the claim that there is no ‘fundamental opposition’ between republicanism and political liberalism (1996, p.205). On this score, Rawls is fundamentally mistaken. While Rawls contends that the background conditions of society are fair, and ipso facto just, once we have ensured that no single conception of the good is privileged in the public sphere, republicans argue that simply applying a principle of toleration to ethical doctrines and a principle of ‘benign neglect’ to cultures is neither fair, nor just.90

From the standpoint of republican justice, privileging a majority culture in the state’s public institutions can render those citizens who do not share that culture socially unequal vis-à-vis the majority. Moreover, socialisation in to, say, a culture which restricts the power of certain members of that culture to make choices limits those members capacity to be free. Notice, however, that often we may have two competing demands here. A cultural minority may have a prima facie reason case in favour of recognition, if they are structurally unequal vis-à-vis others. However, state recognition of a particular group’s distinct ethno-cultural practices may render certain minority members of that group vulnerable to other forms of freedom-limiting constraints in their lives. Any approach to the recognition of cultures must tread carefully here. On the one hand, what makes the republican approach distinct from the

90 For a discussion of this issue in the context of so-called French republicanism, see Laborde (2008).
political liberal approach concerns the manner in which cultures have a prima facie claim to be recognised in order to address any structural inequality in the state’s public institutions. However, and crucially, this right for cultural recognition must be weighed against the right of the individual to not be subject to unnecessary constraints in their lives. Individual freedom, as republicans understand it, puts important limitations on this claim for state recognition. Before I clarify how republicans ought to adjudicate cases where these two demands for justice come into conflict – the demand for individual freedom and the demand for structural or cultural equality - it will be useful to examine some of the more influential liberal theories of multiculturalism which have attempted to provide a general framework for addressing this same competing demand.

3.3. The moral foundations of cultural recognition

In this section I want to look two different arguments for the moral foundations of cultural recognition in a liberal framework. The first grounds a minority group’s claim for recognition in terms of the liberal perfectionist value of autonomy. The second grounds a minority group’s claim for recognition in terms of the classical liberal value of freedom as non-interference. As we shall see, both accounts are particularly vulnerable to a number of important objections levelled against theories of multiculturalism. Chief among these is the ‘paradox of multicultural accommodation’ or the ‘minorities in minorities problem’.

3.3.1. Recognition and Autonomy: Kymlicka’s liberal multiculturalism

According to Will Kymlicka, our previous discussion of political liberalism shows an obvious gap between the theory and practice of liberalism (2007, p. 4). For Kymlicka, liberal theorists have largely ignored the extent to which the modern liberal state is a nation-building state (2001b, p.4). In other words, instead of the political principle of neutrality offering fair background conditions for each citizen, it often serves to render legitimate the dominant
national culture of a society. That culture should take such a limited role in liberal theorising is unfortunate, for Kymlicka, for the reason that an individual’s culture or, as he puts it, ‘societal culture’, provides an important, instrumental role in that person’s ability to make autonomous choices. As Kymlicka puts it, ‘put simply, freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us’ (1996, p.83).

In connecting the instrumental value of culture to autonomous choice, Kymlicka’s argument shares a number of similarities with the autonomy-based argument for recognition that we find in the work of liberal perfectionist, Joseph Raz (1994). As we saw in the last section, for Raz, autonomy is the pre-eminent value in any flourishing life. On Raz’s account, in order to make autonomous choices in our lives we must first understand the meaning of these choices. This meaning, for Raz, is given to us by our culture. It follows, for Raz, that a person’s culture should be respected for the instrumental role it plays in enabling individuals to make autonomous choices. In other words, culture gives our lives meaning and provides the background conditions through which we make free and autonomous choices; as such, cultures ought to be respected. As Raz puts it: ‘only through being socialized in a culture can one tap the options which give life meaning…we should respect and support people’s culture in order to respect and support the people who are part of these cultures’ (Raz, 1994, p. 33).

In developing a more comprehensive liberal theory of minority rights, Kymlicka provides a much more refined or narrow conception of culture than we find in Raz. For Kymlicka, it is ‘societal culture’ that liberals ought to be concerned with. A societal culture, on this account, is a culture ‘which provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres. These cultures tend to be territorially

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91 See, for example, Miller (1995) and Tamir (1993).
concentrated, and based on a shared language’ (Kymlicka, 1996, p.76). A societal culture, in other words, is an institutionalised form of culture – not culture in the general sense. Elsewhere, Kymlicka emphasises the value of a secure societal culture to an individual’s autonomy by characterizing it as a primary good in the Rawlsian sense (1989, p.166). That is to say, access to a secure societal culture is something that we have reason to value no matter what else we value. Accordingly, for Kymlicka, having access to a secure societal culture is something required by liberal justice. In short, minority group rights are not a form of special privilege, on Kymlicka’s account; rather, they are rights derived from basic liberal principles of justice.

By shifting the focus from culture in general to societal cultures in particular, this move enables Kymlicka to argue that that the kind of recognition owed to ‘national minorities’ is qualitatively different from that owed to ‘immigrants’ (1996, p27-33). For Kymlicka, whereas national minorities are, on the one hand, a collective people who were previously self-governing, continue to share a societal culture, have been incorporated – often forcibly – into the mainstream society or state and have a desire to govern themselves, immigrants or ethnic minorities are, on the other hand, a people who have a desire to be integrated into the mainstream society whilst holding on to their distinct identities and traditions. Examples of the former include: the Quebecois, Puerto Ricans, Australian Aboriginals, Chicanos, native Hawaiians, and so on. While national minorities have a claim to self-government rights, immigrants only have a claim to, what Kymlicka terms, polyethnic rights. The reasoning here is that national minorities continue to share a societal culture even when they are forcibly integrated into the majority culture, whereas immigrants have made a choice to leave their homeland in order to join a new societal culture. Furthermore, what makes the immigrant case distinct from the national minority case is that all immigrants’ desire is fairer terms of integration into their host state. Accordingly, polyethnic rights, for Kymlicka, are minority
rights made available to immigrants to assist them in their integration into the new society. Examples of polyethnic rights include: funding for ethnic studies, language rights, exemptions from laws concerning the humane slaughtering of animals, exemption from school dress codes and so on. Finally, for Kymlicka, national minorities and ethnic minorities (immigrants) may be entitled to special representation rights. For national minorities, special representation rights may prove desirable if there proves to be intractable barriers to the exercise of self-government. For ethnic minorities, special representation rights may be claimed to remedy systemic disadvantage.

While national minorities have a *prima facie* right to govern themselves, for Kymlicka, only those cultures that do not restrict a group member’s autonomy ought to be tolerated. Here Kymlicka draws an important distinction between granting minorities ‘external protections’ in order to protect their distinct cultural identities and granting minorities ‘internal restrictions’ which restrict individual member’s basic rights. For Kymlicka, ‘liberals can and should endorse certain external protections, where they promote fairness between groups, but should reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices’ (1996, p.37). Put simply, on Kymlicka’s account, illiberal minorities ought not to be tolerated.

**3.3.2. Liberal Multiculturalism: Objections**

A number of prominent liberal theorists have taken issue with the claim that liberal justice requires going beyond the principle of neutrality. Brian Barry (2001), for instance, has been particularly critical of Kymlicka’s account in this regard. For Barry, Kymlicka’s approach is simply incompatible with liberalism properly understood. Whereas liberals are Universalists for Barry, Kymlicka’s ‘bottom line is exactly the same as that of the wholehearted cultural relativists’ (2001, p.140). Indeed, for Barry, by allowing illiberal national minorities to
govern themselves, Kymlicka’s account ‘is an illiberal theory with a bit of liberal hand-wringing thrown in as an optional extra’ (2001, p.140).

That Barry should take such a view is not surprising. On Barry’s account, liberal justice is guaranteed by equal opportunity sets. Citizens ought to be given identical opportunity sets and, following the discussion of luck egalitarianism in the last chapter, they ought to be compensated for bad brute luck in the distribution of these opportunity sets (Barry, 1991, p.142-143). On this account, opportunities are ‘objective states of affairs’ (Barry, 2001, p.37). If someone has a disability brought about by unchosen misfortune, then they ought to be compensated for this. However, if someone has a ‘cultural disposition’ not to take advantage of an opportunity, then they ought not to be compensated.

Barry’s approach (or lack of) to issues of cultural diversity can best be described by his objection to the rule plus exemption approach (2001, p.40-50). For Barry, a general rule is justified on the grounds that it treats citizens in a just or even-handed way. An exemption, on the other hand, cannot be justified as it gives citizens unequal opportunity sets. In other words, an exemption treats citizens in an unfair or unjust way. It follows, for Barry, that the rule plus exemption approach is unjustifiable, as a matter of principle for liberals. Consider the case of laws prohibiting the inhumane slaughtering of animals. For Barry, if there is a general rule in society such that halal and kosher slaughtering is prohibited, then the religious freedom of Muslims and Jews is unaffected. He writes, ‘if legislation requires that animals should be stunned before being killed, those who cannot as a result of their religious beliefs eat such meat will have to give up eating meat altogether’ (Barry, 2001, p.35). His central argument against Kymlicka’s liberal multiculturalism, therefore, concerns the way in which Kymlicka appears willing to over-ride the universality of liberal principles not simply for pragmatic reasons, as Barry argues that we ought to in certain limited cases, but as a matter of principle in the pursuit of putatively liberal ends.
Like Barry, Okin (1998; 1999) is a steadfast critic of liberal multiculturalism. She also shares with Barry the basic liberal egalitarian idea that we ought to be concerned with ensuring citizens are free and equal in terms of opportunity sets. However, unlike Barry, she assigns a much greater role to the influence that gender and patriarchal norms play in the ability of women to exercise these opportunities. On her account, the gendered division of labour in the household negatively effects women’s equality of opportunity; as such, the family ought to be a primary target of liberal justice (Okin, 1989).

For Okin, liberal arguments for multiculturalism largely neglect two important points. On the one hand, advocates of group rights pay insufficient attention to the fact that groups are gendered. On the other, and related, these arguments also pay insufficient attention to the private sphere. If we recall Kymlicka’s argument for group rights, we can see how his account is vulnerable to this charge. For Kymlicka, minority groups are afforded certain cultural rights only and insofar as these rights do not infringe upon their individual members’ autonomy. However, as Okin points out, Kymlicka’s account neglects the extent to which sex discrimination is more covert than this. She writes:

‘In many cultures, strict control of women is enforced in the private sphere by the authority of either actual or symbolic fathers, often acting through, or with the complicity of, the older women of the culture. In many cultures in which women’s basic civil rights and liberties are formally assured, discrimination practiced against women and girls within the household not only severely constrains their choices about the kinds of lives they want to lead but can cause such decline in their basic well-being as to cause their deaths’ (Okin, 1998, p.679)

In addition, for Okin, Kymlicka’s argument for culture as an essential ‘context of choice’ also downplays the importance of an individual’s position within that culture. If culture is an important constituent in leading a worthwhile life – a primary good in the Rawslian sense, as Kymlicka claims – then surely one’s position within that culture is of equal importance too. In other words, why, according to Okin, would we want to preserve cultures that work to the
detriment of some members living lives of dignity and respect? Okin is under no illusion that any liberal endorsement of group rights will only serve the interests of the dominant members in each group – namely, men. She puts the point pithily as follows:

'It is by no means clear...from a feminist point of view, that minority groups 'are part of the solution'. They may well exacerbate the problem. In the case of a more patriarchal minority culture in the context of a less patriarchal majority culture, no argument can be made on the basis of self-respect and freedom that the female members of the culture have a clear interest in its preservation. Indeed, they might be much better off if the culture into which they were born were either to become extinct (so that its members would become integrated into the less the sexist surrounding culture) or, preferably, to be encouraged to alter itself so as to reinforce the equality of women’ (Okin, 1999, p.22-23)

Okin’s argument here is particularly relevant for republicans: why should we aim to provide different cultures social and political parity if some cultures limit the freedom of their individual members?

This point is taken up by political and legal theorist Ayelet Shachar (2000; 2001). For Shachar, there is a tension in Kymlicka’s account between his normative demand for providing external protections for unrecognised societal cultures and his attempt to ensure that individual members of these cultures are not subject to internal restrictions in their choices, particularly when it applies to a national minorities claim to self-government rights. According to Kymlicka’s typology of minority rights, national minorities should be provided with territorial self-government rights. As such, the state has no prima facie right to intervene in the internal affairs of national minorities or first nations. However, as Shachar notes, if this is the case, then national minorities may be justified in limiting the basic rights of their individual members in order to protect their distinct national culture. In other words, by giving national minorities an absolute right to external protections, some members of these groups are rendered vulnerable to internal restrictions in their choices. In Shachar’s own

92 For more on how we ought to go about balancing the claims of minority groups for recognition against protecting the basic rights of minorities within minorities, see the excellent collection of essays in Eisenberg and Halev (2005).
work, she provides a variety of examples from family case law illustrating the manner in which the rights of children and women can be rode roughshod over by the right of the group for self-preservation. In contrast to Kymlicka’s account, Shachar’s response to this ‘paradox of multicultural vulnerability’, as she calls it, is to argue for a joint governance approach which recognises that people ‘jointly belong to more than one community and will accordingly bear rights and obligations that derive from more than one source of legal authority’ (2001, p.13). In other words, instead of simply affording national minorities an absolute right to govern themselves by whatever means, as Kymlicka’s account seems to imply, Shachar argues that national minorities ought to have regional autonomy with the important, added caveat that individual members continue to be recognised as members of both the national minority and the wider society. The upshot of the joint governance approach, for Shachar, is that it ‘promises to foster ongoing interaction between different sources of authority, as a means of improving the situation of traditionally vulnerable insiders without forcing them to adhere to an either/or choice between their culture and their rights’ (Shachar, 2001, p.88)

If Shachar is critical of the character of Kymlicka’s liberal rights-based framework for adjudicating the claims of minorities for cultural recognition, Deveaux (2006) is critical of the very idea that a ‘juridical approach’ can do the kind of work that liberals think it can when it comes to, on the one hand, respecting the demands of cultural minorities for recognition and, on the other, protecting the rights of the less powerful members of these groups to be able to choose the life they want to lead. For Deveaux, the major problem with the liberal multiculturalist approach is that it represents a ‘blunt instrument’ for dealing with the complexity surrounding the reasonable accommodation of minority practices (2006, p. 4). By

93 Shachar describes the paradox as multicultural vulnerability as follows: ‘the sober recognition that in reality a well-meaning attempt to empower traditionally marginalized minority communities may just end up re-enforcing power hierarchies within the accommodated community instead’ (2001, p.29).
using liberal norms and values as the ‘litmus test’ for assessing the claims of minority groups for recognition, we run the risk of unjustly prohibiting some practices that ought to be allowed, while ignoring many forms of injustice that escape the rights-based framework. On her account, pace deliberative democrats, states ought to use their existing institutions to encourage greater deliberation between majority and minority cultures. This will provide minority groups with a platform for articulating how the wider society ought to go about understanding the importance that certain cultural practices hold for their members. Furthermore, she also advocates widening our understanding of where this deliberation ought to take place. On this latter point, Deveaux views the expansion of deliberative fora beyond the public sphere into civil society as a crucial mechanism for enabling the less powerful members of a minority group to articulate their views on contested social practices.

3.3.3. Recognition and Freedom: Kukathas’ libertarian multiculturalism

Kukathas enters the debate on cultural recognition from a normative position of promoting individual freedom. However, unlike, say, republicans who take a rather wide view of what real freedom amounts to in a choice, Kukathas endorses the view that freedom simply implies the absence of interference in our choices. On this account, individuals should refrain from interfering in one another’s choices and, by extension, should be tolerant of different individual’s cultural practices. Indeed, if Kymlicka’s liberal multiculturalism can claim to be built around the central liberal perfectionist value of autonomy – tolerating cultures insofar as they do not restrict the autonomy of its individual members – then Kukathas’s libertarian multiculturalism takes the idea of toleration to its logical extension – tolerating cultures even if they restrict an individual’s basic rights.

\footnote{For examples of deliberative democrats who also share this general deliberative commitment to resolving cultural disputes, see Tully (1995) and Benhabib (2002).}
On Kukathas’ account, ‘liberalism…is a doctrine of toleration rooted in freedom of association and, ultimately, liberty of conscience’ (2003, p.17). In other words, a liberal society is one in which individuals are free from interference to associate with whoever they wish. Contra Kymlicka, then, for Kukathas, this does not involve the positive extension of group rights to cultural minorities. Rather, it simply involves a negative commitment to allow individuals to live and let live. As Kukathas puts it:

“Liberalism takes no interest in these interests or attachments - cultural, religious, ethnic, or otherwise - that people might have. It takes no interest in the character or identity of individuals; nor is it concerned directly to promote human flourishing; it has no collective projects, it expresses no group preferences, and it promotes no particular individuals or individual interests. Its only concern is with upholding the framework of law within which individuals and groups can function peacefully….Liberalism might well be described as the politics of indifference” (1998, p.691)

For Kukathas, just like there ought to be no state interference in the market place, there ought to be no state interference in the lifestyle choices that individuals make. The implication of this account is that if individuals ‘freely’ acquiesce to the practice of female genital mutilation (FGM), for instance, then the liberal state ought to refrain from interfering in this practice. Similarly, if some women ‘choose’ to throw themselves on a burning funeral pyre, then the liberal state has no legitimate reason to interfere. In effect, the kind of liberal society that Kukathas favours – one that he thinks is most consistent with the fundamental principle of freedom of association and the liberal conception of freedom as non-interference – is a society of societies, an association of associations. Kukathas’ rejection of a single sovereign authority is best captured with his metaphor of a liberal archipelago:

‘The metaphor offered here…is one which pictures political society as an archipelago: an area of sea containing many small islands. The islands in question, here, are different communities or, better still, jurisdictions, operating in a sea of mutual toleration…The liberal archipelago is a society of societies which is neither the creation nor the object of control of any single authority. It is a society in which authorities function under laws which are themselves beyond the reach of any singular power’ (2003, p.22)
For Kukathas, these associations may engage in what many would consider illiberal practices but insofar as they allow members to ‘freely’ exit these associations this is unobjectionable – according to Kukathas at least – from a liberal point of view. In short, on Kukathas’s account, just like individuals ought to be able to freely associate with whoever they wish, a ‘right of exit’ provides that they are also able to freely disassociate from whoever they wish.

3.3.4. Libertarian multiculturalism: Objections

Barry has levelled a number of important objections against Kukathas’s ultra-tolerant approach to cultural diversity. For Barry, although Kukathas rightly recognises the central role that toleration ought to play in a liberal society, he leaves out the necessary additional safeguards that are essential for liberal justice. Recall that Kukathas eschews any appeal to the language of cultural rights – the rule plus exemption approach in Barry’s language – but, rather, endorses a libertarian approach to the issue of cultural diversity. On this account, individuals are free to associate with whomever they like only and insofar as they have a right of exit. This, for Kukathas at least, is what it means to live in a liberal society. However, leaving aside the question whether this is a version of liberalism at all – which, of course, Barry thinks it is not – Barry points out a major problem with this view. If there is no single sovereign authority, and individuals are free from interference to associate with whoever they like, then this permits parents to treat their children in any egregious way they decide. Indeed, for Barry, when Kukathas asserts that parents ought to be allowed to withhold blood transfusions from their children on religious grounds, why stop there (Barry, 2001, p.145)? Presumably, if parents simply decide for no other reason than this is their preference, any appeal to this on cultural grounds is simply redundant. As Barry writes, on Kukathas’s account, ‘it would be open to any parents to withhold vital medical treatment from their children, even if their motive was that they wanted to get rid of them and could do so legally by letting them die of a curable illness’ (2001, p. 145). In short, if parents are free from
interference to do as they wish and there are no limits on this freedom when it comes to a parent’s dominion over their children, then parents have no need to appeal to religious or cultural reasons when treating their children in any manner they decide. For Barry, if we follow the logic of Kukathas’s argument, the simple fact that this is their preference is reason enough.

Barry presses this objection against Kukathas’s account when he goes on to discuss education. If parents have sole dominion over their children and are free to choose what is best (or worst) for them, then ‘the implication is that the position should revert to that which obtained when Mill wrote On Liberty: it should be entirely at the discretion of the parents whether their children receive any education at all’ (Barry, 2001, p.241-242). Indeed, we can go even further here. Not only can parents deny a child an education, on Kukathas’s account, but they can also decide to teach a child anything they decide. So, for instance, if Tommy’s parents are white supremacists, then there is nothing to stop them from teaching him solely from Hitler’s ‘Mein Kampf’ or the anti-Semitic conspiracy theory ‘The Protocols of the Elders of Zion’. While adults may be able to exercise their ‘right of exit’, the plight of children, on the other hand, is exclusively at the discretion of their parents. If parents were angels, then this would not be a problem. However, it goes without saying, angels are in short supply.

Okin takes particular aim at the idea that members of different cultures will be as free to disassociate from these cultures as Kukathas assumes. For Okin, early socialisation within the family will lead many women to remain part of their culture even when those cultures work to the disadvantage of women. Hence, for her, this is why the family ought to be a basic site of liberal justice. By merely assuming that if someone acquiesces to stay within a particular culture that this is in some sense signifies a ‘free’ choice, Kukathas neglects the extent to which our choices are conditioned by social norms – often negatively. As Okin writes:
What if the “acquiescence” by some in cultural practices stems from lack of power, or socialization into inferior roles, resulting in lack of self-esteem or a sense of entitlement? Such is often the case, I submit, within cultures or religions whose female members are devalued and imbibe their sense of inferiority virtually from birth. By neglecting this, Kukathas shows insensitivity to power differentials, and specifically to feminist concerns’ (1998, p.675)

A final, brief point concerns Kukathas’s claim that it is sufficient for freedom to be merely free from interference in our choices. On this score, Kukathas, like other libertarians, misses a crucial point about what it means to be free in our choices. As we have seen in the last two chapters, freedom from interference does not ensure freedom from domination in our choices. The extent to which members of Kukathas’s associations are likely have their choices controlled by dominant members in these associations cannot be remedied by such a simplistic mechanism as a ‘right of exit’. If minority group members are going to have the most basic capacity to make meaningful choices in their lives, then they will have to have the necessary protections put in place which enable them to make these choices. Simply positing a right of exit is neither here nor there in this regard.

3.4. Republicanism, Recognition and Structural Equality

As we have seen, the standard political liberal approach to diversity primarily focuses on ethical diversity rather than cultural diversity. For Rawls, as for many other writers, when the state remains neutral over culture, it provides all its citizens with fair background conditions for the pursuit of their own conception of the good. For writers in this tradition, cultures are important from a moral point of view, if they are at all, only and insofar as they help to produce desired levels of trust and solidarity for redistributive policies. Recently, however, the idea that ‘benign neglect’ might produce inequities at the level of the state’s public institutions and nation-building might provide more favourable background conditions for certain citizens has led to a number of theorists questioning the very foundations of the

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95 See, for example, Miller (1995).
political liberal approach. As I have tried to show, these more ‘culturally sensitive’ theories
are not without their problems. Chief among these is the problem of the ‘paradox of
multicultural vulnerability’: by recognising the distinct cultural practices of a minority group,
we run the risk of riding roughshod over the rights of subordinately situated members of that
group - the more commonly known ‘minorities within minorities’ problem. In the rest of this
chapter and the next I shall put forward a republican argument for cultural recognition. In
addition, and given the discussion above, I will clarify how republicans ought to adjudicate
over cases where the demands for minority group recognition risks limiting the individual
freedom as non-domination of subordinately situated members of that group.

3.4.1. A Prima Facie Case in Favour of State Recognition

Let us begin by exploring the most obvious reason why a minority group ought to be granted
recognition in a republic. As we have seen in previous chapters, citizens are relationally
unequal with one another if the particular cultural group to which they belong is structurally
unequal vis-à-vis the majority. As such, from the standpoint of republican justice, we have a
prima facie reason to reduce this inequality. So, in cases where the state’s public institutions
favour the majority culture over a minority culture, republican justice demands that we act to
remove this structural disadvantage. This demand simply arises out of the idea of republican
equality.

Now, any prima facie claim to recognition emerging out of the idea of republican equality has
to be weighed against at least two important moral considerations: first, it has to be weighed
against the manner in which a particular group has come to find itself under the jurisdiction
of the state; and second, it must also be weighed against the extent to which recognition of a
particular group might render individual members of that group vulnerable to domination in
their lives – the so-called paradox of multicultural vulnerability. As we have already seen in
the context of our discussion of liberal theory, there can be considerable disagreement on how we answer both of these issues. In terms of the first question, we can simply assume that borders are closed or we can provide a principled mechanism which allows us to fairly adjudicate claims on behalf of immigrants and national minorities for recognition. In terms of the second question, we might simply argue that the state already provides fair background conditions for each culture and deny any claim to recognition or we can argue that any claim for state recognition has to be compatible with the particular good that the state aims to promote, say, autonomy, negative liberty and so on.

Of course, from the standpoint of republican equality, if the state could be entirely neutral when it comes to culture, then we would have no reason to address any of these issues. After all, if the state is neutral when it comes to culture, then it has, by definition, provided fair background conditions for all citizens. It goes without saying, however, that in the real-world states can be more or less neutral but absolute neutrality is a chimera. By doing its business in this or that language or by organising the states national holidays according to the majority culture and so on, the state is being partial or non-neutral. Notwithstanding the attempt to devise an entirely neutral language in Esperanto and the aspiration for a distinctively neutral, non-sectional French revolutionary calendar of the Jacobites trying to deliver on neutrality in the literal sense of the term can only go so far. From the standpoint of republican justice then, where the state unjustly favours one group over another and ‘de-ethnicization’ of the state’s public institutions is likely to prove too costly or simply impracticable, recognition is the next best option. So, who is entitled to recognition in a republic?

3.4.2. Distinguishing Claims

As we have already seen, the literature on multiculturalism has largely been shaped by Kymlicka’s original argument for multicultural citizenship. Central to Kymlicka’s analysis is
the distinction between national minorities or first nations and immigrants. While the former have a claim to self-government rights, the latter may only claim polytechnic rights which will help with their integration into their new society. For Kymlicka, by leaving their own state, immigrants have voluntarily waived their right to state recognition. Put differently, because immigrants have made a voluntary choice to leave their own state, their claim to state recognition is morally different than that of first nations. Unsurprisingly, the notion that immigrants largely forfeit their right to state recognition due to a voluntary choice has struck many critics as deeply problematic. Part of the problem here rests on the so-called ‘voluntariness’ of the choice. Surely, it is claimed, while some immigrants freely choose to leave their own state, most immigrants would rather stay in their home state and only end up leaving due to unfavourable economic, social or political reasons. This casts major doubts on whether the voluntary choice condition is a useful principle for distinguishing the rights of immigrants to state recognition from that of first nations.

Before we examine the case for state recognition of immigrants, then, let us examine the more straightforward case for state recognition of national minorities or first nations. Again, these are minority groups who have been involuntarily incorporated into the state through annexation or conquest or in joining the state were given assurances that their language, culture and so on would be respected. Certainly, where a national minority has been forcibly or involuntarily incorporated into the state through conquest, annexation and so on, the state has a special moral obligation to restore ‘parity of esteem’ in society between the majority and minority. After all, from the standpoint of republican justice, national minorities are at a distinct structural disadvantage in these kinds of cases. Republicans have a variety of means at their disposal to reduce this inequality: it might involve recognition of the state as a bilingual state or government support to maintain the minority nation’s distinctive cultural

96 For a useful recent discussion on this, see Patten (2014, p. 275-281).
practices, say, in the areas of family law, health and so on. In those cases where a national minority is territorially concentrated, it may involve additional self-government rights and limitations on the majority nation’s right to acquire property in these areas. As we shall see in the next section, however, this prima facie case in favour of state recognition for national minorities must always be weighed against the basic interest that subordinately situated members in that group have to be free from domination.

If the prima facie case in favour of state recognition for national minorities provides a strong argument for state recognition – notwithstanding those more difficult cases where state recognition conflicts with the individual freedom of a particular culture’s members - what about the case for the state recognition of immigrants’ distinct ethno-cultural practices in a republic? As we have already seen, immigrants bring with them a variety of distinct cultural and religious social practices. However, according to Kymlicka at least, this does not mean that they have the same moral demand for recognition as national minorities. It is the voluntariness of the choice to leave their home country coupled with their desire for fair terms of integration into their new society which grounds their weaker claim to state recognition, on this account. Polyethnic rights, including various exemptions from state law and accommodations of distinct cultural and religious social practices, work to that end.

While ‘Kymlicka’s cut’ between the kind of rights owed to national minorities and immigrants might be difficult to maintain once it is grounded in the voluntary choice condition, I do not think that it is hard to maintain once it is reframed in the claim that, all other things being equal, immigrants would rather not have to choose leave their home society and culture, but this is still a trade-off that they are willing to make to experience a greater number of opportunities in their lives. Let us call this the voluntary trade-off condition. Of course, immigrants leave their home society for a whole host of reasons - economic, political, social, and so on - which makes it difficult to argue for a general
principle which is sensitive to all these cases. However, the decision to emigrate is normally a much more difficult choice to make than Kymlicka seems to allow for by merely calling it a voluntary choice. While some immigrants have no difficulty at all in making the choice to leave their home society, for others the choice can be an extremely difficult one to make. However, in the overwhelming majority of cases the decision to leave still reflects a trade-off that immigrants are willing to make to either stay in their home nation and have less opportunity to lead a flourishing life or leave their home nation and have more opportunity to lead a flourishing life.\footnote{I think it is worth making the point here that, contrary to popular opinion, immigrants are often in fact net contributors to their new society. This fact is largely borne out by Dustman and Fratinni’s (2014) work on the fiscal effects of immigration to the UK.} For the minority of immigrants the decision to leave might be for fairly trivial reasons, such as the lack of good food, but for the overwhelming majority the decision to leave is more often than not for non-trivial reasons, such as a lack of a particular opportunity in their in home society. Given that the decision to leave reflects a trade-off that immigrants are willing to make to expand their opportunities at the expense of living in their home nation, this grounds a much weaker claim to recognition than the claim that national minorities have for state recognition.

Indeed, while national minorities have often been forcibly incorporated into the state and demand regional autonomy and so on to address this injustice, I claim that the decision that immigrants have made to leave their home society demands that we provide immigrants with fair terms of integration into their new society. This will help to ensure that immigrants have the basic republican capacity to be able to walk tall in their new society. Accordingly, we ought to ensure that the political institutions to which immigrants are expected to integrate must not be institutions which unjustly favour one culture over another. In short, it is my claim that where a ‘political’ institution unjustly favours one culture over another and de-
ethnicization of this institution is too costly or simply impracticable, immigrants are owed equal state recognition as a matter of republican justice.

3.5. Conclusion

As this chapter has shown, for liberal theorists, whether and to what extent culture ought to feature as a matter of liberal justice is a deeply contested point. For liberal theorists like Rawls, culture is morally irrelevant from the political liberal point of view. Indeed, for political liberals Barry, the liberal state can only ever have pragmatic reasons for being concerned with culture. In contrast to these accounts, for liberal perfectionists like Kymlicka, cultural rights are owed to minority groups as a matter of liberal justice. Culture, on this account, provides individuals with the essential ‘context of choice’ through which citizen’s make autonomous choice about the good life. For libertarian multiculturalists like Kukathas however, there are no such things as minority rights. Individual members of different cultural groups ought to be allowed to associate and disassociate with whomever they wish. On this account, the liberal state has no business in interfering in the private lives of individuals, except in those cases where an individual is not free to exit a minority culture.

In contrast to these liberal accounts, I have argued that minority cultures have a prima facie case in favour of state recognition in a republican framework where the state’s public institutions unfairly privileges one ethno-cultural group over another and de-ethnicization of these institutions is too costly or simply impracticable. However, as I noted, the kind of recognition owed to minority group largely depends on the *manner* in which a cultural minority has come to find itself under the jurisdiction of the state and the *extent* to which state recognition of a minority culture may render individual members of that culture vulnerable to domination. While I have provided some grounds by which we might be able to distinguish a national minority group’s claim to recognition from an immigrant groups, I have said little on
how we ought to adjudicate cases where the demands for state recognition might undermine the individual freedom of minorities in minorities. This latter question will be the focus of the next chapter.
4. Chapter Four: Culture, Deliberation and Republican Equality

4.1. Introduction

In the previous chapter I argued that a minority group has a prima facie case in favour of state recognition where the state’s public institutions unfairly privileges one ethno-cultural group over another and de-ethnicization of these institutions is too costly or simply impracticable. I also provided some additional grounds by which we can distinguish the claims of national minorities for recognition from the claims of immigrant groups. In this chapter I want to focus on the question of how we ought to adjudicate those cases where the demands that a minority group has for state recognition threatens to undermine the freedom of individual members of that group. As I will show, republican equality provides a normatively attractive way for dealing with this issue. While it respects the fundamental interest that individual citizens have in being free from domination, its commitment to symbolic equality provides for an opening up of the democratic process so that minorities are given a fair hearing in putting forward their claims for recognition.

One of the more vexing issues in the political theory of multiculturalism concerns the kind of limits we ought to put on the accommodation of minority cultures in a free and equal society. As we saw in the last chapter, for libertarian multiculturalists, we can sidestep this issue altogether by simply allowing citizens to freely associate with whomever they wish provided they are also free to dissociate as well. On this account, liberalism takes no interest in cultural, religious or ethnic attachments, and takes no interest in promoting human flourishing or individual interests. As Kukathas’ describes it, this is the ‘politics of indifference’ (1998).
In contrast to the politics of indifference, for those theorists interested in promoting a particular value or idea of human flourishing, the question of what kind of limits ought to be put on the accommodation of minority cultural practices is an important one. Suppose we argue that autonomy is an important value and claim that our own distinct culture provides us with the basic ‘context of choice’ which enables us to choose the autonomous life (Kymlicka, 1996). In this case, cultures are going to be recognised only and insofar as they do not infringe on the individual autonomy of their members. Or suppose we insist on the priority of freedom as non-domination when adjudicating these claims. Here the accommodation of a minority culture is going to be limited to the extent that this culture does not infringe on the non-domination of its individual members.

Insisting on the priority of a particular value as our guide in these debates is not without its problems. Often what may appear as a clear infringement of an individual’s autonomy or freedom as non-domination from the outside will be much more complex for those living on the inside. Cultures are not Herderian organic wholes; they contain multiple and competing interpretations on how they ought to be defined. The tendency to reify and essentialise cultures can often do considerable damage to members of minority groups. Providing members of minority groups with a platform to articulate the various reasons why a culture ought to be accommodated or prohibited is an important mechanism by which the majority can gain a greater understanding of the meaning that a particular cultural practice has for its followers. Indeed, for those who reject the appeal to substantive values like autonomy and non-domination in our normative theorising, providing fair procedures for the articulation of these claims is likely to provide more legitimate and more satisfactory outcomes for all concerned.

What does a commitment to republican equality prescribe in these kinds of cases? Like the a priori non-domination approach, republican equality shares a commitment to the priority of
non-domination. However, in its aim to guarantee symbolic equality, republican equality also shares the commitment that more deliberative-centred theories of multiculturalism have toward just procedures. As we shall see in this chapter, I claim that bringing together a commitment to the substantive value of non-domination and symbolic equality in the democratic provides a normatively attractive way for resolving both intercultural and intracultural disputes in modern pluralistic societies.

This chapter is broken up into four sections. In the first section I explore three different arguments for the value of culture in the political theory of multiculturalism. In contrast to these three accounts, I argue that we ought to view these claims that minority groups have for state recognition less in terms of an argument for the value of culture and more in terms of providing citizens with an important part of their capability sets to function as equals in society. Proceeding in this way, I claim, has a number of important benefits over these ‘value’ of culture arguments, particularly when it comes to protecting individual freedom. In section two I examine Lovett’s *a priori* non-domination approach to the reasonable accommodation of a minority group’s distinct social practices. As I will show, while Lovett is right to stress the importance that freedom as non-domination has to citizen’s lives, his account is problematic for the reason that it is unduly insensitive to the multiple meanings that cultures have for its followers. In this context, I explore the recent controversy over the wearing of the Hijab in French public schools as an illustration of the kind of problems that can arise if practitioners of a particular social practice are not given a forum to express their reasons for wanting a cultural practice accommodated or prohibited. In section three I examine whether a more deliberative-centred approach to the accommodation of minority cultures provides a better way of proceeding here. Here I examine one such approach: Deveaux’s deliberative theory of multiculturalism. As I will show, while Deveaux’s proceduralist approach to the accommodation of minority cultures provides minorities with an important forum in which
they can deliberate on matters of cultural recognition, she ultimately underestimates the extent to which her account requires substantive principles of justice to facilitate this discussion. In the final section I lay out my own general framework for how we ought to adjudicate those cases where the demands that a minority group has for state recognition threaten to undermine the freedom of individual members of that group. Here I provide something of a rapprochement between Lovett’s *a priori* non-domination approach and more deliberative-centred approaches to multiculturalism. On my account, while citizens have a fundamental interest in having their freedom as non-domination protected, the commitment to symbolic equality requires that minorities are given a fair hearing in putting forward their claims for recognition. This fair hearing implies the welcoming of plural forms of communication in the democratic process when debating these issues.

### 4.2. Multiculturalism and the Value of Culture

In this section I want to look at three different arguments put forward for the value of culture in the political theory of multiculturalism, namely, Taylor’s intrinsic argument for the value of culture, Kymlicka’s instrumental argument for the value of culture and Parekh’s intrinsic argument for the value of cultural diversity. As I will show, each of these arguments runs into a number of important objections, particularly when it comes to the question of how we ought to adjudicate claims for cultural recognition where the demands for minority group recognition risks limiting the individual freedom of subordinately situated members of cultures. In contrast to these three accounts, I will argue that we ought to view the claims of minority groups for state recognition less in terms of an argument for the value of culture and more in terms of equalising capabilities or the ideal of republican equality.
4.2.1 The Intrinsic Value of Culture: Taylorian Recognition

Beginning around the early to mid-1980s a number of prominent political philosophers began to see a major problem with the account of the self in mainstream liberal political theory. For these, largely Hegelian, inspired writers, the atomistic individualism inherent to liberalism neglects the ‘situatedness’ or ‘embeddedness’ of individuals within cultural communities. Individuals, on this ‘communitarian’ account, are not simply atomised choosers of different ways of life; rather, they are themselves the product of different communities and social practices which shape their identity and inform their choices. An important voice in this ‘communitarian’ way of thinking about the self and its implications for political theory, then, and now, is the work of Charles Taylor. In Sources of the Self, Taylor develops the Hegelian idea that our identity formation is dialogical rather than monological in character.

Following Hegel, on Taylor’s account an individual can only attain selfhood within what he terms ‘webs of interlocution’:

‘One cannot be a self on one’s own. I am a self only in relation to certain interlocutors: in one way in relation to those conversation partners who were essential to my achieving self-definition; in another in relation to those who are now crucial to my continuing grasp of languages of self-understanding – and, of course, these classes may overlap. A self exists only within what I call ‘webs of interlocution’ (1989, p.36).

These ‘webs of interlocution’, for Taylor, are both real and imagined. Imagined conversations are the kinds of internal (virtual) conversations we have with ourselves when we ask ourselves the question: what would my friends, family, or significant other(s) say or do in this situation I find myself in? In other words, for Taylor, our identity is shaped and continues to be shaped by the continuous range of conservations we have with various interlocutors: the dead, the alive, and the yet unborn. For Taylor, as for Hegel, the Cartesian account of the

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98 See, for example, Sandel (1982), Walzer (1983), MacIntyre (1985) and Taylor (1989). For a useful summary of this debate, see Mulhall and Swift (1992).

99 In the Phenomenology of Mind Hegel writes: '[s]elf-consciousness exists in itself and for itself, in that, and by the fact that it exists for another self-consciousness; that is to say, it is only by being acknowledged or “recognized” (1967, p.229).
independent, autonomous self is a chimera which has impoverished our view of subjectivity. Taylor spells out the normative implications of this inter-subjective account of the self in his later work, most notably his canonical essay *The Politics of Recognition*. Here he expands his account of subjectivity to include, what he terms, a ‘horizon of meaning’. A horizon of meaning is the general framework through which we interpret the world - a shorthand for this we might call culture. For Taylor, if our identity formation takes place at least in part through our membership in a particular culture, then a failure to recognise or to misrecognise that culture can negatively affect a person’s sense of self. As he puts it, lack of recognition ‘can inflict harm, can be a form of oppression, imprisoning someone in a false, distorted and reduced mode of being’ (1995, p.225).

While not exclusively focused on the kinds of ethno-cultural diversity germane to the political theory of multiculturalism, Taylor’s *The Politics of Recognition* continues to hold a major influence on this field. However, an immediate problem arises for Taylor, and for anyone else who might wish to build a theory of multiculturalism up from this account, when it comes to the possible limits to cultural recognition in his theory. For Taylor, cultures are *intrinsically* and not simply *instrumentally* valuable. He writes:

‘[c]ulture… is not a mere instrument of the individual goods. It can’t be distinguished from them [individual goods] as their merely contingent condition, something they could in principle exist without. That makes no sense. It is essentially linked to what we have identified as good. Consequently, it is hard to see how we could deny it the title of good, not just in some weakened, instrumental sense, like the dam, but as intrinsically good’ (Taylor, 1995, p.137).

In other words, we do not value culture for the kinds of things that it provides; we value culture in and of itself. Accordingly, individual rights are not simply trumps to be constantly weighed in favour of whenever they clash with a claim to cultural recognition; instead, on

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100 For the original publication of this essay with a number of important replies, see Taylor (1994). This essay was also later reprinted in Taylor (1995).

101 Gilbert (2010), for one, makes it the main focus of his argument against multiculturalism.
Taylor’s account, often we will have ‘to weigh the importance of certain forms of uniform treatment against the importance of cultural survival, and opt sometimes in favour of the latter’ (Taylor, 1995, p.248). The major problem for such an approach to cultural recognition, then, emerges when state recognition of a particular culture clashes with the rights of the individual members of that culture. If, from the standpoint of justice, cultures are intrinsically valuable and deserving of recognition and the equal dignity of all citizens entails an equal basket of individual rights and immunities, what kind of mechanism or principle do we have for adjudicating cases when these two demands for justice come into conflict? On this point, Taylor has said considerably less.

4.2.2. The Instrumental Value of Culture: Kymlickian Autonomy

As we have seen in previous sections, liberal theorists like Will Kymlicka have tried to tackle this point head on. In contrast to Taylor’s strong claim that culture has intrinsic value, Kymlicka makes the much weaker claim that culture has instrumental value. Similar to Taylor then, Kymlicka claims that we make our choices from the ‘situated’ position of culture and we deny an individual the capacity for self-realisation if we withhold cultural recognition. However, unlike Taylor, Kymlicka makes the point that we ought to only value cultures for the instrumental role they play in giving individuals the capacity to choose the autonomous life. Accordingly, on Kymlicka’s account, if a cultural group fails to respect the individual freedom and autonomy of its members, it ought not to be tolerated. However, if Taylor’s argument for cultural recognition was open to the charge that it was possibly too permissive of intolerant cultures and lacked a concrete principle for adjudicating cases where cultural recognition and individual rights come into conflict, critics claim that Kymlicka’s account is both too permissive of ‘internal restrictions’ on subordinately situated minorities within national minorities and not protective enough of ‘external protections’ on immigrants’ rights to recognition.
On the internal restrictions point, Shachar claims that Kymlicka too readily gives up the autonomy constraint on cultural recognition when it comes to the recognition of national minorities. For Shachar, the internal restrictions allowed to national minorities when it comes to the preservation of their culture renders subordinately situated members of these groups vulnerable to a whole range of possible limitations on their autonomy. The preservation of a particular way of life should not come at the cost of an individual’s right to a freely chosen life. Shachar cites the case of *Santa Clara Pueblo v. Martinez* as particularly emblematic of the problem of allowing a national minority’s right for cultural preservation to trump an individual members basic rights (Shachar, 2001, p.18-20). In 1941 Julia Martinez, a member of the Santa Clara Pueblos, married an individual from outside the tribe. According to the patrilineal kinship rules of the tribe, her children were not deemed to be members of the tribe. However, without tribal membership, her children were excluded from obtaining the particular health care available to this tribe. In 1968, Martinez’s daughter Natalie, who now was seriously unwell with a terminal illness and suffered strokes as part of this illness, was refused emergency medical treatment by the Indian Health Services and died. When Martinez filed a lawsuit in the U.S Supreme Court, the court upheld the right of the tribal community to exclude members like Martinez’s daughter on the grounds that the tribe’s interest in preserving its particular cultural tradition outweighed the right of similarly situated children as Martinez’s to enjoy the same rights and benefits granted to children of Pueblo fathers. According to Shachar, this kind of judgement is entirely consistent with Kymlicka’s argument for the cultural recognition of national minorities and ought not to be tolerated in a liberal society. In short, the importance that culture has to a particular group should not come at the expense of the rights of subordinately situated members of that group.
On the external protections point, Deveaux makes two important claims. First, if we only recognise immigrant cultural practices which are consistent with autonomy, then we won’t end up recognising much at all. She writes:

‘Any conception of liberalism that insists that citizens must have available a wide range of life choices may find itself at odds with the claims of communities that seek to socialize their children into distinct and restrictive life roles, and to shape the choices of adult members.….If what cultures do is precisely to shape the lives of their members in myriad ways, on what grounds can certain forms of socialization be deemed permissible and others not, in the absence of extensive democratic deliberation?’ (Deveaux, 2006, p.38).

To be sure, this is a dilemma for any theory of justice which aims to provide for the state recognition of minority cultures whilst upholding the basic rights of individual members of these groups. I will turn to this issue in the context of republican theory shortly.

The second point Deveaux makes concerns how cultures are much more nuanced and complex than Kymlicka seems to allow for. Indeed, this is an argument which could also be applied to Taylor and many other writers we have discussed in the multiculturalism literature. The tendency to reify cultures as immutable, essentialised, social facts blinds us the fact that putative ‘leaders of national ethnic groups seeking some degree of legal and political autonomy from the liberal state may also have a strategic interest in presenting their social identities as continuous and unchanging’ (Deveaux, 2006, p. 12). The danger here is that in providing for the state recognition of minority cultures we risk supporting an account of culture which stymies the discussion and discord which are an inevitable part of belonging to any culture. We would do well to remember that cultures are not Herderian organic wholes; they are complex, internally pluralistic entities which contain competing explanations on how they should be defined.102

102 For more on Herder’s organic account of culture, see Berlin (1976).
One last point concerns the weight that Kymlicka puts on an individual’s access to his/her societal culture. Again, he writes: ‘put simply, freedom involves making choices amongst various options, and our societal culture not only provides these options, but also makes them meaningful to us’ (Kymlicka, 1996, p. 83). On this account, our socialisation into a particular culture gives us the essential ‘context of choice’ by virtue of which we make our choices. Presumably, then, denying an individual access to this ‘context of choice’ implies that they will only ever make choices which are entirely meaningless. It seems reasonable to ask then: if culture provides the context of choice by virtue of which various options appear meaningful to us, can it ever be justified to restrict an immigrant group’s access to elements of this ‘context of choice’ on the grounds that they are only allowed access to those aspects of their culture which will aid with their integration into the host society? Here, like Taylor, I think that Kymlicka puts too much weight on an individual’s access to their societal culture. As I will argue shortly, we do not need to make an ontological argument about the nature of the subject or ground a theory of cultural recognition on the instrumental value of culture to recognize that if your culture is privileged over mine in the state’s public institutions then I am at a distinct disadvantage.

4.2.3. The Intrinsic Value of Cultural Diversity: Parekhian Multiculturalism

In contrast to Taylor’s and Kymlicka’s arguments for the intrinsic vs. instrumental value of culture, Parekh claims that it is not cultures themselves that have intrinsic value, it is cultural diversity that has intrinsic value. Here, Parekh provides something of a rapprochement between Taylor’s and Kymlicka’s positions on the value of culture. On Parekh’s account, my own particular culture has instrumental value in the sense that it provides me with basic interpretative tools by virtue of which I can access the irreducible plurality of cultures in the world. It is this irreducible plurality of cultures in the world that has intrinsic value, for
Parekh. He gives four reasons why it is cultural diversity and not simply culture that has intrinsic value for individuals.

First, ‘no culture embodies all that is valuable in human life and develops the full range of human possibilities’ (Parekh, 2000, p.167). Cultural diversity enables individuals to expand their horizon of thought beyond the narrow confines of their own particular interpretative horizon. Second, cultural diversity provides individuals with ‘mini-Archimedean points’ which enable us to analyse the strengths and weaknesses of our own culture. For Parekh, there is no grand ‘Archimedean point’ to evaluate different cultures by – no view from nowhere, so to speak - rather, the particular standpoint of different cultures enables us to view our own culture from these other standpoints. In other words, mini-Archimedean points enable human-beings ‘to see the contingency of their own culture and relate to it freely rather than as a fate or a predicament’ (2000, p.167). Third, the wide range of different cultures alerts us to the possible diversity within our own. By seeing the irreducible plurality of cultural interpretations in the world, we come to recognise that our own culture contains a similar plurality of interpretations. Finally, and crucially for Parekh, cultural diversity ‘creates a climate in which different cultures can engage in a mutually beneficial dialogue’ (2000, p.168).

It is this argument for the intrinsic value of cultural diversity which leads Parekh to argue that a theory of multiculturalism proper – that is, one not couched solely in terms of liberal values – promotes intercultural dialogue. Importantly, this is not a dialogue of public reasons for Parekh. Rather, multiculturalism, on Parekh’s account, is a kind of dialogue or conversation between different cultures as different cultures. It is this connection between cultural diversity and dialogue which Parekh sees as providing a distinctly multicultural approach to the issue of cultural diversity in modern pluralistic societies. By allowing different groups to articulate

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103 For a useful contrast, see Nagel (1989).
and express themselves as themselves, Parekh’s version of multiculturalism facilitates a form of dialogue which, he believes, is ‘mutually beneficial’ for all (2000, p.168). This optimism surrounding intercultural dialogue extends to intra-cultural dialogue as well. In other words, dialogue ought to take place, for Parekh, not only between different cultures but within the different cultures themselves. The internal plurality of each individual culture, for Parekh, makes it desirable that this ought to be the case, lest those who are the dominant members of a particular culture will become the only voice for that culture. To facilitate this inter-cultural and intra-cultural dialogue, Parekh claims that we will need to have some pre-established rules of the game, as it were. That is to say, we will need some additional background conditions in society which facilitate this mutually beneficial dialogue. These background conditions Parekh terms societies ‘operative public values’. He writes:

‘[t]he dialogue requires certain institutional preconditions such as freedom of expression, agreed procedures and ethical norms, participatory public spaces, equal rights, a responsive and popularly accountable structure of authority, and empowerment of citizens. And it also calls for such essential political virtues as mutual respect and concern, tolerance, self-restraint, willingness to enter into unfamiliar worlds of thought, love of diversity, a mind open to new ideas and a heart open to others’ needs, and the ability to persuade and live with unresolved differences’ (Parekh, 2000, p.340).

These ‘operative public values’ will have the effect, for Parekh, of promoting the conditions for the kinds of ‘mutually beneficial dialogue’ characteristic of a multicultural polity properly understood. Furthermore, they will help to ensure that non-liberal views are not confined within the narrow limits set by liberalism, as is the case with many so-called liberal theories of multiculturalism, and the ‘emancipatory thrust’ of liberalism is not merely confined within the limits set by an overly-tolerant multiculturalist approach.

What are we to make of Parekh’s argument for the intrinsic value of cultural diversity and the good of intercultural dialogue? One major objection to this view concerns the extent to which Parekh is even willing to endorse his own claim that the irreducible plurality of cultures in the
world are valuable in and of themselves, particularly when he seems to argue for the widespread internalisation of societies operative public values. Indeed, one might argue that even if these are merely ‘public values’ and not ‘private values’, by situating intercultural dialogue in terms of these values, Parekh seems to ignore the extent to which the internalisation of a set of hegemonic ‘public’ norms in society will threaten the very thing he is at pains to protect, namely, cultural diversity. Furthermore, even if we ought to only allow those cultures that respect these values a place in the ‘mutually beneficial dialogue’, how many cultures will actually be willing to respect these values. As Kymlicka has argued (2001a), Parekh’s account seems to implicitly rely on intercultural dialogue taking place within a broadly liberal democratic framework. As such, the operative public values that are conducive to fair and meaningful dialogue among different cultures – the operative public values of a distinctly multicultural approach to diversity, according to Parekh – are in many ways the same operative public values of a liberal democracy. For Kymlicka, while Parekh is at pains to develop a theory of multiculturalism which is freestanding of liberal values, he still simply assumes that, while these values might not be universally true, they should still provide many of the underlying limiting principles that a theory of multiculturalism ought to rely on. This amounts to smuggling in liberal values through the back door and would appear to seriously undermine Parekh’s claim that cultural diversity is something worth promoting in and of itself.

A second objection concerns the extent to which the promotion of cultural diversity would only further entrench existing structural inequalities between men and women in the private sphere. According to liberal feminists like Okin (1999), the claim that there are no grand Archimedean points to judge cultures by is an inherently dangerous idea. For her, liberal values ought to provide this standard. On her account, most cultures – besides liberal cultures of course – are patriarchal cultures, and for that reason ought not to be tolerated – never mind
allowed to express these views in the state’s public institutions. Indeed, Okin rejects Parekh’s claim that intra-cultural dialogue is a possible mechanism by virtue of which women can bring their private concerns into the public sphere. If most cultures are patriarchal cultures, then the chances that women will have their views heard and respected, for Okin, is simply fallacious (1999, p.121). To give Parekh his due, he does mention that citizens ought to be empowered in order to engage in a meaningful dialogue with others (2000, p. 340). However, while he says little on what empowerment in this context actually implies, he would reject the kind of distinctly liberal type of education that we find in Rawls and Raz for instance – an education that might best promote citizens empowerment – as this would threaten the plurality of cultures available in a multicultural state. To merely assert that citizens should be empowered to engage in intra-cultural dialogue without a theory of individual empowerment is, in effect, to not say much at all.

4.2.4. Culture, Capabilities and Republican Equality

As we have seen, the value of culture and cultural diversity has received a lot of attention in the political theory of multiculturalism. On Taylor’s account, we do not value cultures for the kinds of things they provide; rather, each particular culture has value in and of itself. For Kymlicka by contrast, cultures are not intrinsically valuable; they are instrumentally valuable in providing individuals with the essential context of choice through which they make autonomous choices about the good life. Finally, in contrast to both these accounts, Parekh claims that it is cultural diversity that has intrinsic value, not culture. While cultures are instrumentally valuable in providing individuals with mini-Archimedean points through which they can access the irreducible plurality of cultural diversity in the world, it is this diversity of cultures in the world that has intrinsic value, for Parekh.
In contrast to Taylor’s, Kymlicka’s and Parekh’s accounts, I claim that we ought to view the claims of minority groups for recognition less in terms of an argument for the value of culture or cultural diversity and more in terms of the ideal of republican equality. On this account, cultural recognition provides citizens with an important part of their capability to function as equals in society. If your culture is privileged over mine, then I am less capable, so to speak, of looking other citizens in the eye – less capable of passing the eyeball test. As we saw in chapter two, republican equality guarantees citizens sufficient basic functioning capabilities to pass this test. To possess equal standing in society – to be relationally equal with other citizens – is to be provided with the requisite capabilities to function. Cultural recognition matters from the standpoint of republican equality, then, only and insofar as it helps to provide citizens with the capability to be relationally equal with other citizens.

In the previous chapter I tried to establish those cases in which a minority group has a prima facie case in favour of state recognition. To this we can now add two important caveats: first, a cultural minority has a legitimate case in favour of state recognition if cultural recognition does not threaten the fundamental interest citizens have in being relationally equal with each other; and second, while republican equality takes a fairly wide view on what this relational equality requires, citizens’ first or primary fundamental interest is to be free from domination in their choices. I think that framing the claim for state recognition in this way allows us to avoid a number of important objections levelled at Taylor’s, Parekh’s and Kymlicka’s account. I will mention two of these objections here.

First, consider the reification objection levelled against Taylor’s and Kymlicka’s accounts. This objection takes issue with the way in which cultures are falsely represented as static, homogenised undifferentiated wholes. For Phillips, such an account of culture ‘exaggerates the internal unity of cultures, solidifies differences that are currently more fluid’ and is not in keeping with how cultures are actually constituted in the real world (2007, p.14). By
connecting cultural recognition to republican equality, I think we can avoid this objection. On my account, it is each individual citizen’s relational equality that matters. A minority culture has a prima facie case in favour of state recognition if members of this group are at a distinct structural disadvantage vis-à-vis the majority, and recognition of this minority practice does not threaten to undermine the relational equality of individual citizens. While my account recognises the importance that culture and cultural recognition has to an individual’s sense of self, it does not view cultures as undifferentiated wholes. Rather, the focus is on each individual citizen’s relational equality to each other, which implies a non-essentialised, non-reified, pluralistic and contestatory account of culture. As I will explain shortly, my account seeks to provide a platform for the articulation of the various meanings that cultures have for its individual members, lest we inadvertently render some members of these groups vulnerable to domination in their lives.

Second, and related, the importance that my account of republican equality gives to symbolic equality in society demands that we take seriously the claims of minority groups to recognition. Recall, as I argued in section 4.2.2, a major objection against Kymlicka’s context of choice account of culture was that it set the bar quite high on the kind of culture’s that would be deserving of recognition in the liberal perfectionist state. While my account also sets the bar quite high, it recognises that what might appear as a straightforward case of domination from the outside may not be so straightforward once we gain an understanding of the meaning that a particular social practice has for those on the inside. As we shall see in the next section, this is an important difference between my account and some other neo-republican approaches to the accommodation of a minority group’s distinct social practices in a republic. While I agree with neo-republicans that we ought to prioritise an individual’s freedom as non-domination, the fact that minorities are often at a distinct symbolic disadvantage in society requires that the disparate viewpoints on a particular social practice
ought to be given a fair hearing before a decision to accommodate or prohibit a particular social practice is adjudicated on. Involving minorities in this kind of process, I claim, has at least two substantial benefits in terms of the legitimacy of a particular decision over other a priori non-deliberative accounts of cultural recognition: first, the state’s legislators and public representatives are, all things considered, going to gain a better understanding of the various reasons that members of a cultural minority have for wanting a particular social practice recognised or unrecognised, which will mean that they will be able to make an informed decision on this important matter; and second, I think it is reasonable to assume that minorities are going to be more satisfied with a particular ruling than they might otherwise be if they are actually going to be involved in a reason giving process in which the state justifies its position by providing solid reasons for its decision.

4.3. On the Priority of Non-domination: Lovett’s Non-deliberative a priorism

In this section I want to look at one particular neo-republican approach for adjudicating cases where cultural accommodation comes into conflict with the idea of republican equality, namely, the account of cultural recognition we find in Frank Lovett’s A General Theory of Domination and Justice (2010). Like Pettit, Lovett is a staunch defender of the principle of freedom as non-domination. Indeed, on Lovett’s account, social justice should be principally concerned with reducing or minimizing social relations of domination in citizens’ lives.\(^\text{104}\) However, while Pettit has his own definition of what constitutes a social relation of domination, Lovett argues for a further refinement of this ‘arbitrary power conception of

\(^{104}\) As Lovett himself puts it: ‘[s]ocieties are just to the extent that their basic structure is organized so as to minimize the expected sum total domination experienced by their (present and future) members counting the domination of each member equally’ (2010, p.190).
domination’ to include the following three individually necessary and jointly sufficient conditions:

‘To correctly describe person or group 1 as dominating person or group 2:

1. 1 and 2 must both be social actors.
2. 1 and 2 must be engaged in a social relationship with each other.
3. 2 must be dependent on the social relationship to some degree (the dependency condition).
4. 1 must have more power over 2 than 2 has over 1 (the imbalance of power condition).
5. The structure of the social relationship must be such as to permit 1 to employ power over 2 arbitrarily (the arbitrariness condition)’ (2010, p.120)

Notwithstanding the subtle differences between Pettit’s and Lovett’s conception of domination, Lovett shares Pettit’s claim that structural inequalities in society are only relevant from the standpoint of republican justice to the extent that they aid or facilitate in relations of domination (2010, p.205). Indeed, on Lovett’s account, undermining domination should be the ‘exclusive concern of a conception of social justice’ (2010, p.170). When it comes to instances of coercion, exploitation, discrimination and oppression in society these, for Lovett, are often only merely a symptom of wider social relations of domination, as he defines them (2010, p.122). To be sure, I think that when it comes the kinds of disabling constraints in society that render citizens structurally and symbolically unequal vis-à-vis each other Lovett moves much too fast here. We might recognize that removing social relations of domination are an important justice consideration in their own right, but, as I argued in chapter one, it is a mistake to reduce everything to domination. As we have seen throughout this thesis, while delivering on non-domination is an important feature of a just society, it ought not be the only feature. Though Lovett believes that concepts like oppression, which are principally concerned with non-intentional constraints on citizens lives, are ‘too broad to be of much

105 See also Lovett (2012).
practical use in theories of moral philosophy’ (2010, p.122), I have already shown that the distinction between unfreedom and non-freedom gives us the analytical precision we are looking for in order to incorporate a concern with these kinds of constraints (2010, p.122). In short, contra Lovett, I see no reason why a conception of republican justice cannot be concerned with both.

Lovett goes on to apply his ‘republican’ conception of justice as minimizing domination (JMD) to the issue of multiculturalism. In discussing the various grounds for the accommodation of a cultural group’s distinct social practice under JMD, Lovett gives two examples. First, all other things being equal, the republican state will tolerate or accommodate ‘burdened social practices’ if this practice has particular subjective value for its followers, say, the kind of value that a particular social practice may have for an immigrant group, and accommodation of this burdened social practice does not render any individual members of this group vulnerable to a social relation of domination. However, in cases where the accommodation of a cultural group’s distinct social practices would lead to domination, according to Lovett, the republican state may have a reason for accommodating some of the burdened social group’s other social practices if ‘combatting those particular practices [the dominating social practices] would be easier if the burden on other practices shared by the same group were lessened’ (2010, p.208). The second situation, according to Lovett, where the goal of JMD might involve the accommodation of a particular social group’s burdened social practices may exist in cases where cultural differences represent ‘sunk costs’ for certain ethno-cultural groups:

‘[I]mage a worker who has been trained for work in a particular sort of industry that subsequently goes into irreversible decline. It is true that the worker could retrain for work in a new industry, but this might not be very easy to do. Her training investment in the first industry is a sunk cost…[T]his makes her economically vulnerable to exploitation….’

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106 He admits there may be other cases as well, see (Lovett, 2010, p. 208).
might think of a group of unassimilated recent immigrants as analogous to a group of specialized workers in a declining industry…persons who do not speak English cannot easily become American citizens, making them vulnerable to domination in a variety of ways’ (2010, p.209).

Accordingly, Lovett believes we have good reasons for implementing measures which might alleviate the burden that some cultural groups may be under to assimilate in these kinds of cases.

Lovett is unequivocal in his claim that only those social practices that respect the freedom as non-domination of citizens ought to be accommodated. Indeed, on his account, ‘[i]f people are not comfortable with the prospect of non-domination, one should strive to change this fact through education and consciousness raising’ (2010, p.210). While I agree with a large part of this account, I claim that Lovett’s lack of consideration for more non-intentional, symbolic inequalities in society renders his account vulnerable to the charge that it risks misunderstanding the nature of a number of a minority group’s distinct social practices and, as a consequence, is likely to be too punitive when it comes to the possible accommodation of these practices.

Consider Lovett’s claim that burdened minority groups will often strengthen the attachment to a particular social practice in societies where this particular practice is undervalued. They may do this, for example, to ensure a sense of identity with their fellow group members or to maintain a connection to their ancestral homeland. In these kind of cases, according to Lovett, some practices may become more ‘severely patriarchal here than they were in the group’s country of origin’ (2010, p.208). As we saw, Lovett suggests that the accommodation of some of the group’s other social practices may serve to offset this process. However, one of the problems with Lovett’s account here is that he seems to assume that there is some sort of uniformity in meaning to these practices which the republican state can simply draw from in adjudicating these cases. In other words, such an account seems to deny the prevalence of
those cases where a particular minority group’s social practice might have multiple meanings for its followers. As such, the process by which we come to understand a cultures meaning is hugely important.

As we shall see, I think this plurality in meaning objection is a strong argument against \textit{a priori} approaches to the politics of recognition. However, I think there is another related objection we can make here. Lovett claims that the state has good reasons to accommodate a minority group’s more benign social practices if this move serves to combat this group’s attachment to more malign or dominating cultural practices. While this may well be true, what of those cases where state recognition of a putatively patriarchal dominating social practice, say, the wearing of the Muslim veil, serves to lessen the kind of domination that members of this group are likely to experience in the private sphere. This is a complex issue, to be sure. I am certainly not saying that the threat of further severe domination to vulnerable members of minority groups is always enough to warrant accommodating some other milder dominating social practices. This would simply give some minority groups too much leverage when it comes to the accommodation of their particular social practices. All I am saying is that the complexity around this and similar issues should not preclude republicans from considering the likely consequences of prohibiting dominating social practices, particularly when it comes to the possible long-term negative consequences of doing so.

\textbf{4.3.1 Veiled in Controversy: The Hijab Ban in French Public Schools}

I think it will be useful here to look at one particular example which develops the point I have been making with regard to the way in which a particular social practice may have multiple contested meanings for its followers. Perhaps the most salient example which helps to illustrate the kind of problems that arise from a failure to understand the plurality of meanings that a particular social practice has for its followers is the recent controversy over the
meaning of the Muslim veil (Hijab) in French republican political discourse. In French constitutional law the concept of *laïcité* refers to the commitment that the state upholds to remain neutral over religious belief in its public institutions. Extolled by French republicans as a key principle which helps to secure citizens formal equality with one another in the public sphere, *laïcité* is also viewed as a necessary condition for securing women’s equality with men. Indeed, in a move that was seen by many to uphold this fundamental principle of neutrality and gender equality in the state’s public institutions, in 2004 the French government decided to ban so-called ‘conspicuous’ religious attire from its public schools. The reasoning here was that religious attire of this kind had no place in the secular public sphere and rather than each individual school having to implement its own policy on the matter – as had been the case in the period leading up to 2004 – the state was seen as having a particular obligation to uphold the strict separation of church and state in its schools.

The 2004 ruling was a controversial decision at the time as it appeared to many to unfairly impact those faiths whose religion demanded such publicly ‘ostentatious’ displays of belief, such as the wearing of the Muslim veil, the Jewish Skullcap and Turbans (Henley, 2004). Indeed, under the law, while the Hijab was deemed to fall under the category of an ostentatious display of religious belief and ought to be prohibited on those grounds, more modest displays of religious belief such as wearing the crucifix were not deemed to be ostentatious enough to be deserving of such a prohibition (Stasi, 2004). Ostentatious displays of religious belief like the Hijab were thought to be problematic because they included an important proselytizing dimension which served to undermine the idea of the school as a neutral public space devoid of religious content. Indeed, for so-called *laïcité*s, more ‘benign’ expressions of religious belief, such as the way in which the school year was organized.

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107 For a more comprehensive discussion of this controversy, see especially Laborde (2008). See also Joppke (2009, p.27-52).
according to a Christian understanding of the calendar, were not viewed to be in conflict with the idea of the school as an impartial public space.

Prior to this decision being made, in 2003 French president Jacques Chirac established the Stasi Commission to draft a report which would look into the whole issue of religious symbolism in the state’s public schools. It is worth reflecting on the manner in which this report was conducted, as not only did its findings serve as an important basis for the 2004 law but the way in which the commission did its work helped to frame much of the political discourse around the prohibition of the Muslim veil in French public schools. The Stasi commission was composed of twenty experts, lawyers, politicians, academics and educators, who carried out approximately 150 interviews over a two month period. They interviewed a number of public representatives, public sector workers, influential members of the Muslim community and more in order to get a better understanding of the place of religious symbolism and attire in the state’s public institutions. As Laborde rightly points out, however, ‘a remarkable but barely noticed feature of the extensive consultations undertaken by the Stasi Commission…is that hardly any veiled woman was heard, on the grounds that the commission, assuming they were manipulated and alienated, would “not be sensitive to their arguments”’ (2008, p.133). In fact, only two such women were interviewd. Moreover, it is also worth noting that one of these women was only invited on the last day that the commission sat for interviews. Accordingly, rather than Muslim women representing themselves in this process, they were mostly represented. The commission largely assumed that the subordinate position these women occupied in their patriarchal Muslim families was reason enough to exclude them from the discussion, lest they would end up merely voicing the opinions of their more dominant Muslim male counterparts.

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When the Stasi Commission finally produced its report in December 2003 it made a number of observations about the role of young women in France’s Muslim community. Chief among these was a particular interpretation of the meaning of the Hijab for these young women. As Anne Philips describes it, the report found that:

‘covering one’s head in public places - including at school - was becoming the only way to avoid being stigmatised as sexually loose or a heretic. For those who refused, the fact that others of their age group were wearing the hijab made them even more vulnerable to accusations of impurity. The commission therefore doubted whether young girls really were choosing the headscarf, and this perception made it easier for it to conclude that school students should not be permitted to wear conspicuous religious or political symbols’ (2007, p.118).

In accordance with these findings, the report recommended that a blanket ban on the Muslim Headscarf in the state’s public schools was a necessary measure to protect young Muslim women’s freedom and equality in French society.

While the recommendations of the report were largely implemented, a number of important objections have been levelled against the way in which the commission carried out its work. I will mention two of these important objections here. The first concerns the Stasi Commissions lack of engagement with some of the key empirical work in this area, particularly the work carried out by sociologists Francoise Gaspard and Farhad Khosrokhavar (1995). In their 1995 study of Muslim women in France, these authors described three different meanings that the Headscarf had for the Muslim women they interviewed. For older Muslim women who immigrated to France in the 1960’s, the hijab was viewed as providing a sort of symbolic connection with their country of origin. Wearing the veil enabled these women to withstand the trauma involved in finding oneself outside of one’s familiar cultural surroundings. For a second group, aged between 16 and 25, wearing the veil represented an autonomous choice by young assertive second generation Muslim women to hold on to their distinct ‘Islamic Identity’. For these women, the desire was to be both French and Muslim, to be autonomous choosers of the Islamic way of life. For a third group of young adolescent
girls, the veil was something imposed by parents to uphold the belief that young girls ought to be modest and chaste. However, as Gaspard and Khosrokhavar observed, this third meaning of the Hijab also held emancipatory possibilities for these young women. Wearing the veil enabled these young women to go out without harassment from men. It also enabled these young women to receive an education which would help to prepare them for a life beyond mere domesticity. In other words, the wearing of the veil served a twofold function: it gave the illusion to their parents that these young women were just like their traditional forbears, while, at the same time, it allowed them to be more independent and to break this connection with their traditional role. Indeed, as Gaspard and Khosrokhavar also noted, the majority of these young women ultimately refrained from wearing the Hijab a few years after they left school. This research appeared to contradict the findings of the Stasi report which held that the coercive imposition of the Hijab on Muslim women was on the rise in French society.

The second objection concerns the way in which the actual process for choosing interviewees was carried out. As I have already mentioned, only two interviewees were Muslim women. Again, the general view by the commission was that the subordinate position that these women held in their community implied that they would more than likely only express the views of their dominant male counterparts in the discussions. Accordingly, the commission decided to effectively exclude Muslim women from the consultative process on these grounds. However, if Gaspard and Khosrokhavar’s analysis is right, then the commission failed to understand how a number of young Muslim women choose to wear the Hijab for non-coercive reasons. Indeed, opening up the consultative process to these and other Muslim women would surely have led to a less one-sided and more nuanced discussion on the meaning of the Hijab than was actually carried out. Of course, I should stress here that there are undoubtedly instances where the Hijab and other religious attire are imposed on more

\[109\] In Section 3.3.2.1 of the report (Stasi, 2004) the Commission refers to the high levels of physical, verbal and psychological pressure that Muslim women are under.
vulnerable members of minority groups. That being said, the commission proceeded to carry out its work with an essentialised account of Muslim culture in which women were denied any meaningful agency. As such, understanding the symbolic significance that the Hijab had for Muslim women in their everyday lives and the likely consequences that a possible ban on wearing this symbol in schools would have for young Muslim women was not given due consideration in the consultative process. Muslim women’s agency was thus denied twice over: by the essentialist understanding of Muslim culture which framed the commission’s enquiry and by their effective exclusion from the consultative process.

The debate over the wearing of so-called ‘ostentatious’ religious attire in public spaces in the French Republic has not gone away. In fact, a ban on the Burqa in public spaces was soon to follow in 2010. More recently, there has been controversy over Muslim women wearing so-called ‘Burkini’s’ on public beaches, in the wake of a number of terrorist incidents in France (Quinn, 2016). However, as the Council of Europe has recently reported, there has also been a substantial increase in anti-Muslim abuse on the streets of France during this period as well (Muižnics, 2015). Some critics have argued that all out bans such as these do more damage than good in the long run to intercultural relations (Vulliamy, 2016). This may well be the case. However, I do not want to argue this specific point here. The point I want to make is a more general point about the need to be more inclusive when adjudicating the claims that cultural minorities have for recognition. The politics of cultural recognition is much more complex than either liberal or republican a priori accounts allow for. If we return to Lovett’s analysis, he argues that burdened social practices have a reasonable claim to accommodation in a republic only and insofar as they do not involve domination. Unfortunately, however, he says nothing about those kinds of cases in which a particular social practice has multiple meanings for its followers. This is where the reasonable accommodation of minority cultures becomes a lot more intractable. Indeed, as the Hijab controversy in France illustrates, often
prohibiting a particular social practice can have the unintended consequence of increasing some member’s vulnerability to domination in the private sphere. Of course, not all cases are as complex as the accommodation or prohibition of the Hijab. However, this should not preclude republicans from thinking about the process by which they come to adjudicate these claims. As we shall see in the next section, this has been precisely the focus of deliberative multiculturalists. For them, the claim to recognition requires a legitimate process which gives a voice to members of minority groups. I turn to this case for a more deliberative-centred approach to multiculturalism now.

4.4. Deliberative Multiculturalism

In recent years a growing number of political theorists have applied the deliberative democratic approach to the issue of majority/minority relations.\footnote{See especially Deveaux (2003, 2006), Young (1996, 2000), Parekh (2000), Benhabib (2002) and Tully (1995).} As Deveaux explains, for these writers:

‘[d]eliberative democracy, suitably revised, offers a robust, egalitarian model of power-sharing in political deliberation and…can also provide a political framework for the democratic and respectful resolution of both inter- and intra-cultural conflicts in socially plural, liberal democratic states’ (2005, p.342).

In this section I want to explore in more detail this application of deliberative democracy to the accommodation of cultural minorities in a liberal democratic society. As I will show, while there are a number of important lessons that republicans can draw from this discussion, applying a purely deliberative democratic approach to multiculturalism is unsatisfactory for a number of important reasons.

4.4.1. What is Deliberative Democracy?

As Gutmann and Thompson explain, the core idea of the deliberative democratic approach is simple: ‘when citizens or their representatives disagree morally, they should continue to
reason together to reach mutually acceptable decisions’ (1996, p.1). In contrast to the more widely practiced Schumpeterian or aggregative conception of democracy, which holds that an outcome or decision is legitimate if it reflects the self-interested preferences of the majority of citizens, the deliberative conception of democracy holds that an outcome or decision is legitimate if it is reached through a process of democratic deliberation in which citizens put forward reasons for their side of an argument and reach consensus through the force of the better argument.\textsuperscript{111} However, as we shall see, even on this fairly general definition of deliberative democracy there can be deep disagreement.

For a number of influential deliberative democrats, an essential feature of the deliberative conception of democracy is the idea of reasoned argumentation. On this account, when deliberating about matters of public concern citizens ought to provide non-strategic or public reasons, as opposed to strategic or private reasons, for their particular position.\textsuperscript{112} These norms of public reason are viewed as morally universalisable norms, which respect the principle of democratic legitimacy to which all reasonable citizens are expected to endorse. By using public as opposed to private reasons in their democratic deliberations, the deliberative democratic process is viewed as a transformative process in which citizens start out with a particular view on a matter of public concern and alter or transform their position in line with the force of the better argument. Indeed, when Habermas refers to the ‘forceless force of the better argument’ he has this particular view of the transformative potential of public reason and deliberative democracy firmly in mind (1999, p.449-450).

However, this is by no means an uncontested feature of the deliberative democratic approach. Critics of this particular conceptualization of deliberative democracy have taken issue with

\textsuperscript{111} As Schumpeter puts it: ‘the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people’s vote’ (1976, p.269).

the idea that public reason can act as a non-partial basis for inclusion in the democratic process. For deliberative democrats like Dryzek (2000) and Young (1996; 2000), for example, rather than the norms of public reason providing a neutral basis for a more inclusive democratic politics, these same norms can often have the opposite, exclusionary effect. Frequently, those unfamiliar with this mode of communication find themselves at a distinct disadvantage in trying to argue for their particular position. As Young writes:

‘restricting practices of democratic discussion to moves in a contest where some win and others lose privileges those who like contests and know the rules of the game. Speech that is assertive and confrontational is here more valued than speech that is tentative, exploratory, or conciliatory. In most actual situations of discussion, this privileges male speaking styles over female’ (1996, p.123).

Elsewhere James Tully has recently described this tendency toward partiality in the deliberative democratic process as the unfreedom of assimilation:

‘unfreedom is brought about by relations of inclusion and assimilation. Subjects are permitted and often encouraged to participate in democratic practices of deliberation yet are constrained to deliberate in a particular way, in a particular type of institution and over a particular range of issues. Their agreements and disagreements therefore serve to reinforce rather than challenge the status quo…This is the unfreedom of assimilation, for one is not free to challenge the implicit and explicit rules of the dominant practice of deliberation, but must conform to them and so be shaped by them’ (2008, p.116-117).

For Dryzek, given this cultural or symbolic inequality in the deliberative democratic process, deliberative democrats should not shy away from the acceptance of rhetorical appeals as well as argumentation in the process of democratic deliberation, as rhetoric can act as an important mechanism by which minorities can frame points in a manner that will move their audience (2000, p.52). Similarly, on Young’s communicative account of deliberative democracy, deliberative democrats ought to go beyond a narrow concern with public reason and argumentation in their theories and include a broader concern with plural forms of communication such as greeting, storytelling and narrative as well (2000, p.52-80). I will return to the value of this specific aspect of democratic deliberation in the final section of this chapter.
Another important feature of the deliberative democratic approach concerns the extent to which the theory ought to be confined solely to providing the procedures by which laws are made or whether it also ought to include prescribing certain substantive principles, say, principles of justice and so on, which operate independently of the actual democratic process. For proceduralists like Habermas, for example, ‘only those statutes may claim legitimacy that can meet with the assent of all citizens in a discursive process of legislation that in turn has been legally constituted’ (1996, p.110). On this account, we ought to reject the kind of independent a priori substantive principles of justice that republicanism prescribes as these principles have not been derived from a fair process of democratic deliberation and fail the test of political legitimacy. For Habermas, law has no legitimacy outside of its derivation in a rational discourse in which all those persons possibly affected by this law could agree as participants (1996, p.107). As Gutmann and Thompson describe it, on a purely proceduralist conception of deliberative democracy, ‘the principles of deliberative democracy…should not prescribe the content of the laws, but only the procedures (such as equal suffrage) by which laws are made and the conditions (such as free political speech) necessary for the procedures to work fairly’ (2002, p.153).

In contrast to the purely proceduralist conception of deliberative democracy, some deliberative democrats argue that a theory of deliberative democracy ought to include certain substantive principles, say, basic liberty, an idea of the common good or fair opportunity, as well as those procedural principles mentioned in the previous paragraph. For non-proceduralists like Gutmann and Thompson, for example, ‘[a] democratic theory that shuns substantive principles for the sake of remaining purely procedural sacrifices an essential value of democracy itself: its principles cannot claim to treat citizens in the way that free and equal persons should be treated - whether fairly, reciprocally, or with mutual respect - in a

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113 For an argument objecting to Habermas’s claim to pure proceduralism, see Rawls (1996, p. 372-434).
democratic society in which laws bind all equally’ (2002, p.154). On this account, the theory of deliberative democracy fails to deliver on its promise of reciprocity among free and equal citizens if it excludes certain substantive principles from its theory. As such, substantive principles are viewed as a necessary requirement of democratic politics.

Of course, arguing that the theory of deliberative democracy ought to go beyond process is not without its problems. After all, how can a particular law pass the test of democratic legitimacy if the actual process of law-making is foregrounded by non-procedurally derived substantive principles, we might ask? If a democratic decision is legitimate if and only if it is derived solely from the outcome of a deliberative democratic process, this would seem to preclude out-of-hand the introduction of any non-procedural principles. As we shall see, this is an issue that directly affects the application of the deliberative democratic approach to the area of multiculturalism, particularly when it comes to the accommodation of illiberal minority groups.

4.4.2. Deveauxian Deliberation

Monique Deveaux’s (2006) recent work represents the most ambitious attempt to apply the principles of deliberative democracy to the area of multiculturalism. For Deveaux, by creating new spaces for democratic activity and adopting a model of democratic deliberation that goes beyond a narrow concern with participants’ non-strategic reasons, the deliberative approach has the theoretical and practical tools to provide ‘the most democratically legitimate and just means’ for resolving these disputes (2006, p.21). In fact, according to Deveaux, not only does a deliberative theory of multiculturalism provide a legitimate and just framework for resolving intercultural disagreements – disagreements between cultures – but it also provides a legitimate and just framework for resolving intracultural disagreements as well – disagreements within cultures. In contrast to the liberal perfectionist approach to
multiculturalism which foregrounds the possible accommodation of cultural minorities by substantive liberal values such as respect for individual autonomy, Deveaux’s deliberative multiculturalism is grounded in a set of minimal procedural constraints which aim to facilitate a democratically legitimate, though not necessarily liberal, outcome.

In contrast to a monistic model of political deliberation in which participants engage in reasoned argumentation about policies and norms that reflect their normative differences with one another, Deveaux argues for a pluralistic deliberative model which engages with the various motivations and strategic interests that members of a cultural minority have for wanting a particular social practice recognised (2003, p. 781). Indeed, for Deveaux, ‘as the intra-cultural nature of these conflicts suggests, they are often much more about concrete interests and the distribution of power in communities than they are about normative differences’ (2003, p.788). Accordingly, if we are trying to get the heart of these disputes we will want to employ a model which invites differentially situated members of cultures to voice their views or concerns about how the possible accommodation or non-accommodation of a particular cultural practice directly effects their lives from their own particular standpoint. For Deveaux, by insisting that minority groups present their claims in terms of universalisable norms of public reason, the monistic model renders these disputes all the more intractable and often serves to obscure complex power relations which leave subordinately situated members of cultures even more vulnerable and powerless.

A major vehicle for allowing the strategic interests of minority group members to be heard involves an expansion of the scope of democratic activity outside of the public sphere and into the private sphere or civil society. For Deveaux, subordinately situated members of minority cultures can be empowered ‘by shifting power away from those community leaders who try to silence and intimidate them, and expanding opportunities for critique, resistance, and reform’ (2006, p.6). On this account, engaging in both formal and informal sites of
deliberative democratic participation can act as important mechanisms by which the voiceless can be heard. Promoting discussion in more informal sites of democratic deliberation might involve ‘state funding for social and community services’ supporting ‘local media sources with a broadly democratic outlook’ or encouraging ‘community groups’ to engage in debate about the changing face of cultural practices. For Deveaux, these are just ‘a few examples of ways in which the liberal state can directly facilitate the expansion of spaces of democratic activity’ in civil society (2003, p.793).

Deveaux grounds her conception of deliberative multiculturalism in a number of important procedural constraints. First, Deveaux’s account ‘presupposes that deliberation about contested cultural practices takes place against the background of a liberal democratic state that protects individual rights and freedoms’ (2006, p.94). However, rather than this simply meaning that this will result in substantively liberal outcome, Deveaux is keen to stress that her procedural account ‘does not require that political deliberation ultimately yield proposals for reform that privilege liberal norms of individual autonomy and choice, or….a substantive (and so normatively controversial) liberal standard of social equality’ (2006, p.94). Second, to help to ensure fair terms of deliberation, Deveaux introduces three further procedural principles: non-domination, political equality and revisability. The principle of non-domination acts as a necessary constraint on dominant members of minority groups actively coercing subordinately situated members ‘through pressure tactics or more overt forms of oppression’ (Deveaux, 2005, p.350). The principle of political equality provides for ‘the presence of real opportunities for all citizens to participate in debate and decision-making’ (Deveaux, 2005, p.350). This requires that citizens are also not excluded from deliberation by such endogenous factors as power, wealth and so on. The principle of revisability, for Deveaux, implies ‘that decisions and compromises, once reached, may be revisited at a later point when there are good grounds to do so’ (2005, p.351).
While Deveaux’s deliberative multiculturalism represents a considerable improvement on some of the more substantively \textit{liberal} accounts discussed in the previous chapter, particularly when it comes to providing a general framework which seeks to understand the nature of intra-cultural disputes, there are quite a number of objections that can be levelled against her account. I will offer two salient objections here. The first concerns her claim that the minimalism of her procedural democratic constraints ‘leaves the outcome of deliberation wide open’ (Deveaux, 2003, p.795). Recall that Deveaux claims that deliberation ought to take place ‘against the background of a liberal democratic state that protects individual rights and freedoms’ and her three principles of non-domination, political equality and revisability. I think it is reasonable to assume that rather than this leaving the deliberative outcome wide open this would merely stack the terms of the debate in favour of more liberal-minded minorities. If Deveaux is supposed to be offering a strictly procedural democratic approach to multiculturalism, it seems hard to justify the appeal to these putatively minimal principles solely on the grounds that they help to promote a process of democratic deliberation. Of course, this would not be a problem for Deveaux if she was willing to invite a more substantive reading of her deliberative principles. However, she would probably be unwilling to do this as this would undermine her claim that the outcome of deliberation is wide open and her account is a distinctly deliberative theory of multiculturalism, not a liberal theory of multiculturalism.

There is a second objection that emerges out of this desire to keep her procedural principles minimal, namely, such a minimalist reading of these principles underestimates the extent to which empowering subordinately situated members of minority groups to deliberate in formal and informal settings requires a much more substantive reading of her principle of non-domination. Providing subordinately situated members of minority groups with the necessary protections to be willing and able to voice their concerns on matters of cultural interpretation,
I claim, would require the kind of measures more commonly associated with republican theory than procedural democratic theory. Indeed, one could argue that the account of republican equality developed in chapter two would be better suited for this task of securing equal capacity to deliberate. If we want to empower citizens to look cultural leaders in the eye and engage in a meaningful dialogue about the particular meaning of their cultures distinct social practices, then I claim that Deveaux ought to endorse a more substantive republican theory of multiculturalism rather than a purely procedural democratic theory. In the next section I will put forward my case for such an account.

4.5. A Republic of Reasons: Symbolic Equality, Deliberation and Contestation

So far we have been looking at the some of the arguments put forward by liberals, neo-republicans and deliberative democrats for how we ought to adjudicate the claims of minority groups for state recognition. As we have seen, for a priori liberal and a priori neo-republican approaches, any reasonable claim that a minority group has to state recognition has to be weighed against the a priori value of liberal autonomy or republican non-domination. For deliberative multiculturalists, by contrast, we ought to be less concerned with an appeal to some sort of substantive principle of justice for adjudicating these claims and more concerned with providing a fair procedure for deriving legitimate outcomes. In this final section I offer something of a rapprochement between these two views. While I agree with neo-republicans that we ought to respect the priority of non-domination when adjudicating these claims, I claim that the demands for symbolic equality requires that minority groups are given a fair hearing in articulating their claims for recognition.

4.5.1 The Paradox of Multicultural Vulnerability Reconsidered

If Lovett’s a priori non-domination approach is unsatisfactory for the reason that it fails to understand the multiple meanings that cultural practices have for its followers and Deveaux’s
deliberative approach is unsatisfactory for the reason that it wrongly assumes that a deliberative theory of multiculturalism can exclude certain substantive principle of justice from the democratic process, the approach that I favour aims to secure the fundamental interest that citizens have in being free from domination in their lives while opening up the democratic process for deliberation over the meaning of minority cultural practices. In my view, this approach is likely to give us more just and more legitimate outcomes when it comes to the accommodation or prohibition of minority social practices. On the one hand, it aims to ensure that the value of non-domination is preserved, while, on the other, it aims to provide a consultative forum in which minorities have a platform to articulate the various contested meanings that a particular social practice has for its followers.

Crucially, however, rather than this merely implying a more inclusive democratic space in which minority groups must conform to the symbolic or discursive practices of the majority, my account’s commitment to symbolic equality implies a welcoming of plural forms of communication in the public sphere. While Tully (2008, p. 116-117) tends to call the process by virtue of which minority groups are excluded from participating in the democratic process due to cultural bias as the ‘unfreedom of assimilation’, I claim that the pressure to conform to the dominant discursive rules when deliberating on these matters is more accurately described as the ‘non-freedom of assimilation’. Although the non-freedom of assimilation is a largely unintentional background feature of the deliberative democratic process, the fact that it unfairly favours those who have a certain set of cultural competencies makes it an important form of injustice on my account. Accordingly, if we want to provide a fair setting for minority groups to articulate the meaning that a particular social practice has for its members, then minority groups ought to be allowed to use non-public or cultural reasons when discussing these matters. Indeed, only then will minorities have the confidence to look others in the eye without fear or deference in expressing their reasons for accommodation.
Consider the pre-legislative consultative process which helped to inform South African legislation surrounding customary marriage, as a real-world example of what a fair hearing in this sense might entail. In late 1998 the Customary Marriages Act was passed into law by the South African legislature. This act gave legal recognition to traditional or customary marriages which had previously only been granted to mainly Christian marriages in this jurisdiction. The label traditional or customary law refers to the largely uncodified legal system developed and practiced by the indigenous population of South Africa. Prior to the passing into law of this act, for at least 50% of South Africa’s majority black population, there was no legal recognition for marriages performed under South African Customary Law. The backdrop to the passing of this piece particular legislation was the introduction of a new constitution in South Africa. In February 1997 the newly agreed upon South African constitution came into effect replacing the Interim Constitution of 1993. This updated Constitution has been lauded by many as one of the most liberal or progressive constitutions in the modern world, particularly when it comes to the areas of racial and sex equality and its commitment to protecting the rights of religious, linguistic and cultural groups in South Africa. The progressive cast of this Constitution is perhaps most obvious when it comes to anti-discrimination law: the new Constitution contains 17 grounds on which discrimination is deemed to be unconstitutional. Moreover, the constitution specifically recognizes South African Customary Law and the system of traditional leadership associated with it (Deveaux, 2003, p. 796). The tension between the Constitution’s commitment to sex equality and its recognition of Customary Law, particularly when it came to legislating on the area of Customary Marriage Law, produced a comprehensive consultative process in which all key stakeholders were given a voice in the hearings.

In 1998, as part of a long-term project entitled Harmonization of the Common Law and the Indigenous Law, the Law Reform Commission sponsored a number of hearings on reforming
customary marriage in line with the new Constitution. In contrast to the Stasi Commission’s narrow consultative process on the role of religious symbolism in France’s public schools, in which certain groups, namely, Muslim women, were effectively excluded from the hearings, the South African Law Commission cast a much wider net and included key stakeholders in the discussion such as chiefs from the Congress of Traditional Leaders (CONTRALES), rural women’s advocacy groups, women’s equality and legal reform groups and leading scholars in constitutional and customary law. Indeed, instead of simply assuming that some women’s testimony should be excluded on the grounds that it would reflect the views of the ‘manipulated’, the Law Reform Commission’s commitment to providing participants with a fair hearing in its deliberations involved listening to rural women’s advocacy groups and what these women understood customary marriage to entail. By doing this, for example, the Law Reform Commission discovered that, contrary to the traditional leaders account, it was simply false to claim that, in the event of becoming widowed, women were taken care of both by their husband’s and by their husband’s families (Deveaux, 2003, p. 798).

The process of providing all citizen’s – chief’s, women, legal scholars and so on – with an opportunity to voice their concerns about the legal recognition or misrecognition of African customary marriage represents an attempt to give all stakeholders concerned a voice or a fair hearing in the consultative process. Not only did this process help to ensure that citizens were given symbolic equality in the deliberations, in the sense that they were permitted to express their understanding of customary marriage from their own situated perspective, but it also proved to have great epistemic benefits too. Indeed, when it came to the practice of polygyny for example, the law commission found that an all-out ban on this practice would leave many women in these marriages unprotected. Accordingly, an agreement was reached whereby polygyny would be allowed to continue, ‘but a man intending to marry another wife must have a written contract with his existing wife that protects her financial interests and
establishes an equitable distribution of his assets in the event of divorce or his death’ (Deveaux, 2003, p. 799). However, while Deveaux might claim that all that matters in these kinds of cases is that we have a fair procedure for adjudicating these claims, I claim that we also ought to be concerned with ensuring that citizens can walk tall among their fellow citizens in their daily lives as well.

The problem of subordinately situated members of minority groups simply internalising their second-class status in these groups is a real issue for any theory that aims to accommodate minority cultural practices. While deliberative multiculturalists are less inclined to provide substantive principles which might offset this problem and simply focus on widening the democratic space, the account of republican equality developed throughout this thesis argues for a whole range of justice measures which secures citizens equal standing with one another. The advantages of foregrounding the consultative process by these substantive republican principles should now be clear: if a minority group member speaks out against a biased understanding of a particular cultural practice, these substantive principles help to ensure that the fear of reprisal by more dominant members of minority groups is less likely to have a deleterious effect on that members life than it might otherwise do in a framework which did not aim to secure citizens equal standing with others. Once citizens leave the consultative process, they should still be able to walk tall among their fellow citizens. The fact that the state is under an obligation to provide citizens with the basic capabilities to function as citizens extinguishes, to a considerable degree, this danger.

Once those engaged in the consultative process have listened to all the relevant testimony, considered the likely unintended consequences of accommodating or prohibiting the cultural practice and reached a decision on the matter, this does not mean that this is a matter resolved once and for all. Just as citizens ought to be allowed to contest other pieces legislation, citizens should be provided with a forum for contesting these decisions. This will involve a
more contestatory type of democracy than we are presently used to (Pettit, 2000). The idea of making the state’s democratic institutions open to contestation is something that republicans and deliberative multiculturalists have both found attractive, albeit for slightly different reasons. For republicans, to ensure that state power does not represent an arbitrary exercise of power in citizens’ lives, there ought to be effective institutional safeguards put in place which put this power under the control of citizens (Pettit, 2012). On this view, democracy is as much about providing citizens with an effective capacity to participate in the collective decisions that govern their lives as it is in having an effective power to oppose potentially dominating collective decisions. In other words, for neo-republicans, the state’s democratic institutions ought to have both an electoral and a contestatory dimension (Pettit, 1999). On the one hand, citizens ought to have enough control over the electoral process such that any laws that are enacted are actually reflective of their collective interest in being free from domination, while, on the other, individual citizens ought to have the power to contest those laws or decisions that might unfairly render them vulnerable to social relations of domination in their lives. While the electoral dimension provides citizens with collective control over the authorship of laws, the contestatory dimension provides citizens with an important individualised capacity to edit the laws. The kinds of measures that provide neo-republican institutions with a contestatory as well as an electoral cast include the following: bicameral institutions, the publicity of deliberation and debate, deliberative consultation in the policy-making and policy-implementation stage, depoliticized decision making and judicial review (Pettit, 1999, p. 185).

Similar to the republican idea of contestatory democracy, and as we have seen, Deveaux argues for a principle of revisability in her account of deliberative multiculturalism. This is the principle that holds that decisions may be revisited at a later date when warranted. The main advantage of this principle in the context of deliberation about cultural conflicts ‘is that
it acknowledges the gradual character of real change and the ways in which a range of processes outside legislation—processes of a social, cultural, and economic nature—contribute to the transformation of customs and cultural arrangements’ (Deveaux, 2006, p. 116). A revisability constraint in the deliberative democratic process, in other words, is an important measure by virtue of which the state can remain responsive to the fluid character of cultural identities and cultural disputes. While Deveaux is right to point out that a principle of revisability is an important mechanism by which the state can remain responsive to the fluid and multiple meanings that a particular culture has for its members, she says relatively little about the institutional basis of this principle beyond a recommendation that the state ought to be actively involved in promoting informal sites of deliberation, debate and contestation. Pace neo-republicans and deliberative multiculturalists, I claim that if we want to ensure that citizens have a capacity to contest potentially dominating laws brought about by cultural recognition, then we are going to favour a process which provides citizens with an *ex ante* opportunity to raise questions about proposed laws and an *ex post* opportunity to contest laws once they are passed. As we have already seen in the context of our discussion of the Hijab case and the customary marriage law case, at the *ex ante* stage we ought to favour measures such as the publicity of democratic deliberation and a comprehensive consultative process in the policy-making and policy-implementation stages. Such measures will help to ensure that citizen’s potential grievances or objections to the particular piece of legislation have been listened to, reflected on and responded to in the consultative process. At the *ex post* stage the state ought to promote more informal sites of democratic deliberation in civil society through various non-state actors. This will help to ensure that citizens have a means by which they can lobby and press claims against the state for reversing or revising a particular piece of legislation. Crucially, because individual citizens’ freedom as non-domination is at stake in these kinds of cases, we ought to ensure that this power to edit the laws exists. Indeed, not
only will this prove to be epistemically valuable, but if minorities are given a voice in the
democratic process and allowed the opportunity to contest the decisions that are made, they
are more likely going to feel that these decisions have more legitimacy than they otherwise
would if they were excluded from this process.

4.6. Conclusion

As this chapter has shown, one of the more vexing issues in the political theory of
multiculturalism concerns the kind of limits we ought to put on the accommodation of
minority cultures in a free and equal society. For those theorists interested in promoting a
particular value or idea of human flourishing, cultures ought to be recognised only and insofar
as they do not undermine this value. However, as I have argued, insisting on the priority of a
particular value as our guide in these debates is not without its problems. Often what may
appear as a clear infringement of, say, an individual’s autonomy or freedom as non-
domination from the outside will be much more complex for those living on the inside. For
those that eschew appeals to substantive values, providing members of minority groups with a
legitimate process for articulating the various reasons why a culture ought to be
accommodated or prohibited provides a better solution to these debates than relying on
substantive value. As I have tried to show, this deliberative-approach to multiculturalism is
also not without its problems.

In contrast to these accounts, I have argued that while citizens have a fundamental interest in
having their freedom as non-domination protected, the commitment that republican equality
has to symbolic equality requires that minorities are given a fair hearing in putting forward
their claims for recognition. This implies an opening up of the democratic process to hear
these claims. However, rather than this merely implying that minorities ought to articulate
their claims in the dominant discursive norms of public reason, a fair hearing, on this account,
implies the welcoming of plural forms of communication into the democratic process when debating these issues. Here I have provided something of a rapprochement between the a priori non-domination approach and more deliberative centred approaches to the reasonable accommodation of minority cultures.
5. Chapter 5: Reimagining the Nation-State: On the Process of Building a Republican Political Community

5.1. Introduction

In the previous chapter I argued that, while citizens have a fundamental interest in having their freedom as non-domination protected, the commitment that republican equality has to symbolic equality requires that minorities are given a fair hearing in putting forward their claims for recognition. This I claimed implies an opening up of the democratic process to allow minorities to articulate their claims for recognition. In this chapter I want to look at the question of what ought to form the basis of citizens’ relations with one another such that they are willing to act according to reasons of republican social justice. In contrast to the view that nationality ought to provide this basis, I argue for moving beyond a form of solidarity based on ethnic foundations or *ethnicities* to one based on patriotic foundations or *patries*.

There is general consensus in the social sciences that nations and nationalism are distinctly modern artefacts. The configuration of states into nation-states has had important normative implications for what we think ought to provide the basis for non-strategic social action in liberal and republican societies. For republican nationalists, for example, the only motivationally efficacious bases for republican political community are the bonds of nationality. National identities, on this account, provide citizens with the necessary trust and social solidarity required for liberal and republican politics. For critics, however, forming a
state around the bonds of nationality is an exclusionary idea. For these writers, we ought to ‘uncouple’ this connection between state and nation and devise new forms of social solidarity that are more in keeping with what it means to be co-citizens in modern pluralistic societies.

In this chapter I argue that while nations have provided an important basis for establishing a ‘people’ in republican societies, the state is obligated to promote new forms of solidarity based on citizen’s connections with one another qua co-citizens. This involves a re-imagining of citizens’ relations with one another from one based on a shared national narrative to one based on the preservation of their common liberty.

This chapter is composed of three sections. In section one I examine the idea of nations and nationalism. As we shall see, while nations and nationalism emerged in the modern period, they were firmly built on ethnic foundations. While some civic nationalists argue for a non-ethnic form of national identity, I claim that the idea of the civic nation is also an ethnic idea.

In section two I look at the argument from republican nationalists that national identity provides the only motivationally efficacious basis for getting citizens to act according to reasons of republican justice. I argue that while early republican nationalists saw the instrumental value of forming people into a nation before they become a republic, later republican nationalists have tried to give the bonds of nationality a moral foundation. This, I claim, is problematic for a number of reasons. In section three I examine whether loyalty to the institutions and principles of a state’s constitution can provide an important alternative to the bonds of nationality. As we shall see, while laudable in its aim, constitutional patriotism is insufficient in this respect for a number of reasons. In the final section I argue for a re-imagining of the bonds that bind citizens together; from one based on ethnic foundations or ethnie to one based on patriotic foundations or patrie.
5.2. Nations and Nationalism

The dominant view within the social sciences is that nations and nationalism are contingent artefacts arising in the modern world. Indeed, as Liah Greenfeld claims, the association between modernity and nationalism is so great that we should view ‘modernity as defined by nationalism’ (1992, p.18). Other scholars have also drawn this connection between modernity and nationality. For Ernest Gellner (1983), a leading exponent of the modernist thesis on nations and nationalism, nationalism is an essential component of the transition from the pre-modern, agrarian age to the modern, industrial age. On Gellner’s account, in order for states to function properly in this new modern industrialized age, they had to impose a single homogenous ‘high culture’ in place of the plurality of ‘low cultures’ that already existed. To do this states used a mass education programme to promote the standardization of a single vernacular language within modern industrialized states. The implementation of a standardized education programme, for Gellner, created the necessary homogeneity for modern industrialized states to function. Nationalism, on this view, ‘invents nations where they do not exist’ (1964, p.169)

While Gellner connects the emergence of nationalism to industrialization, Benedict Anderson (1983) connects nationalism with the dissemination of new cultural narratives in the early modern period through newspapers, novels and so on. Essential to this view is the relationship between the printing press and modern capitalism. On Anderson’s account, it is the standardization of vernacular languages through literature and newspapers that provides the motivational force enabling individuals to feel part of a wider community. Through print media, individuals come to experience a greater identification with the larger community or nation than with the local face-to-face communities of their everyday lives. It is this constant imagining of a connection with the wider community that led Anderson to describe nations as ‘imagined communities’. A nation, for Anderson, ‘is imagined because the members of even
the smallest nation will never know most of their fellow-members, meet them, or even hear of them, yet in the minds of each lives the image of their communion’ (1983, p.6). In other words, it is the development of the printed word that enables people to imagine themselves as part of a wider community or nation. Indeed, it is the dissemination of these new cultural narratives that allows a dispersed population which will never meet one another to feel some level of kinship with each other. While proponents of the modernist paradigm may differ in relation to the exact set of circumstances which they believe produced nations and nationalism, what they all generally agree on is the connection between modernity and nations.  

While some scholars have sought to draw the connection between nationalism and modernity, others have sought to draw a distinction between a good, civic nationalism and a bad, ethnic nationalism. The origins of this dichotomy can be traced back to the work of Friederich Meinecke, who, in *Cosmopolitanism and the National state* (1970 [1907]) first drew the distinction between cultural and political nations. While Meinecke was the first to comment on this distinction, it is Hans Kohn’s (1944) classic account of ‘east’ and ‘west’ nations which provides the general framework for understanding the distinction between ‘civic’ and ethnic nations. For Kohn, writing during the Second World War and amidst the atrocities carried out in the name of German National Socialism, the distinction between east and west nationalisms was, perhaps, at its most obvious. On Kohn’s account, ‘while Western nationalism was, in its origin, connected with the concepts of individual liberty and rational cosmopolitanism current in the eighteenth century…. the later nationalism in Central and Eastern Europe and in Asia easily tended toward a contrary development’ (1944, p.330). This latter eastern nationalism, for Kohn, ‘arose not only later, but also generally at a more backward stage of development….Because of the backward state of political and social

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115 For another influential modernist approach to nations and nationalism, see Hobsbawm (1992).
development, this rising nationalism outside the Western world found its first expression in the cultural field’ (1944, p.329). The cultural expression of nationalism has been, and continues to be, closely associated with the work of Johann Gottfried Herder. On Herder’s account, each national culture contains its own centre of gravity, so to speak. Accordingly, states ought to be nations for Herder, as nations are self-contained moral communities. Herder thus rejected the claim made by enlightenment philosophers and cosmopolitans concerning the universal rights of man and universal morality. By contrast, his view was one of a world of variegated linguistic communities (nations) living side-by-side in peace. As he describes it: ‘[f]atherlands do not move against each other…they lie peacefully beside each other, and support each other as families. Fatherlands against fatherlands in a combat of blood is the worst barbarism in the human language’ (Herder, 2002, p.379).

Although Kohn’s distinction between ‘east’ and ‘west’ nationalism’s came some time before the recent upsurge in attention to the topic – that is, immediately following the collapse of the Soviet Union – the distinction between east and west nationalisms is something which continues to endure today. While the language of ‘eastern’ and ‘western’ nationalism has largely been dispensed with, the terms ‘civic’ and ‘ethnic’ have come to take their place. In Nationalism: Five Roads to Modernity (1992), Liah Greenfeld provides a typical example of this distinction. Here, she explores the emergence of civic and ethnic nationalisms in England, France, Germany, Russia, and the United States. For Greenfeld, following in the modernist tradition of nations and nationalism, ‘it is possible to locate the emergence of national sentiment in England in the first part of the sixteenth century’ (1992, p.42). This nationalism was essentially a ‘good’ nationalism as it stressed notions of political responsibility and was civic in character. Moreover, for Greenfeld, this type of nationalism

116 For a classic account of Herder as ‘the father of cultural nationalism’, see Ergang (1931).
117 As Herder writes: ‘every nation has the centre of its happiness within itself just as every ball has its own centre of gravity’ (cited in Beiser, 1987, p. 143).
was subsequently inherited by the colonies in the United States during the eighteenth century and evolved towards a more democratic interpretation – although not in the south where slavery remained. While the type of nationalism produced in England and the United States was civic in character, France, for Greenfeld, represents a more ambiguous case. In the French case, nationalism’s emergence was both civic and collectivistic. However, in contrast to these western/civic variants of nationalism, Russian nationalists asserted their national identity in terms of ‘blood and soil’. This nationalism was essentially ethnic, as it tended to celebrate, in the first instance, the people’s shared ethno-cultural identity rather than any ideas of political or civic loyalty. However, while Russian nationalism may be viewed as fundamentally irrational in comparison to the rational civic nationalisms of England, the United States, and France, it is German nationalism, for Greenfeld, which displayed the full dangers of an ethnic nationalism. On Greenfeld’s account, German romantic nationalism was essentially anti-western and emerged from the intellectual movement of romanticism in the eighteenth and nineteenth centuries. Peculiar to this nationalism was the expression of the superiority of German culture, language, and ethnicity. In a damning critique of this type of ‘ethnic’ nationalism, Greenfeld proclaims that ‘Germany was ready for the holocaust from the moment German national identity existed’ (1992, p.384). Thus, instead of ‘fatherlands’ living peaceably beside ‘fatherlands’, as Herder claimed, Greenfeld points to the danger in grounding the duties and obligations that citizens owe to one another along the lines of ethnicity.

In contrast to the ethnic nation and its connection with German Romanticists such as Herder, the civic nation is often connected with the work of Ernest Renan. In his lecture What is a nation? (2002 [1882]), Renan points to the voluntarism of modern nations. A nation is, on this view, ‘a daily plebiscite’ (Renan, 2002 [1882], p. 58). In other words, instead of a nation being defined by ethnicity, pace Herder, a nation is composed of individuals who will to
belong to it. This has led many to regard the bonds of the civic nation, as Renan describes it, as providing an attractive alternative to the bonds of ethnicity.\textsuperscript{118} On this view, civic nationalism is political rather than cultural, western rather than eastern, liberal rather than illiberal; in short, good rather than bad. While this binary distinction between ethnic and civic nations is attractive for some, leading nationalist scholar Anthony Smith has pointed out that the claim that nations are entirely voluntarist is undermined in Renan’s very same lecture when he argued that ‘the nations of present-day Western Europe, including their approximate borders, were the product of the division of Charlemagne’s realm by the Treaty of Verdun of 843’ (2009, p.4). In other words, as Renan seems willing to concede, nations are not wholly voluntary associations of individuals after all; rather, they are built firmly on ethnic foundations or \textit{ethnies}.\textsuperscript{119} In Renan’s own words, nations are ‘the outcome of a long and strenuous past of sacrifice and devotion’ (2002 [1882], p.58). On Smith’s account, the distinction between civic and ethnic nations is a difficult one to maintain (1991, p. 13). Indeed, as Craig Calhoun argues, this binary distinction merely ‘encourages self-declared civic nationalists, liberals, and cosmopolitans to be too complacent, seeing central evils of the modern world produced at a safe distance by ethnic nationalists from whom they are surely deeply different’ (2007, p.146).

In both the ethnic and civic variants of nationalism, then, what grounds the normative peculiarity of states is a shared nationality or \textit{ethnie}. On this view, the scope of justice ought to apply to members of the same nation. In others words, ‘the political and the national unit should be congruent’ (Gellner, 1983, p.1). For those that endorse this position, the reasoning here is simple: the shared feeling or identity that comes from being part of an ‘imagined community’ motivates individuals to act according to reasons of justice. Let us call this

\textsuperscript{118} See Tamir (1993) and Miller (1995).

\textsuperscript{119} Smith defines an \textit{ethnie} as follows: ‘a named and self-defined human community whose members possess a myth of common ancestry, shared memories, one or more elements of common culture, including a link with a territory, and a measure of solidarity, at least among the upper strata’ (2009, p. 27).
position – the position that nationality provides the motivational basis to act according to reasons of justice – the nationalist thesis. The nationalist thesis stipulates that individuals will not feel obliged to act according to reasons of justice unless a suitably demanding cultural basis exists to these obligations. Arash Abizadeh nicely captures the nationalist thesis in the following form:

‘Thesis 0: The social integration, cultural reproduction, and socialization necessary for a well-ordered democratic society can be effected only if there exists a motivationally efficacious form of nonstrategic social action.

Thesis 1: The required motivation for nonstrategic social action obtains only if there exists a shared affective identity, constituted by the sentiment or affectively sanctioned belief that we belong together.

Thesis 2: This (motivationally efficacious) shared affective identity, constituted by the sentiment or affectively sanctioned belief that we belong together, can stem only from a shared, national, public culture.

Therefore,

Thesis 3a: The required motivation for nonstrategic social action can obtain only if there exists a shared, national, public culture.

and

Thesis 3b: The social integration, cultural reproduction, and socialization necessary for democratic society can be effected only if there exists a shared, national, public culture’ (2002, p. 499)

For Abizadeh, the important point to recognise about the nationalist thesis is that if one wishes to challenge the conclusion of this argument (thesis 3a and thesis 3b), then one must attack the three preceding premises: theses 0, 1 and 2. For Abizadeh, while there may be general consensus over thesis 0, it is not at all obvious whether thesis 1 and 2 are as unproblematic. Indeed, while we might be willing to recognise that a shared affective identity plays some part in non-strategic social action, nationalists have tended to argue that it is only a shared nationality that will motivate individuals to act according to reasons of non-strategic social action. As we shall see in the next section, the nationalist thesis has proven attractive for many, even for some republicans.
5.3. Republican Nationalism

As we shall see, while it was Rousseau who was arguably the first to put forward the claim that nationality provides a suitably motivational efficacious basis for republican political community and was, in some sense, an early proto-nationalist, it was Montesquieu who first brought the problem of the motivational basis for republican justice in the modern world first to light. In his *Spirit of the Laws* (1986 [1748]) Montesquieu makes an important observation regarding the connection between the requisite level of virtue needed in a republic and the size (population) of modern republics. On his view, the virtue of a citizenry is inversely proportional to its size: when size goes up, virtue goes down. The emergence of the modern Westphalian state system, for Montesquieu, posed a major problem for republican politics in the modern age. This, coupled with the increased level of self-interested behaviour in modern commercial societies, according to Montesquieu, would surely bring to an end the long tradition of republican politics. If republics were not able to adapt to these modern conditions, then they would be doomed to the dustbin of history. Montesquieu was less than optimistic about republics being able to withstand this wider social process. He remained committed to the view that republics were better suited to smaller city-states where ‘the public good is better felt, better known, [and] lies nearer to each citizen’ (Montesquieu, 1986 [1748], p.124).

According to republican nationalist David Miller (2000; 2008), it was Rousseau who took up Montesquieu’s challenge that republicanism was destined to disappear in the new, modern Westphalian state order. It is the argument put forward in his *Government of Poland* (1985 [1782]) which provides an important response to Montesquieu’s concern about the motivational basis for republican politics in the modern world. For Rousseau, the sheer size, internal divisions and threat of foreign subjugation made poor foundations for the
establishment of a republic in Poland. Consequently, and in this sense Rousseau anticipates Smith and Renan’s view that nations are built on pre-existing *ethnies*, the question becomes how Poland can become a nation – that is, a people with a shared sense of history or community – before it can become a republic.\footnote{Rousseau also anticipates Ernest Gellner’s writings on the connection between nations and the standardization of education when he writes: ‘it is education that you must count on to shape the souls of the citizens in a national pattern and so to direct their opinions, their likes, and dislikes that they shall be patriotic by inclination, passionately, of necessity’ (1985 [1782], p.19).} For Miller, Rousseau here explicitly endorses the nationalist thesis referred to earlier. That is to say, in order for Polish citizens to act according to reasons of justice, Rousseau endorses the view that they must first see themselves as Poles. In short, for the proto-nationalist Rousseau, only when a Polish cultural identity has been established in the hearts and mind of Poles will they feel obliged to act according to the common good.

According to Miller, political communities based around a shared national identity continue to provide ready-made communities for the implementation of republican politics and values in our contemporary age. He gives three arguments for the motivational efficacy of nationality as the basis for republican political community. First, whether nationality emerged through the industrialization process as Gellner suggests or the through institutionalization of vernacular languages as Anderson claims is not the point. What is important is that ‘nations are large scale communities within which people identify with one another by virtue of their shared history, their common language or other cultural characteristics, and so on’ (Miller, 2008, p.142). In this sense, nations are indeed real, and the pre-existing cultural and historical ties among members help foster the non-strategic social action required for republican justice. Second, the commonality generated by nationality motivates individuals to work together and to protect one another. Without this commonality individuals would not be motivated to stand by their compatriots to defend their shared values, Third, ‘because they share a common identity, and acknowledge special responsibilities, people in national communities are also
disposed to trust one another to a greater extent than they are willing to trust outsiders’ (Miller, 2008, p.143). Trustworthiness is a difficult good to cultivate in the mind of individuals, but bonds of nationality serve to create this image in the minds of citizens. Miller is unequivocal in his claim that republican justice requires a shared national identity. On his account, without a shared national identity, citizenship lacks the requisite affective dimension – Abizadeh’s thesis 1– which motivates individuals to act according to reasons of non-strategic social action.

While nationality may well provide the necessary solidarity required for Miller’s own particular version of republican justice, a number of critics have argued that we should reject the nationalist thesis for a number of important reasons. First, as Charles Taylor has argued, for example, political societies are at their best and most cohesive when all groups in society feel part of that political order. Minority groups will be less inclined to participate politically if they do not see themselves as having a stake in that society. As Taylor writes: ‘a citizen democracy can only work if most of its members are convinced that their political society is a common venture of considerable moment and believe it to be of such vital importance that they participate in the ways they must to keep it functioning as a democracy’ (2002, p.120). On this account, using nationality as the basis for a political society promises to alienate certain groups and undermine the stability that comes when all citizens are involved in the democratic process. Indeed, rather than nationality providing the requisite solidarity required for redistributive policies of social justice, it can often sow the seeds of discord and discontent in modern political societies. While we might recognise that states require a shared ‘social imaginary’, there are inherent exclusionary dangers in anchoring this to a shared nationality.

121 For more on the connection between trust and trustworthiness, see Hardin (1996).
Second, consider the standing of immigrant groups on Miller’s account. Presumably, as these groups fail to share in the dominant national culture, citizens would not have the motivational basis that a shared nationality provides to treat these groups as fellow citizens. In other words, because the scope of justice on Miller’s account is particular to co-nationals, rather than universally applied to all citizens *qua* citizens, only co-nationals – that is, those citizens that share the same national culture – owe a duty of justice to one another. This would be unacceptable from a republican point of view. Such a restrictive conception of citizenship would create a society in which some would enjoy the benefits of republican equality, while others would not. If this wasn’t bad enough, Miller’s position would also appear to provide groups who considered themselves as separate ‘nations’ with the legitimate grounds to secede from the state. If modern nation-states were built on pre-existing dominant *ethines* and those different *ethnies* provide the motivational basis for reasons of justice, then those so-called *ethnies* that never achieved national status would have legitimate grounds for separation. Myriad groups, then, need only satisfy the conditions of constituting a national group in order to have a legitimate right to self-determination. We need not deny that some nations have a just-cause for secession, but neither should we endorse the view that all putative nations *qua* nations have a right to secede simply because they satisfy the conditions of being a nation in Miller’s sense of the term. How nations were incorporated into the state and whether they have a just-cause to secede are also important considerations.

Third, Miller appears to lose sight of the reasons why so-called proto-nationalists endorsed a politics of nationality. Recall Rousseau’s endorsement of nationality as the motivational basis for republican politics. Importantly, Rousseau’s endorsement of a politics of nationality differs from that of the cultural nationalist Herder. For Herder, the preservation of distinct national cultures was an end in itself. However, on Rousseau’s account, the cultivation of bonds of nationality was only ever meant to be a means to an end. That is to say, the
cultivation of a shared nationality ought only to serve the distinct political purpose of forming citizens into a single homogenous group, which aids in promoting the kind of cohesiveness and solidarity that Montesquieu deemed essential to republicanism – a cohesiveness and solidarity that was becoming increasingly absent in the modern westphalian state order. In this sense, the nationalist thesis is very much an instrumentalist or pragmatist doctrine on Rousseau’s account. Indeed, as Erica Benner has pointed out, liberal/republican nationalists like David Miller have turned ‘an essentially pragmatic and conditional set of policy arguments into a defence of ‘intrinsic’, non-negotiable national loyalties’ (1997, p.202). Similarly, for Vincent, what is required is not a coupling of ethics with nationalism, pace Miller, but its de-coupling. He writes: ‘[i]t is a very different matter to accept nationalism, with some reluctance, pragmatically, as a pervasive form of group allegiance, and, alternatively, to try to bestow some ethical and liberal significance upon it’ (2002, p.108). For Vincent, contemporary liberal and republican theorists who endorse nationality as the basis for their theories of justice seem to have lost sight of this. On his account, ‘nationalism may be inevitable for the present, but is not a virtue to be promoted’ (Vincent, 1997, p.275). If we are going to endorse nationalism as the motivational basis for liberal and republican politics, then we should do this reluctantly. Rather than arguing for the intrinsic value of nations, as Miller seems to argue on occasion, we should only ever argue for their instrumental or pragmatic value in delivering on justice. .

While Miller’s argument for the motivational efficacy of nationality might be problematic for the above reasons, we are still left with the following important question: if not nations and nationality, then what? If we recognise that the connection between nation and state is an ‘irresponsible compound’ at a purely normative level, as Vincent suggests, what else can provide the motivational basis for republican politics in our contemporary age? I turn to some of these arguments now.
5.4. Is Patriotism Enough?

As we have seen, at a purely descriptive level, according to recent scholars of nationalism in the social sciences, dominant pre-existing *ethnies* were converted into nations as states sought out new ways of homogenising disparate groups of individuals into a single group. The new compound that emerged out of this process peculiar to modernity was the modern nation-state. For republican nationalists like David Miller, the aim has been to make a virtue out of nationality’s seemingly necessary connection to modernity. On the one hand, he accepts the descriptive argument that nationality is a necessary feature of modern states; while, on the other, he has attempted to provide normative reasons for why we ought to endorse the principle of nationality in our theorising about justice. I will not pursue an argument against Miller’s reliance on the descriptive argument for nationalism and modernity here. Suffice it to say that here I tend to agree with Malesevic (2011) that this descriptive connection between modernity and nationalism is rather much more ambiguous than modernists and primordialists seem to allow for. The argument I want to pursue here relates to Miller’s normative argument for the principle of nationality. While I have already provided some reasons for why we might be sceptical of the claim that the principle of nationality ought to provide the motivational basis for citizens to act according to reasons of non-strategic social action or reasons of justice, I have as of yet to supply any argument for why we might think that there is an alternative basis to this form of solidarity in a republic. Here I want to look at some of the arguments put forward by theorists of patriotism who claim that the love of the *patrie* can provide an important alternative to the love of the *ethnie* in our modern free and equal societies. While there are a number of problems with these different accounts of patriotism, I think that patriotism, properly construed, can provide the motivational basis for citizens to act according to reasons of justice that republican theorists are looking for.
5.4.1 Habermas and Constitutional Patriotism

As Jan-Werner Muller describes it:

‘[n]either constitutionalism nor patriotism were invented by Germans. Yet, constitutional patriotism, as a theory distinct from liberal nationalism, traditional republican patriotism, and cosmopolitanism, was elaborated most clearly in post-war West Germany’ (2007, p.15).

While the idea of constitutional patriotism also has routes in other jurisdictions which have had to deal with issues of deep diversity and cultural conflict, it is, perhaps, the unique set of social and political circumstances which arose in Germany before, during and immediately after the Second World War that led to some prominent German intellectuals turning their attention to this idea. Chief among these theorists is the German philosopher and social theorist Jurgen Habermas (2001). For Habermas, loyalty to the principles and institutions of a constitutional democracy can provide an important alternative to the kind of ethnic loyalty of liberal and republican nationalism. For Habermas, the aim has been to provide an account of social solidarity in modern constitutional democracies which is grounded in the idea of a ‘post-national’, post-traditional and distinctly ‘political’ ideal of identification. Indeed, if social cohesion could be based on a non-ethnic form of identification, according to Habermas, then this would serve to neutralise many of the intractable cultural conflicts which arise in multicultural states. Moreover, in the context of an emerging European Union, if the post-war European project of a federation of European states was ever to succeed, then citizens would have to see themselves as Europeans. They would have to identify with Europe and see their own particular narrative as part of a wider European narrative. For Habermas, as for other constitutional patriots, a ‘care for’ or ‘loyalty’ to the principles and institutions of a European constitutional democracy could provide this solidifying force (1996, p. 507).

In terms of the important affective dimension that drives a commitment to constitutional patriotism, theorists agree that it is a ‘care for’ the particular institutions that govern their
lives which provides this important emotional drive. Here, it is important to recognise that the affective ties between citizens are vertical rather than horizontal, on this account. Citizens have an affective attachment to the institutions of their particular polity, not to the culture of their particular ethnic group. Such a vertical attachment encourages citizens to see themselves less in terms of members of this or that ethnic group and more in terms of this particular constitutional democracy. The assumption that states ought to be nation-states is rejected on this view. The tie that binds people together for constitutional patriots is exactly that, their constitutional patriotism.

The advantages of the model of constitutional patriotism over nationalism should now be obvious. Constitutional patriotism provides a non-ethnic, post-traditional or neutral form of identification which also promises to motivate citizens to act according to reasons of justice. Its political basis does not exclude some minority citizens from enjoying the shared identity and solidarity that comes with being part of a political society. It shifts the focus away from history and transfers the emotional attachment that we bestow on other particular citizens to the political and legal institutions in which all our fates are entwined. While constitutional patriotism might appear to provide an important alternative to the bonds of nationality, critics have pointed out that it is problematic for quite a number of reasons. I will mention some of the most salient reasons for our discussion here.

Margaret Canovan has, perhaps, provided the most scathing attack on the idea of constitutional patriotism. In her essay ‘Patriotism is not Enough’ (2000) Canovan gives four reasons for why we ought to reject constitutional patriotism. First, the kind of loyalty that constitutional patriotism requires would involve the same socialization processes of nationalism. This would lead to a kind of ‘confessional state’ in which those who are more loyal to the ‘civic faith’ are morally superior to those who did not internalise these values to

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the same degree (Canovan, 2000, p.420). For Canovan, this would only serve to encourage the kind of conflict that constitutional patriotism was designed to alleviate. Second, on Canovan’s account, Habermas underestimates the extent to which his whole theoretical edifice is built on the idea of a ‘people’. This implies that political societies need to be well integrated before they can implement the kinds of morally universal values that Habermas prescribes. As Habermas appears willing to admit, a people with a shared history and shared cultural narrative are often the best to implement these ideas. As Canovan puts it: ‘[t]he claim that an impartial state can form a benign umbrella soaring above rival national or ethnic identities and attracting patriotic loyalty ignores the most crucial political question. Where is the state to draw its power from? What holds up the Umbrella?’ (2000, p.423).

Third, when Habermas refers to some real-world examples of constitutionally patriotic states the examples he provides are less than convincing according to Canovan. The patriotic loyalty that citizens of the United States of America have to their constitution is often cited by Habermas as an important example of constitutional patriotism. However, as Canovan argues:

‘the principles of the constitution are not just liberal principles but (for Americans) ‘our’ principles, handed down to us by our forefathers, biological or adopted. To think of the United States as a society bound together by constitutional patriotism rather than by nationhood is to overlook inheritance – inheritance not only of citizenship, but of the constitution, the principles, the national mission, the American Way of Life’ (2000, p.425).

Finally, Canovan claims that Habermas fails to understand that, for many who are born into the constitutionally patriotic state the principles that are supposed to form the basis of their shared identity will not be chosen or agreed on. They will simply be the product of inheritance and early socialisation. In effect, this will mean that the principles that bind citizens together will be exclusively ‘our’ principles, making the important distinction that Habermas want to maintain between a post-traditional patriotism and nationalism less than clear.
While Canovan, on occasion, tends to overstate some of these objections to constitutional patriotism in her essay, I think there is another important wider point that she generally alludes to that needs to be stated. By moving loyalty away from the horizontal level to the vertical level Habermas misses a key point about what it means to part of an ‘imagined community’, namely, citizens need to feel that they have a shared fate in common in order to engage in the kind of non-strategic action required for justice. Habermas’s vertical loyalty to the constitution is unlikely to promote the idea that, for those citizens I do not meet on a regular basis, our fates are intertwined.

5.4.2. Reimagining Republican Political Community

In the preceding sections I have noted a number of important points when it comes to the place of nations and nationality in modern political societies. Modern nation-states have been built on dominant ethnic foundations or *ethnies*. These ethnic foundations have provided modern states with an important communal and affective basis for creating the necessary trust and solidarity required for the kind of non-strategic social action of liberal and republican politics. Indeed, as we saw with Rousseau, a shared nationality was openly advocated as a way of creating the required solidarity that was needed before a state like Poland could become a republic. I claim that if we are going to say anything about the kind of solidarity that is desirable in a modern republic, we need to recognise the role that nations have played in allowing co-citizens to think of themselves as part of an ‘imagined community’, in Anderson’s sense of the term. For good or ill, to greater and lesser degrees, a shard *national* narrative has provided an important driving force for social cohesiveness in modern *political* communities.

However, while this empirical reality may well be the case, the connection between nation and state is not a constant conjunction. If states have been built on dominant ethnic
foundations, we need to ask ourselves the question of how we can unsettle this uncomfortable compound without undermining the solidarity that bonds of nationality, albeit imperfectly, create in modern political societies. In terms of the argument for republican equality, if de-ethnicization of the state’s public institutions and cultural recognition are important ways of bringing about a more just society, then squaring this requirement of republican justice with the requirement for social solidarity is a vitally important question. From the standpoint of republican justice, the aim is to ensure that no cultural or ethnic group dominates the state’s public institutions. However, while I have shown that this is a desirable aim at the level of principle, critics could argue that in practice this kind of process could be liable to undermine the bonds of solidarity needed for my particular version of republican justice. These critics might claim that there is something of a tension or contradiction here for my account: de-ethnicize the state too much and undermine the bonds of social solidarity required for republican justice; don’t de-ethnicize enough and you fail to deliver on the commitment to republican justice. I think that this objection to my account moves too fast. This is the basic assumption of those who endorse the nationalist thesis, namely, nationality is the only motivational basis for republican politics. While I do not want to reject the idea that nations can provide an important motivational basis for republican justice, it is a mistake to think that they provide the only basis for republican justice. In this final section I give some reasons for thinking that there might be some middle ground between the idea that political communities require a particular ethnic foundation in order to function well and the idea that citizens ought to be bound together by love of county or patrie instead.

5.4.3. Creating a Shared Narrative: From Ethnie to Patrie

By recognising cultural minorities or de-ethnicizing the state’s public institutions, we are adding to the shared narrative that binds citizen together, not simply destroying it. Just like it was possible to imagine a new form of political community through the dissemination of the
printed word and the standardization of a particular language, I claim it is possible to re-imagining a particular political community’s shared narrative. These are, after all, social constructions. The state, through its public institutions, is capable of re-defining the national narrative, so to speak. In fact, insofar as that state is charged with delivering on republican justice, it is under an obligation to do this. By re-defining the shared narrative that binds the citizens of a state together, the state is involved in a process of moving from ethnie to patrie. That is, from a love of my particular ethnic group to a love of country in the political sense of the term. Of course, this is not all that is required to create the necessary solidarity for republican justice. Just as citizens have long held that their fates are intertwined with their co-nationals, the state must convince or persuade citizens that their relations qua citizens are intertwined. Thus, instead of simply arguing for a more vertical connection between citizens and the state, pace Habermas, I claim that citizens need to be convinced that their horizontal relations with their co-citizens are important to their own lives -- indeed, to their own liberty.

To see how this might be possible it is worth considering the relationship that citizens have to one another under the ideal of freedom as non-interference. Under the classical liberal ideal of freedom as non-interference, I am maximally free to the extent that nobody interferes in my choices. That is to say, I suffer a reduction in my freedom as non-interference if there are any obstacles to the exercise of this freedom. The state and my fellow citizens, on this account, add nothing positive to my overall liberty. Indeed, to put it crudely, they merely represent possible future impediments or obstacles to the exercise of my freedom. Unsurprisingly, such a conception of liberty encourages citizens to view themselves as self-interested, atomised individuals, rather than members of this or that community. It encourages citizens to view one another as possible forms of interference, possible sources of unfreedom. As we have seen,

123 As Taylor puts it, negative theories of freedom, such as the classical liberal idea of freedom, represent an opportunity concept of freedom, “where being free is a matter of what we can do, of what it is open to us to do, whether or not we do anything to exercise these options” (1999, p. 213).
nationalism and national identity provides an important counter-weight to this pursuit of naked self-interest, namely, it encourages or motivates citizens to act against their strategic self-interest and act according to reasons of justice. Indeed, for liberal and republican nationalists, nation-building provides the state with the requisite amount of solidarity for redistributive policies and a way out of this motivational problem.

In contrast to freedom as non-interference, freedom as non-domination is a communitarian ideal. According to Pettit, a communitarian ideal, as he conceives it, displays two important features: it is a social good and a common good (Pettit, 1997, p.122). To call something a social good is to call something a good which can only come about by the presence of others, not their absence. Freedom as non-domination is a social good, in this sense. That is to say, freedom as non-domination is a good that is realised through the presence of legal and social arrangements which represent ‘checks on the capacity of other people to exercise domination’ (Pettit, 1997, p. 122). If freedom as non-domination is a social good, then freedom as non-interference is a non-social good: my freedom as non-interference increases through the absence of legal and social arrangements, not their presence. To call something a common good, on the other hand, is to call something a good that is valuable to the different cultural and ethnic groups to which citizens belong, as well as to the community as a whole. As Pettit writes:

‘[t]o enjoy non-domination is to be in a position where others are unable to interfere in your affairs. But no one will be able to interfere arbitrarily in your affairs just to the extent that no one is able to interfere with those of your ilk…To the extent that those others are exposed to arbitrary interference, you are exposed; to the extent that they are dominated, you too are dominated. You will only enjoy non-domination, therefore, so far as non-domination is ensured for those in the same vulnerability class as you. Those of you in each class sink or swim together; your fortunes in the non-domination stakes are intimately interconnected’ (1997, p. 122).

In other words, if a certain identity represents a marker of inferiority in society for me, it represents a marker of inferiority for all those who share this identity – for all those who
belong to this same vulnerability class, so to speak. To the extent that I am an unequal in society, those that share my identity are also unequal. As Pettit describes it, freedom as non-domination, in this sense, is a ‘partially common good’ from the point of view of each vulnerability class (1997, p.121-124). It is a partially common good from the point of view of each gender, class, race, ethnicity, and so on. As a partially common good from the point of view of each vulnerability class, it gives members of these groups a common cause in reducing this inequality. Indeed, if freedom as non-domination is likely to be a partially common good from the point of view of each vulnerability class, it is also likely to be a ‘perfectly common good’ from the point of view of all citizens (Pettit, 1997, p. 124). This is likely to hold true if we make the basic empirical assumption that citizens will be permutable in the vulnerability stakes the more that freedom as non-domination is maximised in society:

‘[T]he permutability assumption will have to be better and better satisfied as we approach the society where the enjoyment of non-domination is maximized…That means that as non-domination is promoted, factors like caste and class, colour and culture, should decline in political significance: in significance as markers of vulnerability to interference. The community as a whole should approach the point of being a single vulnerability class. Non-domination would tend to be a fully common good in those circumstances, for it would become more or less impossible for any individual to increase their enjoyment of the good without everyone else increasing their enjoyment at the same time. The closer we approximate to the enjoyment of perfect non-domination, then, the more common that ideal will become: the more it will appear that our fortunes in the non-domination stakes are intimately interconnected’ (Pettit, 1997, p. 124-125).

The connection that an individual citizen’s freedom has to the freedom of his or her fellow citizens is likely to promote the internalisation of norms of civic virtue or civility (Pettit, 1997, p.257-260). The reason for this should now be obvious: the connection that the freedom of my fellow citizens has to my own particular freedom implies that I will push for the freedom as non-domination of all those in my particular vulnerability class. Indeed, not only will this lead to the internalisation of norms of civility, but this should also produce a shared identification with the community as a whole. As Pettit writes, ‘if we cherish our own citizenship and our own freedom, we have to cherish at the same time the social body in the
membership of which that status consists’ (1997, p. 260). Rather than seeing one another as potential impediments to liberty, citizens view one another as part of a collective body necessary for the preservation of their liberty. This collective identification generates the necessary bonds of solidarity that motivates citizens to act towards the common good. Again, this common good is a good for all citizens regardless of race, ethnicity, nationality, gender, and so on. It is this patriotic love of republican liberty, in other words, that motivates citizens to act according to reasons of republican justice (Viroli, 1995). Patriotism, on this account, involves a love of liberty instead of a love culture, a love of our political institutions and fellow citizens as important providers of our freedom, and a love of the republic rather than a love of the nation. However, it is not simply a vertical form of solidarity based on the love of an abstract principle. It is a love of the embodiment of this principle in our relations with one another.

Before I conclude this chapter it is again worth considering the objections that Canovan levelled against Habermas’s account of constitutional patriotism to see whether these can also be applied to my account of republican patriotism. I have already argued that constitutional patriotism is vulnerable to the charge that it ignores citizen’s horizontal relations with one another and this is an objection that a love of republican liberty can avoid. However, what of Canovan’s four other objections to constitutional patriotism, can any or all of these also be levelled against the account of republican patriotism developed above? A first objection, on Canovan’s account, to all non-nationalist or political forms of identity such as constitutional patriotism is that they rely on an idea of ‘the people’ which a shared ethno-cultural provides (2000, p. 422). Indeed, when it comes to citizens acting against their own strategic self-interest for the good of the community, Canovan claims that it is this notion of the people and not a set of abstract political principles which will continue to provide this motivational force. As I have shown, we are more likely going to continue to appeal to a shared ethno-cultural
identity in a society in which citizens see their own flourishing as independent from the flourishing of others. While a shared national culture has provided an important mechanism by which citizens have come to see themselves as ‘a people’ in modern liberal democratic states, it is the communitarian aspect of republican equality – our permutability in the vulnerability stakes, so to speak – which should encourage citizens to see their fates as intertwined in a republic and act according to reasons of justice. A second objection concerns Canovan’s rejection of the examples used by constitutional patriots of political societies which have supposedly seen an uncoupling of ‘state’ and ‘nation’ (2000, p. 423). In contrast to Habermas, I have avoided giving real-world examples of what a state based on republican patriotism might look like. The reason for this is simple: no state exists in which the idea of republican equality, as I understand it, has been achieved. Aim for republican equality at the level of social justice first, we might say, and then you should see the emergence of bonds of solidarity based on a love of liberty in society. A third objection against constitutional patriotism concerns the ‘serious efforts’ to which the state will have to ‘inculcate’ non-national or political bonds of solidarity into the ‘minds’ of citizens (Canovan, 2000, p. 420). In terms of the argument for republican patriotism, I do not think this objection holds. As I have shown, while we might agree with Canovan that citizens will need to be socialised into some shared values, the internalisation of civic norms and citizens’ identification with one another in a republic should emerge from the bottom-up rather than needing to be imposed from the top-down. The final objection that Canovan levels against constitutional patriotism concerns the fact that, for many who are merely born into the constitutionally patriotic state, the state’s constitutional principles are not going to be something that they have agreed on. As such, for second generation citizens, third generation citizens and so on, the identification that these citizens will have with one another will be grounded in ‘inheritance’ and a recognition that this polity is ‘our’ polity, rather than an abstract loyalty to the state’s
constitutional principles (Canovan, 2000, p. 426). This is perhaps one of the more difficult objections for any account of patriotism to respond to. That being said, I think it is reasonable to assume that once citizens view themselves as merely connected to one another through inheritance and not bound together or dependent on one another in the common pursuit of their freedom, then their potential vulnerability to domination in their lives is likely to increase. For those that are merely born into the republic, they would do well to remember that old republican wisdom that ‘the price of liberty is eternal vigilance’ (Pettit, 1997, p. 6).

5.5. Conclusion

As this chapter has shown, for republican nationalists the only motivationally efficacious bases for republican political community are the bonds of nationality. National identities, on this account, provide citizens with the necessary trust and social solidarity required for liberal and republican politics. For critics, however, forming a state around the bonds of nationality is an exclusionary idea. For these writers, we ought to ‘uncouple’ this connection between state and nation and devise new forms of social solidarity that are more in keeping with what it means to be co-citizens in modern pluralistic societies.

In this chapter I have argued that while nations have provided an important basis for establishing a ‘people’ in republican societies, the state is obligated to promote new forms of solidarity based on citizens connections with one another qua co-citizens in these societies. This, I claimed, involves a re-imagining of citizens relations with one another from one based on a shared national narrative to one based on the preservation of their common liberty.
Conclusion

6.1. Introduction

This thesis is my response to a view of republicanism that has become orthodox among contemporary political theorists. On that view, when we are talking about what it means to be treated as free and equal in a republic we are talking about having a certain security or resilience against the arbitrary interference of other agents or agencies in our lives. Social equality, on this orthodox republican view, is secured if citizens enjoy ‘equal freedom as non-domination’ in their lives. While this orthodox view has a lot to recommend it, I do not think that it goes far enough in securing our freedom and equality in number of important additional areas. As I have tried to show, if republicanism is going to provide an attractive public philosophy for our contemporary age, as neo-republicans aspire it to, then I claim that we need to go beyond the narrow concern with republican unfreedom and explore the various forms of non-freedom or disabling constraints to action that render citizens socially unequal vis-à-vis each other.

While I accept that securing citizens against potential forms of unfreedom in their lives is a worthwhile aim, I have tried to ground a republican conception of justice in the much more demanding aim of securing citizens against possible forms of unfreedom and non-freedom in their lives. However, rather than this implying an argument which rejects republicanism tout court, I have tried to show that republican theory can be easily re-configured to incorporate a concern with more structural and symbolic forms of inequality in society. In this concluding chapter I would like to provide some final reasons for why we ought to favour the approach argued for in this thesis over some of the more recent attempts to go beyond republican
theory and freedom as non-domination in our normative theorising. Furthermore, I would like to outline the kind of contribution that I believe this thesis has made to republican theory in particular and to contemporary political theory more generally, its obvious limitations and areas for possible future research.

6.2. Clearing up Conceptual Confusion

In his *Philosophical Investigations* (1953) Wittgenstein refers to philosophy as a kind of ‘therapy’ for clearing up conceptual confusions. Whatever the strengths or weaknesses of such an interpretation of philosophy, allow me to make some final comments on why a failure to make the kinds of conceptual distinctions I have made in the earlier part of this thesis, in the context of my analysis of social and political freedom, can lead critics to offer a number of misplaced and overstated objections against republican theory. In this section I will focus on one such account, namely, the account put forward by Michael J. Thompson in his recent paper ‘The Two Faces of Domination in Republican Political Theory’ (2015).

6.2.1. Thompsonian Domination

According to Thompson, we ought to broaden the account of social domination in republican theory.\(^\text{124}\) Central to this account is Thompson’s claim that there are two faces or dimensions of social domination in modern societies. What he calls ‘extractive domination’ and ‘constitutive domination’ (Thompson, 2015, p.4-13). For Thompson, while the former dimension draws in some measure from the master-slave account of freedom as non-domination recently revived by neo-republicans Pettit (1997) and Skinner (1998), the latter dimension – largely ignored by neo-republicans according to Thompson – represents the kind of domination bound up with the logic of social institutions and the way in which social actors internalise their own domination. Recognition of this latter dimension of domination in

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\(^\text{124}\) See Thompson (2015).
our normative theorising is particularly important for Thompson, as mere exposure to this form of institutional domination is often enough to reduce an individual’s choices without the actual interference of other agents.\textsuperscript{125} For Thompson, this ‘bivalent conception’ of domination, as he calls it, represents the starting point for a more ‘critical’ or ‘radical’ account of neo-republican theory. Indeed, the intellectual forerunners for such an account of social domination, Thompson asserts, can be found within the corpus of classical republicans, namely, in the writings of Machiavelli and Rousseau, among others.\textsuperscript{126}

While I am broadly sympathetic to the kind of analysis put forward in Thompson’s article, and agree with the view that contemporary republicans ought to be more radical in their approach, I want to challenge Thompson’s argument on two levels: first, I want to challenge the explicit claim that we ought to go beyond the ‘narrowness’ of the republican conception of freedom as non-domination as it does not cohere with how we actually understand domination in the real world; and second, I want to challenge the implied claim that the kinds of constraints he is concerned with requires going beyond an ‘outdated’ concern with social and political freedom.\textsuperscript{127}

\textbf{6.2.1.1. Dimension One: Extractive Domination}

According to Thompson’s analysis we need to go beyond the neo-republican conceptualisation of freedom as non-domination – with its narrow focus on free choice – in

\textsuperscript{125} As Thompson writes: ‘A manager need not interfere in any arbitrary sense with his employees as long as they have internalised the norms of getting to work on time, comporting themselves ‘professionally’ and towards productive behaviour, and so on. Similarly, when gender roles or other ascriptive categories are routinized in the culture, members of different groups will tend towards obeying laws and norms that may exclude them or predispose them to extractive relations, or in some other way preserve and sustain hierarchical structures’ (2015, p. 7).

\textsuperscript{126} Unfortunately, Thompson never tells us who these ‘others’ actually are, see (2015, p. 4).

\textsuperscript{127} Referring to his own constitutive account of domination, Thompson writes: ‘This aspect of domination also challenges the narrowness of Pettit’s arbitrary interference account of domination’ (2015, p. 8). On the ‘outdated’ point, he writes: ‘Pettit derives his analytic conception of domination from the historical discourse of the seventeenth- and eighteenth-century republican thinkers who had as their protagonists social relations governed by feudal forms of dependence and control. In modern societies, this paradigm loses its critical power when we see that domination is more than an arbitrary interference in choice’ (Thompson, 2015, p. 3).
order to account for his two faces of social domination in modern societies. The first face or dimension of domination he refers to as extractive domination:

‘Extractive domination is in play whenever agent A is in a relation with B and this relation is a structural type where the relation exists for the purpose of obtaining some benefit or value for A from B’ (Thompson, 2015, p.4).

Let us call this account of domination Thompson’s teleological account of domination. In other words, a relation is a dominating social relation, for Thompson, if A interferes with B for the purpose of gaining some ‘surplus benefit’ from B. Later on Thompson gives us another formulation of his teleological account of domination when he writes: ‘domination is…a form of control over another for the purpose of extracting some surplus benefit’ (2015, p.5).

As we have seen, freedom as non-domination is a non-teleological account of domination. In other words, it is enough to be dominated or unfree, on this account, if I am subject to the possibility of arbitrary or uncontrolled interference in my life. In other words, from the standpoint of neo-republican justice, it matters less what the individual with the capacity for arbitrary interference aims to do with this power once it is exercised; rather, what matters is the fact that this individual has the capacity to interfere. Thompson’s account of domination, by contrast, seems to imply two conditions. The first condition is that person P is dominated if they are subject to uncontrolled interference (this is entirely consistent with the account of freedom as non-domination in the last section). The second condition is that person P is dominated if this control is used to extract some surplus benefit from that person. However, it is not obvious to me why we need to add this second, supplementary condition. Surely it is enough to be dominated if I am subject to some sort of alien control no matter what this

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128 He writes: ‘I do not mean to suggest that the kind of domination that Pettit describes is not an issue: to have anyone constrain your choices or desires is not pleasant, and it should be a concern for anyone seeking a more just social order… The kind of domination that Pettit discusses – one rooted in seventeenth- and eighteenth-century modes of power – misses this historical element since forms of dominance become rationalised and routinised under the conditions of modernity’ (Thompson, 2015, p. 15-16).
control is used for? One of the things we find so egregious about the social institution of slavery, for instance, is that if I am a slave – if you have the capacity to arbitrarily interfere with me – you can do what you will with me – you can, if it pleases you, exploit my labour power. In this sense Thompson’s extractive or exploitative social relation (condition two) is parasitic on simply being unfree in the classical republican sense (condition one). So, it seems to me at least, if we address the logically prior unfreedom relation (condition one) first, then a fortiori we have addressed the exploitative or extractive relation (condition two).

On my reading, Thompson is raising a much more interesting substantive point here about republican theory rather than a conceptual point about domination, namely, what are the relevant choices that citizens ought to be protected in such that they can claim to be free in modern societies? Again, however, this is more an empirical or political point than a conceptual one. Indeed, Thompson would seem to agree with the assessment that he is not making a conceptual point but a substantive political one when he writes: ‘the key here is that although arbitrary interference in the choice of the person dominated is at work, the more essential, political point seems to me that this interference is performed in order to gain some benefit’ (2015, p.5).

However, if this is a substantive point about freedom, then we need not go beyond Pettit’s account of non-domination in this case; rather, we need only recognise that republicans have some interesting questions to ask concerning what areas in social life citizens ought to be secured and protected in such that they may enjoy meaningful freedom from domination. To Thompson’s credit he does highlight, for example, one way in which modern market economies might subvert this freedom. However, this does not mean that we have to add any additional ‘extractive’ dimension to the account of non-domination in republican theory.
Instead, it means we have to ask the more interesting substantive question of how far and in what areas of our social lives we want the principle of freedom as non-domination to apply.\footnote{Again, I think this substantive question is very much an open question for republicans. On Pettit’s (2008) account, we apply the idea of freedom as non-domination to the basic or fundamental liberties. However, I think there is much room for debate here, particularly when it comes to the connection between freedom as non-domination and the economic liberties. For an argument that suggests that we ought to use the ideal of non-domination to ground a conception of workplace democracy, see Hsiesh (2008) and Gonzalez-Ricoy (2014). On the insufficiency of non-domination in this respect, see Breen (2015).}

\subsection*{6.2.1.2. Structural domination}

Alongside the argument for extractive domination, Thompson makes the additional point that hierarchical-structural relations, say, between factory owners and workers, make social domination possible. Indeed, as we saw in section 1.3.3., social structures can aid or facilitate in social domination when these structures work to the advantage of some individuals or groups over others. In this sense, Thompson is exactly right to point out their significance when evaluating social domination. Bad employment law or marriage law, for example, may aid or facilitate in rendering some citizens vulnerable to domination. In some cases, as in the case of zero-hour contracts mentioned in section 0.4., this dominating social relation can result in exploitation. As Thompson writes: ‘the key issue involved in domination is that benefit be extracted according to rules, norms, laws, and powers that are socially specific and therefore inherent in the social structures to which the agents belong’ (2015, p.5).

For Thompson, then, if we are going to minimise social domination, then we need to evaluate the ‘norms, laws and powers’ of society. In other words, we need to analyse the background social conditions (ableness) that place individuals in potentially dominating positions. While I agree with Thompson on this point, I claim we can evaluate these kinds of structural determinants of domination within the parameters of the distinction between unfreedom and non-freedom that I outlined in the first chapter. In fact, I claim in distinguishing between

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constraints that disable and constraints that make a person unfree, this has the added advantage of giving us greater analytical precision in performing this evaluative exercise.

Indeed, such an analysis helps us to avoid looking at cases of domination as simply a property of ‘discrete individuals’, as Thompson claims (2015, p.4). Moreover, it also helps us in avoiding the problem of reifying social structures to the realm of social facts, which we might inadvertently describe as having an internal (dominating) logic irreducible to the agents that comprise them. As we saw earlier, if are jointly concerned with unfreedom and non-freedom, then the background social conditions – different citizens ableness or power to - are of immediate concern, particularly as they can aid or facilitate in rendering citizens vulnerable to social relations of domination. Again, I think that this kind of analytical work can be done within the parameters of republican theory, as I conceive it.

However, what of Thompson’s larger claim that the logic of social institutions may lead to social actors internalising structural constraint, rendering citizens \textit{a priori} unfree to even cognise a free choice? This takes us to Thompson’s second face of domination: constitutive domination.

\textbf{6.2.1.3. Dimension Two: Constitutive Domination}

According to Thompson,

‘constitutive domination… is not a direct form of domination over your actions such as in extraction… it is a kind of power over the norms and values that pervade the community and its institutions; it is a kind of domination because it is able to control the individual from within, to fashion cognitive as well as evaluative dimensions of consciousness as well as the personality to accept certain social relations as legitimate especially when they are not in the objective interests of the individuals themselves’ (2015, p.7).

Central to Thompson’s account of constitutive domination is the intuition that there are certain types of social-structural or symbolic processes which shape the subjectivity of social actors such that when A chooses X he/she unwittingly chooses an option that contradicts
his/her own best interests. Constitutive domination, in other words, is a form of domination in which the social-structural processes work to the benefit of those situated at the top of the social hierarchy. Subordinately situated social actors, on this account, are subject to a type of false consciousness: they think they prefer to choose option X, when, in fact, they actually choose X because they have been socialised to think that X is the best option for them. While Thompson is exactly right to point out that this is something that Pettit largely ignores in his writings, the way he conceptualises this type of constraint, at times, seems to unnecessarily imply that there is some sort of ‘power elite’ always intentionally or consciously shaping the consciousness of semi-conscious social subjects. Indeed, as he puts it:

‘[d]omination, in the sense that I am using the term…is a bottom-up phenomenon where elites maintain and sustain their control over resources by cultivating the modes of legitimacy and cultural values among the dominated who themselves support and reconstitute the social order through their practices and norms’ (Thompson, 2015, p.12).

If, as Thompson claims, there are certain individuals or groups in society that have the capacity to shape the consciousness of social subjects, then we have good reasons, I think, to try to eradicate this possibility. The question then becomes ‘does the principle of freedom as non-domination give us the normative resources to do this?’ Suppose I want you to choose X but you actually prefer Y. Now suppose I control certain ‘socialisation processes’ in society such that I can manipulate your mind to get you to choose X. Does this constitute a form of domination on the standard account of non-domination? This we might describe as a particular kind of interfering in a person’s choices. Suppose I actually want to read Dickens and you control certain socialisation processes in society which convince me to read, say, Rand. If I actually want to read Dickens – this is what is in my own non-manipulated best interest – and you convince me to read Rand – this is the choice I actually make after being manipulated – then this presupposes that you have a capacity or power to interfere in my choices. If I am to be truly free in a choice, then I must also have the cognitive resources to be

130 I take the idea of a ‘power elite’ from Mills (1956) book of the same name.
able to make a choice. If you control my ability to cognise my own choices, you control my choices. In short, we can make freedom as non-domination more responsive to these kinds of cases once we have an account of what it is to have the cognitive resources to make a choice.  

The point which I think Thompson ought to be making here, however, is not how do we address cases where elites have control over socialisation processes in society – this, after all, I claim, can be addressed by the republican conception of freedom as non-domination. Rather, the much more interesting question is how we go about addressing cases where subordinately situated social actors internalise structural constraints not because elites consciously or intentionally cause them to but because both the less powerful and the more powerful accept this situation as merely doxic or taken for granted. Crucially, however, in this case we are no longer directly talking about domination (unfreedom) we are talking about lack of power (non-freedom). To show why this is the case, it is worth recalling the distinction we made in the first chapter concerning constraints that disable and constraints that render a person unfree: I am unfree to choose X if some agent or agency has the power to interfere in my choosing X, while I am unable to choose X if I do not have the power or ability (or the contextualised ability or ableness) to choose X.

In his argument for constitutive domination, Thompson seems to continually confuse a person’s lack of power with their being dominated or unfree. Indeed, while he distinguishes early on in his article that all power over is not domination, he does not make an important further distinction that all power is not simply power over. As we have already seen, there

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131 In some of his more recent work Pettit has very briefly spoken about the issue of cognitive resources. See, for example, Pettit (2012, p. 26).
132 As Thompson writes: ‘[t]o dominate someone is not simply to have power over them. Teachers and parents have powers over their students and children, respectively’ (2015, p.4). However, here we can add that having power does not always mean having power over something or someone. I have the power or ability to tie my shoelaces at present but I hardly have power over my shoelaces.
is an additional concept of power, namely, power as power to or power as ability. So, for example, as Thompson puts it:

‘when gender roles or other ascriptive categories are routinised in the culture, members of different groups will tend towards obeying laws and norms that may exclude them or predispose them to extractive relations, or in some other way preserve and sustain hierarchical structures’ (Thompson, 2015, p.7).

However, again, in the first instance, what is problematic in this case is not that these individuals are dominated – nobody intentionally interferes in their choices (although, as Thompson intimates in the above quotation, they might find themselves in dominating social relations as a consequence of this lack of power). Rather, what is problematic in these kind of cases is that individuals do not have the power to take advantage of their freedom and others do. In other words, they experience structural constraints not because they are dominated but because they do not have power. Put differently, in these kinds of cases, the background conditions of society give some individuals or groups more power to achieve outcome than others.

As I have tried to show throughout this thesis, removing structural and symbolic inequalities in society can be relevant from the standpoint of justice independent of their connection to domination. Just because somebody does not have the power to do something, this does not mean that we ought to describe this person as dominated. I claim that the argument in this thesis avoids many of the conceptual pitfalls of Thompson’s bivalent conception of domination.

6.3. Contributions

In this section I want to provide a brief sketch of what I consider to be the key contributions of the thesis as a whole. At a general level, I have attempted to provide the foundations for a republican theory of justice which incorporates a concern with the kind of constraints that
make us unfree and the kind of constraints that make us unable. While neo-republican theorists are right in thinking that relations of domination are inimical to real freedom in society, I have provided reasons for why I think we ought to go beyond a concern with relations of domination in our normative theorising. My basic claim has been that we ought to examine the various forms of non-freedom which render citizens socially or relationally unequal with one another. This, I claimed, points the way to a particular account of social justice which promises to be considerably more efficacious in delivering on the republican commitment to relational or status equality in society. The key question regarding contribution, then, is whether, or to what extent, this general framework provides a novel and normatively attractive political theory for delivering on this commitment to relational equality.

As I have already noted in this concluding chapter, the distinction between unfreedom and non-freedom offers considerable conceptual clarity when it comes to diagnosing the various forms of inequality in society. While some critics of republican theory have sought to redraw the boundaries of what constitutes a social relation of domination to fit with their particular accounts of inequality, they have largely done this at the expense of conceptual clarity. A major contribution of this thesis is, then, providing some much needed clarity regarding the kinds of constraints that are the result of the intentional interference of other agents and the kind of constraints that are a product of the unintentional basic background features of society. As I argued in chapter two, I believe this distinction informs a republican conception of social justice which promises to be considerably more relationally egalitarian than the orthodox republican view. Indeed, in contrast to distributive egalitarian theories of social justice, I claimed that republican social justice or republican equality, as I understand it, has the conceptual tools to address some of the more socially and institutionally embedded dimensions of injustice which those working in the distributive paradigm largely ignore.
Furthermore, I claimed that while neo-republicans have more recently viewed security in the basic functioning capabilities as providing the basis for a conception of social justice which secures citizen relational equality with one another, there are a number of reasons for why we ought to view the connection between the capabilities approach and republican justice as running much deeper.

I applied this account of republican social justice to the issue of the reasonable accommodation of cultural minorities in chapters three and four. This was by no means an easy task. The legitimate grounds for the reasonable accommodation of minority cultures in free and equal societies is one of the more vexing issues in the contemporary literature on social justice. There are a number of justice demands at play in these kinds of cultural disputes, both internal and external to cultures. That being said, I believe I have provided an original way for addressing the claims that minority groups have for state recognition in a republic. In contrast to liberal accounts of multiculturalism, I argued in chapter three that minority cultures have a prima facie case in favour of state recognition in a republic where the state’s public institutions unfairly privilege one ethno-cultural group over another and de-ethnicization of these institutions is too costly or simply impracticable. Evaluating whether or to what extent a minority has a prima facie case in favour of state recognition, I claimed, was an important first step in delivering on justice in these disputes.

In chapter four I addressed the question of how we ought to adjudicate cases where the demands for the state recognition of a minority group threatens to undermine the individual freedom as non-domination of subordinately situated members of these groups. Here I provided something of a rapprochement between a priori non-domination approaches to this issue and more deliberative-centred approaches. I argued that while citizens have a fundamental interest in having their individual freedom as non-domination protected in a republic, the commitment that republican equality has to symbolic equality requires that
minorities are given a fair hearing in putting forward their claims for recognition. This, I claimed, implied an opening up of the democratic process to allow minorities to voice their claims for state recognition. Rather than this merely implying that minorities ought to articulate their claims in the dominant discursive norms of public reason, a fair hearing, on my account, involved the welcoming of plural forms of communication in the democratic process when debating these issues.

In chapter five, contra republican nationalists, I argued that while nations and nationality have provided an important basis for establishing a ‘people’ in republican societies, they are not the only motivationally efficacious basis for encouraging citizens to act according to reasons of social justice. Here I claimed that the state has an obligation to promote new forms of solidarity based on citizen’s connections with one another qua co-citizens in a republic. This, I claimed, involves a re-imagining of citizens’ relations with one another from one based on a shared national narrative or ethnie to one based on patriotic loyalty or patrie.

6.4. Limitations

As Plato arguably first made clear in his Dialogues, philosophical enquiry often generates more questions than it answers. However, rather than this representing a damning indictment of the philosophical method for Plato, it illustrates the extent to which the search for knowledge about a particular subject matter is always likely to produce more questions which the philosopher did not originally anticipate from the start. Writing this thesis has been an exercise in humility in this Platonic sense. While I have tried to develop an account of social justice which is sensitive to symbolic and cultural inequalities in society, there are a number of limitations and unanswered questions to this study. While I will not provide an exhaustive account of these here, I will mention what I consider to be the most obvious limitations to this study.
The first and (for me) the most glaring limitation concerns the question of state domination (imperium) or political legitimacy in my theory. While I have advocated an opening up of the democratic process to allow minority groups to put forward their claims for state recognition in a language that does not imply the non-freedom of assimilation, I have said little regarding how this might affect the overall legitimacy of the state’s decisions. If some citizens are allowed to put forward cultural or non-public reasons to argue for their position on a matter of personal importance, does this not affect the state’s capacity to treat citizens impartially? In other words, does this not simply reflect this particular group’s attempt to use the coercive power of the state for their own sectional interests? While I have not developed my own particular theory of democratic legitimacy in this thesis, I concede that much more could be said here. However, I should stress that the question of political legitimacy is still very much an open question in republican theory. There is a possible argument to be made that allowing plural forms of communication into the public sphere is likely to produce more legitimate decisions, not less. A shared symbolic space, on this account, is one that is not dominated by one a particular form of deliberating style. Regrettably, the broader issue of democratic legitimacy is something I did not pursue fully in this thesis.

If this thesis has focused on the question of social justice more than the question of political legitimacy, it has also focused on the issue of justice within states rather than justice between states. While delivering on global justice is an important moral consideration for any political theory, a discussion of this topic would have been well beyond the scope of this thesis. Suffice it to say that I generally agree with the view that there are different demands of justice at the state level and at the international level. This pluralist conception of justice does not deny that we owe a duty of justice to citizens of other states; it simply claims that this duty is

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of a different kind than what we owe to citizens of our own state. Again, there is a lot more that could be said here.

6.5. Future Work

While I have already mentioned some possible avenues for future investigation in the previous section, I would like to mention one or two other areas where I think republican justice, as I understand it, might be usefully applied. The first concerns the application of republican equality to the issue of ‘emotional regimes’ in contemporary societies. Just like different domains of social interaction tend to privilege a particular cultural habitus, often they will tend to privilege a particular emotional habitus as well. In these domains certain forms of emotional life or emotional practices are deemed normatively desirable and inculcated/promoted/encouraged by the state. As such, some emotional practices, dispositions or forms of emotional (dis)regulation are positively sanctioned and legitimated, others negatively sanctioned and de-legitimated. Emotions, on this analysis, are considered to be an embodied form of cultural capital. As my account is sensitive to these inequalities in cultural and symbolic resources in society, I think it provides a unique way of looking at this insidious form of inequality in contemporary societies. What republican equality might prescribe to remedy the symbolically unequal regulation of the emotions in schools, for example, would be an interesting area for future investigation.

Another area for possible future research concerns the moral justification for widening the participation of minority groups in third level institutions. At present a number of universities throughout the country run widening-participation programmes with the aim of getting citizens from socio-economically disadvantaged backgrounds into third level education. The present justification for this is largely to do with ‘getting people back to work’ or remedying socio-economic disadvantage. While these may be morally praiseworthy justifications in and
of themselves, I think it would be interesting to explore a further justification for these programmes based around the idea of republican equality. Not only do these programmes provide citizens with the necessary qualifications for rendering them less vulnerable to relations of domination in society but, in terms of the culture that pervades many of these institutions, there may be a further justification derived from the republican desire for symbolic equality. On this account, widening-participation programmes provide an important measure for challenging the kind of symbolic status inequalities that might arise in these institutions without an adequate representation of minority groups that actually exist in society.

6.5. Conclusion

I started out this thesis noting how our modern republics fall some way short of delivering on even a very basic idea of equality. Recent years have seen growing levels of intolerance in many of these societies, with huge increases in levels of inequality between the top 10% and the bottom 90%, the emergence of new right-wing, anti-immigration political parties and the rolling back of many of the state’s vital public services. The list could go on. Of course, these are issues that not only affect modern republics. Intolerance, the polarisation of wealth between rich and poor, the privatisation of the state’s public services and so on are issues that affect many of today’s underdeveloped, developing and developed societies. In the manner in which we organise our legal, economic, political and social institutions, I think we can do much better here.

In this thesis, I have tried to make the case for a new kind of republican politics: one in which citizens stand in relations of equality with one another at three different levels, namely, the interpersonal, the structural and the symbolic. This is a demanding ideal, to be sure. However, as I have tried to show, the kind of framework which I have argued for has not simply been
an exercise in ideal theory. There are many real-world applications for republican equality, as
I understand it. My guiding idea in all this has been the following simple question: what does
it means to be able to stand as an equal in society? If citizens and their public representatives
give this question the kind of consideration that I think it deserves, I claim they will find the
kind of argument put forward in this thesis as something which coheres with their considered
convictions on what it really means to be free and equal in society.
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