

Liberalism, Republicanism and the Idea of an Egalitarian Ethos

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Abstract

This paper extends a project of embedding Rawls's political liberalism in the wider framework of republican political theory. It does so by arguing that the most secure basis for the content of Rawls's two principles begins from the republican emphasis on securing the conditions for effective political agency. G. A. Cohen has, over a series of publications, presented a strong challenge to Rawls's egalitarianism. He has argued that the collective solidarity required for the adoption of the two principles is undermined by the special incentives permitted by the difference principle: those better off under a given distribution make it the case that they have to be incentivised to market their labour, tainting the resultant inequality as it arises solely from their anti-social preferences. It is argued that this critique can be deflected only by noting that a restricted scope of application for the theory of justice (the basic structure) is compatible with pervasive effects at the level of social relations. Properly understood there are no "justice free zones" in a Rawlsian society where exploitative bargaining is tolerated in such a way as to undermine an ethos of justice. The specific form of implementation of Rawls's egalitarianism, the ideal of a property owning democracy (adapted from the work of James Meade) illustrates this line of response to Cohen: markets are neither fair nor unfair, but the effects of market transactions are made fair by restructuring the distribution of capital and changing labour supply and demand. The most direct route to this solution is the overall point of reflection on economic justice: to secure freedom under law and effective political agency for all citizens of a republic.

Recent political philosophy has seen an upsurge of interest in republicanism and the suggestion that the republican tradition might offer new insights into a central concern of Anglo-American political philosophy, namely, egalitarianism. [Dagger, 2006] Gerald Gaus has suggested that republicanism might be a source for a new, post-socialist account of distributive justice.¹ [Gaus, 2003, p. 64] One question that I address in this paper is how this claim relates to the most highly developed and widely accepted liberal form of egalitarianism, namely, Rawls's theory of justice.

I have previously argued that a fully satisfactory defence of Rawls's project, spanning his broader commitment to political liberalism as well as his more narrowly focused theory of justice, needs to add to his position elements from the superficially competing tradition of republicanism.² [Thomas, 2006a] The resulting composite view, a liberal form of republicanism, seems to me to make the most sense of Rawls's overall commitments, even if some of those need to be selectively re-interpreted. In my view, then, there is significant convergence between one strand of the republican tradition and Rawls's work.³ In this paper I want to develop this argument further by demonstrating that a liberal-republican starting point is the most secure basis for Rawls's egalitarianism.⁴ By "secure" here I mean something very specific: that only a basis in republicanism allows one to address the most well-known critique of the content of Rawls's principles, namely, G. A. Cohen's critique of the difference principle. My aim is further to strengthen the case for this "liberal-republican" reading of Rawls by arguing that without it, Cohen's critique cannot be answered.⁵

Cohen's arguments are best viewed as an updating of Marx's critique of liberalism in 'On the Jewish Question'. [Marx, 1844] Marx argued that classical liberalism gave all people formally equal status as citizens, expressed in terms of rights, but then permitted such high levels of material inequality that this merely formal notion was rendered practically ineffective: liberal rights mask exploitative social relations. Cohen argues that there is an inconsistency between the ethos of collective solidarity that is expressed by a society's adoption of Rawls's principles of justice and the special incentives that the second part of the second principle (the difference principle) permit.⁶ Rawls permits departures from equality if those benefit the worst off. Cohen argues,

however, that the attitude of those better off, more talented, citizens who demand incentivisation to market their labour at above the average reservation wage is no different from that of a blackmailer. They make it the case that they will not market their labour if not so incentivised. The only solution, Cohen urges, is a supplementary egalitarian ethos to compensate for this (inadvertent) internal inconsistency within Rawls's egalitarianism.

I will argue that appreciating the resources within Rawls's work for resisting this critique leads one to endorse the specific form in which he saw his egalitarianism as implemented, namely, the property owning democracy described by Cambridge economist James Meade. This form of political economy has proved independently attractive to neo-Republicans, too. [Dagger, 2006] However, as I will show, this complete implementation of Rawlsian egalitarianism is, in Rawls's view, subject to the democratic process such that a society might dispense with this complete scheme of implementation. My conditional agreement with Cohen is this: if dispensing with the complete scheme were permitted, then his neo-Marxist argument would be resurrected. But that would lead to the undermining of the fair value of political liberty, in the face of substantial material inequality that would allow the political domination of weaker agents by more powerful ones. That would undermine Rawls's most fundamental commitment to the democratic equality of all citizens. I therefore argue that a liberal-republicanism that shares Rawls's fundamental commitment to effective political agency is a more secure basis for Rawls's own egalitarianism. The implementation of the republican value of freedom from domination will not compromise the fair value of political liberty in the same way. Overall my aim is to argue that there is, indeed, a form of neo-Republican

political economy that should be energising our commitment to equality.⁷ However, it has been “hiding in plain sight”; it is Rawls’s egalitarian view, but set in a novel context.

1 From Liberalism to Republican Liberalism

Political liberalism is a general, reflective account of politics underpinned by a distinctive contextualist epistemology. [Rawls, 1971, 1993; Larmore, 1990; Thomas, 2006] The defining problem for a political theory in the modern West is a deep-seated pluralism in reasonable comprehensive conceptions of the good. The basic aim of political liberalism is to specify a politicised conception of freedom and equality that is independent of any particular such conception of the good as it is affirmable from within any. Drawing on the ideas of mutual respect and toleration that are part of our intellectual tradition, Rawls’s politicised account of justice was the context for his normative theory of justice as fairness, expressed by the following two lexically ordered principles of justice:

First, each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.

Second, social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and office open to all. [Rawls, 1971, p. 60]

The recent work of Philip Pettit and Charles Larmore has demonstrated the extent to which political liberalism converges significantly with the superficially competing tradition of republicanism.⁸ [Pettit, 1997, 1998, 2002, 2006; Larmore, 2001, 2004] I say “superficially competing” as there are two distinct forms of republicanism discussed in contemporary political philosophy: an “Athenian” strand represented by Charles Taylor, Michael Sandel and Richard Dagger and a “Roman” strand represented by Skinner and

Pettit. The former makes political participation part of the good life; the latter does not do so. Given that political liberalism argues that the modern problem of legitimacy in the face of pluralism cannot be solved by any political conception based on a single exclusionary conception of the good life, it is not surprising that it shares a common starting point with the Roman tradition of republicanism. [Thomas, 1997]

The similarities do not stop there. Neither view begins in morality and constrains politics, as does libertarianism; neither is a doctrine of limited government focused solely on the idea of negative liberty. [Larmore, p.8] The priority that Rawls assigns to the list of basic liberties can be interpreted as co-extensive with the basic commitment of republicanism, which is to understand freedom as non-domination, to be precise, as freedom from the arbitrary power of another. [Pettit, 1997; Larmore, 2001, 2004] I will emphasise particularly in this paper the similarity in the basic normative commitment of both views, namely, accounting for effective political agency.

Norman Daniels points out, in an insightful paper, that Rawls's most basic commitment is to "democratic equality", where the qualifier "democratic" picks out as important an aspect of his view as does his more familiar emphasis on equality. [Daniels, 2003; see also J. Cohen, 2003] Rawls's starting point is the implementation of an ideal, namely, how we express our nature as rational and reasonable beings in self-determination (but not the collective self-determination of the Athenian tradition of republicanism). We are interested in liberties, opportunities and resources derivatively; our primary concern is effective political agency, consisting in the expression of our two moral powers in our conceptions of the good in the context of a just society. Our standing as free and equal is understood as requiring, through justice as fairness, that those needs

of ours have to be met that allow the exercise of our powers of rationality and reasonableness. [Daniels, 2003; Cohen, 2003] In a well-ordered society, viewed as a single co-operative venture, it is mutually known that we have elected to express our standing as free and equal in a way that allows us to recognise each other's identical standing. We acknowledge that other citizens are equal participants in the democratic determination of society: that is why, in agreeing on the principles of justice, we are securing the social basis of self-respect. [Daniels, 2003] Daniels describes the relevant notion of equality:

Those who are worst off must continue to see themselves as worthy equals – in participation, in opportunity, and in the interest they have in pursuing their ends – or they will not be able to sustain their self-respect and thus their participation. [Daniels, 2003]

This concept of democratic equality closely parallels the Roman republicans' belief in freedom as non-domination. Such freedom, the republican argues, is best secured under a regime of just law, constrained by a public process of democratic deliberation, in such a way that our commitment to these laws can be seen as expressive of an underlying norm of equal respect for persons. [Larmore, 2004] Rawls noted the close parallel between his views and classical republicanism:

At most there can be differences [with justice as fairness as a form of political liberalism] on matters of institutional design and the political sociology of democratic regimes. These differences, if there be such, are not by any means trivial; they can be extremely important. But there is no fundamental opposition because classical republicanism does not presuppose a comprehensive religious, philosophical or moral doctrine. Nothing in classical republicanism, as characterized above, is incompatible with political liberalism as I have described it. [Rawls, 1993, p. 205]⁹

Assuming that the general outline of Rawls's view is the more familiar, what are the main features of the less familiar republican tradition, in its Roman as opposed to Athenian form?

The republican believes in public-ness and self-government. [Pettit, 1997; Dagger, 2003; 2006, p. 153] Self-government is not, however, the autonomous collective self-determination of the Athenian tradition, but the valuing of political participation as a means of prudently protecting each citizen's interests under a regime of just law. The identification of interests that the state will protect is itself a matter of free and open rational dialogue that requires two things: first, citizens able to reason collectively about the public good. Secondly, a public willing to re-shape the agenda of interests as society changes through time. The latter, in turn, requires free associations, civil society and a public sphere. [Thomas, 2006a] For the republican, freedom under law requires a state. [Larmore, p.8] The state makes law that is a precondition of freedom from arbitrary authority and is one source of our identification of the particular political community to which citizens owe allegiance. The republican citizen is identified with a particular regime of law, partly constitutive of the identity of a contingent historically identifiable community.¹⁰

One argument strategy in defence of republicanism notes that it has a clear-eyed view of the evils that come with the inception of a state. There are certain standing problems that all political views can recognise but which republicanism takes explicit measures to address: corruption, faction and the abuse of political power in a form where some citizens come to dominate others. This notion of shared common evils is one powerful motivation for adopting republicanism, particularly given the modern history of

the nation-state with its unparalleled marshalling of resources and technology to further its ends.

In Rawlsian liberalism a concern for socio-economic equality is lexically subordinated to the equal scheme of basic liberties; in the republican tradition a concern with economic inequality also has a derived standing, following on from the concern with freedom as non-domination. Economic inequality is of concern to republicans in so far as some citizens come to dominate others by the improper exercise of political power and in so far as it erodes the bonds of common citizenship. [Dagger, 2006, p. 154] On any republican view, the state acts to preserve its self-governing citizens from arbitrary power. [Pettit, 1997; Thomas, 2006b; Dagger, 2006] Dagger plausibly argues that republicans will place a high instrumental value on the quality of public debate, contrasting its sense of public-ness with that of private interests.¹¹ However, he also notes that such institutional measures are only valuable, for the republican, if combined with a suitably wide distribution of civic virtue. [Dagger, 2006, pp. 156-157]

Those, then, are the main shared features of political liberalism and republicanism.¹² However, if political liberalism and republicanism share many features, one could also predict that they would share similar vulnerabilities. From the early reception of Rawls's views, critics from the political Left argued that Rawls's priority of liberty was incompatible with the inequalities permitted by the difference principle. The societies we live in are not Rawlsian, but we can generalise from them concerns we may continue to have even if our society was: one might, for example, observe that formal equality before the law can be undermined by individuals (whether persons or corporations) with very substantial socio-economic power in a way that seems to

substantiate Marx's critique of liberal rights. This is the threat that Michael Walzer describes in his theory of complex equality, constructed around the idea that domination in one sphere of goods ought not to be leveraged to generate domination in another sphere. [Walzer, 1984] Money and power, he argues, are the two sphere-transcendent goods that are paradigmatically used to leverage domination in this way.

Rawls's response to this threat to the consistency of his view was four-fold: he introduced the "equal worth" of the entire scheme of basic liberties; he restricted this, practically, to the fair value of political liberty; he made some policy suggestions, such as the state funding of political parties, that attempted to secure this fair value in a very restricted way; finally, and importantly for my discussion, he suggested that his entire package of views needed to be taken in the context of his complete political economy in the way that I will describe. However, as we shall see, the neo-Marxist concern about the overall structure of Rawls's position continues to attract adherents, notably, G. A. Cohen, who argues that Rawls's remedies do not go far enough and, in fact, that Rawls inadvertently permits behaviour that undermines the very ethos of collective solidarity on which his whole view depends.

Before proceeding to exposit Cohen's critique in more detail, let me note at the outset that the republican shares a similar vulnerability. As Gerald Gaus insightfully notes, protection from domination via just law does not make the exercise of dominant power impossible: it simply makes it more costly. [Gaus, 2006, p. 72] Some laws, such as pro-union legislation or anti-trust or anti-monopolistic legislation directly undermines dominant economic positions, as Charles Larmore points out. [Larmore, 2004] However, Larmore also stresses that most law is not like this: what troubles the republican is that

some people have the capacity to dominate and law does not usually take that capacity away. [Larmore, 2004] It simply makes it costly to use it, but some very dominant actors might decide the cost was worth it. Larmore develops this point to argue that what matters for the republican is not sanctions, per se, but what they express, namely a public and shared commitment to just law imposed by an impartially underwritten collective agency. That is importantly correct, but it also suggests that the republican, as much as Rawls, might want to take the pre-emptive step of undermining very dominant socio-economic or powerful positions before they can arise. Thus both traditions are interested in the prospects for a liberal-republican political economy that disperses power and resources. Such an arrangement thereby undercuts the capacities for domination that would otherwise accrue to very powerful agents who may attempt unjustly to leverage their domination in one sphere into another. But I should now deepen my description of why a neo-Marxist critique of Rawls seems compelling in the first place.

2 Cohen's Critique of Rawls

Several commentators have noted that Cohen's critique of Rawls is an updating of Marx's critique of liberalism. [Sensat, 2003; Estlund, 1998; Baynes, 2006] Cohen focuses his critique not on the lexically prior basic liberties, nor on the first part of the second principle, guaranteeing equality of opportunity. He is concerned solely with the difference principle that permits departures from inequality in so far as they benefit the representative worst off person and also permits any inequalities that do not worsen the position of the worst off even if they improve the position of the better off. ¹³[Van Parijs, 2003] Cohen, like some of Rawls's communitarian critics, argues that any political

community that endorsed Rawls's two principles would show, by such endorsement, that it was committed to a high degree of social solidarity. However, the way in which Rawls permits inequalities inadvertently undermines this solidarity.

The nerve of Cohen's argument is the behaviour tolerated on the part of those who prove to be, in any given distribution, able by means of the natural lottery of both talent and the capacity for effort to make themselves better off in that distribution. They are legitimately incentivised not simply in a compensatory way (that is, for lengthy training or work that is particularly difficult) but also in the form of special incentives. Special incentives reflect their unwillingness to work unless they are rewarded either at, or above, the average level of reward. The problem, Cohen argues, is that the whole Rawlsian scheme is justified as one in which no-one is any more unequal than he or she need be, but in the scenario described these inequality generating incentives are produced solely by the anti-social attitudes of the better off. They make it the case that they need to be incentivised in order to supply their labour; if they were not, they would withdraw it. But this is, morally, no different from the stance of a blackmailer. Rawls has, then, inadvertently permitted egoistic and selfish behaviour that will corrode the ties of social solidarity, implicitly leading to the undermining of the very commitment to justice that selected the two principles in the first place.

I will call this latter argument Cohen's "overspill" argument: it involves some interpretative license, but it avoids the obvious rejoinder to Cohen that a society that implements Rawls's principles but lacks Cohen's ethos involves people acting wrongly, but not unjustly. [Daniels, 2003] By extending some of Cohen's remarks about the idea of political community, we can explain why the problem he has identified would be more

serious than a compromised acceptance of a society that was justly governed, but was not just. Cohen alleges that the internal inconsistency of Rawls's view would lead to a Rawlsian society unravelling over time, degenerating into an unjust one. However, Cohen further argues, this can be avoided if the citizens of that political community adopt an ethos of justice, located in their individual behaviour and motivations, that compensates for this inadvertent loophole in Rawls's arguments. A society with such an ethos will be more just than one without as it will dispense with special incentives.

Cohen's argument has been much discussed and I will not review those arguments here as I have done so elsewhere; for present purposes I want to isolate Cohen's main line of argument relevant to this paper. [Thomas, 2006b] It focuses on the scope of application of Rawls's theory of justice. One of Rawls's innovations was to apply his principle of justice to what he called the basic structure of society. Cohen argues that his motivation for this was poorly thought through, ambivalent between a focus on those structural features with a particularly deep impact on people's life chances, or those coercively imposed by the legal system. However this institutional focus ignores the fact that "the personal is the political" and Rawls's restricted focus tolerates justice free zones in our collective social life where the demands of social justice are simply discounted. The tainted incentives of the better off are simply exempted from the demands of justice by Rawls's institutional focus. As they continue to enrich themselves, even at no cost to the worst off, the incentive argument sounds less and less appealing:

Where the worst off are not too badly off, it looks more fanatical to assign absolute priority to their claims. But the stronger the case for ameliorating the situation of the

badly off is, the more discreditable (if I am right) the incentive argument is on the lips of the rich. [Cohen, 1995b, p. 37]

Cohen's case seems, then, superficially plausible. However, I think its real import is not that which Cohen suggests; there are resources within Rawls's egalitarianism for deflecting this critique, but only if one focuses not solely on the two principles but the exact form of a just political economy within which Rawls sought to implement them.

Does Rawls really restrict the scope of his theory of justice solely to the basic structure? In answering this question one needs to bear in mind two points: Rawls does not believe that his principles apply everywhere. He is a normative pluralist and in that sense some parts of our lives are beyond justice: parents do not violate the two principles if they do not regulate the distribution of resources between their children by those principles. Furthermore, there is a sense in which Rawls also believes that it is simply impossible for a person, no matter how motivated, to regulate every one of his or her economic transactions aiming solely to be just. Individual transactions are aggregated into a system whose scale, complexity and emergent properties make that unfeasible. But, granted those two points, Cohen is still, in my view, mistaken about Rawls's views on the scope of justice. [Thomas, 2006b; see also Scheffler, 2005] Rawls applies his theory of justice to individuals via the basic structure: his structural focus is not a means of applying it to something other than individuals. His aim is not to make all our social relations, such as those in families, fair, but to make our relations pervasively fair, extending at least as far as individual decisions to market one's labour. [Thomas, 2006b] (From the point of view of Cohen's critique, Rawls's pervasive fairness must at least extend to individual decisions to market one's labour.) [Thomas, 2006b]

One ground for Rawls's approach is that he wants his rule of justice to be publicly specifiable, commonly known and reflexively applied.¹⁴ [Williams, 1998] However, these functional features of a rule do not change the fact that they ultimately apply to people; what they determine is that they apply to people in a certain way, that which Phillippe van Parijs has called "motivation conscious institutional engineering". [Van Parijs, 2003] The context in which Rawls denies that individuals can, via their individual decisions, make a social process just is where he is particularly concerned to stress the vulnerability of libertarianism on this point:

The role of the institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place. Unless this structure is appropriately regulated and adjusted, an initially just social process will cease to be just, however fair and free particular transactions may look when viewed by themselves.¹⁵ [Rawls, 1993, p. 266]

This passage contains, in summary form, Rawls's best line of defence against Cohen.

We can understand Rawls's remarks about the fact that one cannot directly regulate individual conduct in one of two ways: we can see individual transactions as simply indifferent to justice, with mechanisms located elsewhere to make the whole system of transactions just. An alternative reading argues that market transactions that presuppose justice are thereby made just, an interpretation strengthened by the observation that this is the only way that they can be made just (the feasibility argument).¹⁶ The first view permits those justice free zones that require Cohen's compensatory ethos. The second view accuses Cohen of misinterpreting, as egoistic, economic behaviour that is permissibly self-interested as it presupposes a commitment to

justice. By so adjusting market transactions that their effects are rigged to be fair, we thereby show that we are presupposing justice, not discounting it. We acknowledge the demands of justice by committing ourselves to participation in a system with built in systemic mechanisms that make the effects of transactions fair.

This line of response is very abstract and the best way to appreciate its force is to specify it in a particular way, namely, to show how Rawls's use of the idea of a property owning democracy exemplifies this strategy of presupposing justice at the level of a society's complete property settlement. (This constitutes what Rawls called "adjusted" as opposed to "pure" procedural justice.) Cohen's critique can be undermined only if we focus on the specific form of its implementation in a property-owning democracy. I take it that it is no co-incidence that, in his independent investigation of what could constitute a neo-Republican political economy, Richard Dagger ends up endorsing exactly the same proposal (but without addressing the question of its deliberative priority, that will be my focus below). [Dagger, 2006] I will now describe in more detail how this proposal is supposed to be worked out before turning to the different role that these ideas play in liberal and republican defences of equality.

3 A Liberal-Republican Political Economy

I noted above that there is independent interest in the idea of a neo-Republican political economy. [Gaus, 2003; Dagger, 2006] The idea is certainly worth exploring independently of the issue of the extent to which it allows one to address Cohen's concerns. Richard Dagger has argued that:

There is enough agreement amongst neo-republicans to make a reasonably coherent conception of a civic economy possible...attractive enough to appeal to anyone who is not already convinced that the market should rule in all matters or that it should figure in none. [Dagger, 2006, p. 152]

That is a description that could equally have been applied to Rawls, who rejected free market “laissez-faire” economic arrangements on the grounds that they permit moral arbitrary contingencies to determine competitive advantage and hence resource allocation. He also rejected a centralised command economy as a threat to the basic liberties, particularly the liberties of free association and choice of occupation. Unsurprisingly, the liberal republican concurs with both of these lines of reasoning. He or she will also concur with Rawls that once the basic liberties are in play it is important to secure their worth, but will disagree with Rawls that it is unrealistic to secure fair value for anything other than political liberty.

The divergence between Rawls and the republican lies in how both parties treat the kinds of economic inequality permitted by the difference principle. If such inequality can lead to accumulations of wealth that lead to domination and arbitrary power, such as when domination in one sphere is leveraged into domination in another, then the republican will seek to put protections in place to prevent such a capacity arising in the first place. For all these reasons (and others) Richard Dagger has concluded that a republican political economy will be, precisely, a Meade-style property owning democracy of the kind that Rawls defended, a conclusion convergent with that of Stuart White. [Dagger, 2006, p. 160; White, 2003; 2006] Freedom from arbitrary domination will be extended to the workplace; there will be a presumption in favour of workplace democracy and worker ownership; the nature of work must be consonant with, or at least

not corrode, citizens' virtues; economic decisions at the level of communities must be subjected to regulation; there must be substantial inheritance tax, a progressive taxation scheme of last resort and a guaranteed basic minimum wage.¹⁷

The majority of these ideas are found in both Meade and in A Theory of Justice. Rawls is committed to the market and to private property, but he declares an official agnosticism over whether the means of production are to be privately or socially owned. However, if a capitalist society is one divided into a property-owning class and a class without property that is dependent solely on income from labour, then Rawls was never a capitalist. [Krouse and Macpherson, 1998, p. 80] In his ideal property owning democracy, markets operate in a context structured pervasively by fairness. The state intervenes not only to supply public goods and to counter negative externalities but also to impose adjusted procedural justice. Some effects are the unintended effects of intended behaviour; the vestigial (and comparatively unimportant) "invisible hand" part of Rawls's view is that the market, of its nature, decentralises economic power and protects freedom of occupational choice. It does the former by protecting free association and free equality of opportunity and does the latter by giving rise to differential earnings. [Rawls, 1971, p. 272]

But other effects are self-consciously engineered: the holdings of land and capital are widely dispersed; no sector dominates the control of resources; inheritance laws are strongly egalitarian; incentives are put in place for small savers; there is substantial public investment in the education system and each citizen is given income from property and the opportunity to invest. The aim is to increase the supply of skilled labour and reduce dependence and exploitation in the labour market, with the effect that the residual

incentives in the system can all be viewed as compensatory because their role has been transformed. Paul Smith comments as follows:

The idea that the equalization of property ownership would transform the labour market, by equalizing bargaining power and eliminating the economic coercion to accept drudge jobs at low pay and thus forcing employers to make all jobs attractive, all things considered, is crucial to Rawls's idea that, in a competitive labour market located in a just basic structure, income inequalities would tend just to compensate the costs of different jobs, that is, tend to equality, all things considered. [Smith, 1998, p. 225]

Rawls follows Meade in rejecting welfare state capitalism by equalising property ownership prior to the corrective effects of progressive taxation or a guaranteed income.

The consequences of this for Cohen's vestigial critique of Rawls are profound:

Economic equalization is more likely and reliably to be effected, as Rawls thinks, by institutions and policies that equalize bargaining power than by an egalitarian ethos restraining the exercise of unequal bargaining power (and egalitarian institutions and their distributional results are what, if anything, could produce an egalitarian ethos. [ibid, p. 227]¹⁸

If we take Rawls's complete view, implemented so as to respect his lexically ordered principles of justice as fairness, then Cohen's special incentives are simply eradicated. If both Rawls and the Roman republican agree on this approach to egalitarianism, and I believe they should, why cannot the argument end there? I believe it cannot, not because of the content of their respective views (which is identical) but because of the strategic rationale each can give for it.

4 Liberal and Republican Approaches to Effective Political Agency

I noted at the outset that I did not intend to introduce any artificial distance between political liberalism and republicanism as this paper is part of an ongoing project to develop their rapprochement. However, I do think that while both views exhibit similar strengths and vulnerabilities in how they conceive of the relative balance of liberty and socio-economic justice, it is the republican component of liberal republicanism that offers a more secure context for Rawlsian justice. My argument, in summary, is that both Rawls's account of "ideal based" political theory and neo-Republicanism are concerned with effective political agency. However, Rawls's strategy threatens, inadvertently, to undermine this commitment from within by leaving the implementation of his property owning democracy to the democratic process itself.

I have described the line of left wing argument directed against Rawls that claims that the inequalities permitted under the difference principle will work, through time, to erode the fair value political liberty. (Cohen's critique is a more specific development of that argument.) I have explained how there are resources in Rawls's work to address it, but the neo-Republican has a more direct argument to the same end. The primary goal of politics is to secure robust freedom under law and the values of participation, publicity in deliberation and public virtue are all directed towards the defence of effective political agency. If securing a distinctive form of neo-Republican economy is required to secure the conditions of effective political agency that is a non-optional core to neo-Republican policy. There is a very important substantive issue here: Rawls's ideal of democratic equality trades off the value of effective political agency against the democratic determination of which issues form part of the constitution and which form part of the democratic process.

Rawls's subtle view both requires the implementation of his principles and their sub-part in lexical order and also requires that their overall effect be judged taken as a whole. So, for example, a lexically subordinated principle cannot be implemented if it were to undo the implementation of a prior principle. Rawls's complex justificatory scheme in A Theory of Justice envisages a four-stage process: the original meeting of the parties in the original position is followed, in the thought experiment, by a series of assemblies in which the informational restriction on deliberation is gradually lifted during the constitutional, legislative and executive stages.¹⁹ The problem with this sequence is a subtle one, noted by Stephen Wall in passing during his insightful discussion of the importance Rawls attaches to the fair value of the political liberties:

It might be thought that the fair value guarantee...relates to the four-stage sequence...The guarantee is needed to ensure that the symmetrical situation of the parties in the original position persists through the legislative stage in the four-stage sequence. On this view, the fair value guarantee...is needed to 'mirror' the equality present in the original position. But this thought cannot be right for a simple reason. It overlooks the fact that the four-stage sequence does not describe an actual process. As Rawls emphasises, the veil of ignorance is still in play at the legislative stage. The legislators do not have access to the kind of information that would enable them to exploit inequalities in political influence. Therefore, the fair value guarantee for the legislative stage of the four stage sequence would be superfluous. [Wall, 2006, fn. 42 at pp. 267-268]

So there cannot be, in any part of the sequence, measures intended to secure the fair value of political liberty. I believe that introduces a significant vulnerability in Rawls's overall position.

I will re-state my concern, one that reflects Cohen's influence and the conditional correctness of his argument. Inadvertently, in his attempt to secure the fair value of political liberty, Rawls has left that fair value hostage to democratic deliberation after the four stage sequence is complete. Without an endorsement of the political economy of a property owning democracy morally tainted special incentives will be tolerated that will undermine the very basis of social solidarity that is expressed by our commitment to all three principles. (As Cohen's critics emphasise, those principles come as a package.) A democratic society might, then, choose to implement a property owning democracy or it might not. If not, then we will not be able to rig the outcome of market decisions so as to make them fair and Cohen's critique of Rawls will be back on track. That will lead either to a society that is justly governed, but not just, or, I have argued, to a society in which the very commitment to justice as fairness will be undermined. So whether Rawls's view is self-undermining depends on whether or not due democratic deliberation decides so to undermine it. I submit that is an uncomfortable position for Rawlsians to occupy. The aim of the view was, above all, to allow those who are the worst off to remain free and equal citizens bound up in a system of mutual and reciprocal recognition even when material inequality is permitted. But on the uncomfortable option now before us, a society can democratically decide not to implement the full range of measures implicit in a property owning democracy, such that adjusted procedural justice cannot be left to "take care of itself" (as Rawls hoped it would). Substantial material inequalities will thereby be permitted that undermine the fair value of political liberty. But that value ought to be non-negotiable: it is the practical expression not of a mere status, but of the

exercise of a capacity, namely, our two moral powers. Rawls might have mistakenly believed that this option could be ruled out by his own version of Cohen's argument:

Yet sometimes the circumstances evoking envy are so compelling that given human beings as they are, no one can reasonably be asked to overcome his rancorous feelings. A person's lesser position as measured by his index of objective primary goods may be so great as to wound his self-respect: and given his situation we may sympathize with his sense of loss. Indeed, we can resent being made envious, for society may permit such large disparities in these goods that under existing social conditions these differences cannot help but cause a loss of self-esteem. . . . Since self-respect is the main primary good, the parties would not agree, I shall assume, to count this sort of subjective loss as irrelevant. [Rawls, 1971, p. 534 and p. 468 emphasis added]

In other words, excessive distance between the worst off and the better off will harm the self-respect of the former and self-respect is a primary good. But that argument is only available to Rawls after the background context of adjusted procedural justice is in play; as a response to Cohen, taken alone, it begs the question. It seems to me that Rawls cannot allow an inadvertent inconsistency in his own principles.

In conditionally endorsing Cohen's argument, that is, accepting that in a scenario in which pure procedural justice is not adjusted we would not be able to re-describe motivations that seem to discount justice as presupposing it, I am not overlooking the fact that the overall effect of Rawls's package of principles is to mitigate the effect of the natural lottery of talents, not to redress it. My concern is solely with the one component of Rawls's view that is non-negotiable, which is our standing as free and equal citizens, bound by mutual recognition and self-respect. The fair value of political liberty is threatened to an unacceptable degree even within the range of mitigated inequalities unless the complete implementation of Rawls's scheme is adopted by a given society. However, in his irenic attempt to base a theory of justice on as wide a range of intuitions

as possible, Rawls's first principle is the only part of his view secured in the constitution; the two parts of the second principle are secured in the legislative phase (partly because their interpretation is subject to a great deal of reasonable disagreement) and, as Wall points out, there is no protection for the fair value of political liberty at all until we reach the stage of democratic politics.

Can the republican, and *ex hypothesi* the liberal republican, do better? I believe that he or she can. The solution, in my view, is to return to the overall aim of securing our standing as free and equal citizens by eliminating arbitrary domination. If we prioritise the republican emphasis of the liberal-republican reading of Rawls, we can argue that the specific policies implemented after the four stage sequence not be allowed to undermine, even via unintended side-effects, the liberties specified and mutually adjusted during the constitutional stage of the sequence. We need to re-conceive of the four stage sequence, so that the fair value of political liberty is not undermined.

How is this result to be achieved? In Pettit's version of republicanism, his institutional focus is not derived from a prior, instrumental, concern with freedom as non-domination. He emphasises that institutional design in the republican tradition is constitutive of non-domination. This is separate from his account of deliberative politics, the actual contested process by which we identify those "avowable common interests" that the state's implementation of a just regime of law is intended to track. It is a way of securing a "constitutional provision of non-domination". [Pettit, 1999, pp. 67-68, 95] That, in turn, reflects the most important, and distinctively republican, common avowable interest:

An outstanding matter of common interest amongst people is precisely the interest they each have in avoiding domination by others. [Pettit, 1999, p. 289]

My proposal, then, is that republicanism offers a more secure basis for the fair value of political liberty because whatever institutional measures are required for its implementation and protection are identical to those that secure freedom as non-domination. Freedom as non-domination is the republican's (and political liberal's) implementation of effective political agency. On that basis the implementation of a property owning democracy can form part of the institutional design of a society, allowing the implementation of Rawls's two principles in a way invulnerable to Cohen's neo-Marxist critique.

It might seem to strain credulity to require such detailed macro-economic policies as those implemented in Meade's property-owning democracy to take on the status of constitutional fundamentals. Agreed, but we do not have to present the issue in quite those terms. One can, instead, make a republican case for not simply the basic liberties and the priority of political liberty to the other liberties being a constitutionally secured fundamental, but also the fair value of political liberty itself. We can then propose various institutional schemes for the realisation of subordinated values, such as wide dispersal of property, a scheme of employment of subsidies, and so on. Taken together we might then seek single schemes of implementation that would jointly realise these values, of which, clearly, Meade's scheme would be one well-developed proposal. The aim, then, is not to enshrine the Rawls/Meade view, in all its details, in the constitution but to put in the constitution what one might call a "task specification" for the legislative and executive phases: institutional structures that secure the fair value of political liberty. Pettit believes

that a good polity can secure freedom as non-domination alone in a way that excludes Rawls's package of lexically ordered principles; I think that is, as Charles Larmore has demonstrated, a mistake. [Larmore, 2004] Both political liberalism and republicanism share an evaluative commitment to equal respect for persons. But the republican strategy that Pettit follows seems to me, for the reasons I have given, to suggest a liberal-republican basis for Rawls's own egalitarian commitments more secure than that provided by political liberalism taken alone.

Conclusion

Political liberalism does not require supplementation by an "ethos of justice" as it already expresses one. What it does require is supplementation by a liberal-republicanism that explains the priority afforded to the basic liberties in terms of the basic commitment to understanding freedom as non-domination. A corollary of this view is that the fair value of political liberty reflects a basic commitment to effective political agency. Democratic politics cannot be allowed to be responsible for the undoing of this commitment by permitting substantial inequalities that permit the domination of the worst off by very powerful agents. Yet this commitment is threatened unless that which Cohen identifies as a justice-free zone in which special incentives are permitted can be re-described as presupposing, not discounting, the demands of justice. That requires a particular kind of political economy: a property owning democracy. That requirement, then, is defended by the liberal-republican as basic to the defence of effective political agency. The upshot is that the fair value of political liberty will have to be guaranteed in a constitution. A scheme of implementation for those goals that effectively realise it will constrain

democratic deliberation. Only then will the basis of Rawls's two principles of justice be secure.²⁰

List of Works Cited

BAYNES, Kenneth [2006] 'Ethos and Institution: On the Site of Distributive Justice', Journal of Social Philosophy, vol. 37, no. 2, pp. 182-196.

BURTT, Shelley [1993a] 'The Politics of Virtue Today: A Critique and a Proposal', The American Political Science Review, vol. 87, no. 2, pp. 360-368

BURTT, Shelley [1993b] 'Civic Virtue and Self-Interest', The American Political Science Review, vol. 89, no. 1, pp. 147-151

CARENS, Joseph [1986] 'Rights and Duties in an Egalitarian Society', Political Theory, 14 pp. 31 - 49.

COHEN, Gerry A, [1995a] 'The Pareto Argument for Inequality,' Social Philosophy and Policy, 12 Winter, pp. 160-185.

COHEN, Gerry A, [1995b] 'Incentives, Inequality and Community', reprinted in DARWALL, S (ed) [1995] pp. 331 – 398.

COHEN, Gerry A, [1997] 'Where the Action Is: the Site of Distributive Justice', Philosophy and Public Affairs, 26, no. 1, Winter, pp. 3 – 30.

COHEN, Gerry A, [2000] If You're An Egalitarian, How Come You Are So Rich?, Harvard University Press.

COHEN, Joshua [2003] 'For a Democratic Society', in Freeman [2003], pp. 86-138.

DAGGER, Richard [2006] 'Neo-republicanism and the civic economy', Philosophy, Politics and Economics, vol. 5, no. 2, pp. 151-173

DANIELS, Norman [2003] 'Rawls's Complex Egalitarianism', in Freeman [2003] pp. 241 – 276.

ESTLUND, David [1998] 'Liberalism, Equality, and Fraternity in Cohen's Critique of Rawls', Journal of Political Philosophy, 6, March, pp. 99-112.

FREEMAN, Samuel [2003] The Cambridge Companion to Rawls, Cambridge University Press.

GAUS, Gerald [2003] 'Backwards Into the Future: Neorepublicanism as a Postsocialist Critique of Market Society', Social Philosophy and Policy, 20, pp. 59-91.

GUTTMAN, Amy, [1998] Democracy and the Welfare State, Princeton University Press.

HERZOG, Don [1986] 'Some Questions for Republicans', Political Theory, vol. 14, no. 3.

KROUSE, Richard and MACPHERSON, Michael [1998] 'Capitalism, "Property Owning Democracy" and the Welfare State' in GUTTMANN, A [1988]

LARMORE, Charles [1990] 'Political Liberalism', Political Theory, Vol. 18, No. 3, pp. 339-360 (1990)

LARMORE, Charles [2001] "A Critique of Philip Pettit's Republicanism", Nous: Philosophical Issues, vol. 11, pp. 229-243.

LARMORE, Charles [2004] 'Liberal and Republican Conceptions of Freedom', in D. WEINSTOCK and NADEAU, C. (eds.), Republicanism: History, Theory, and Practice, Frank Cass, pp. 96-119.

MARX, Karl [1844] 'On the Jewish Question', Deutsch-Französische Jahrbücher.

MCMAHON, [2005] 'The Indeterminacy of Republican Policy', Philosophy and Public Affairs, vol. 33, no. 1, pp. 67-93.

MEADE, James, [1993] Liberty, Equality and Efficiency, Macmillan.

MICHELMAN, Frank [1988] 'Law's Republic', The Yale Law Journal, vol. 97, no. 8, pp.

Miller, David [2000]

PATTEN, Alan [1996] 'The Republican Critique of Liberalism', British Journal of Political Science, vol. 26, no. 1, pp. 25-44

PETTIT, Philip [1998] 'Reworking Sandel's Republicanism' Journal of Philosophy, vol. 95, pp. 73-96.

PETTIT, Philip [1997] Republicanism, Oxford University Press.

PETTIT, Philip [2002] 'Keeping Republican Freedom Simple: On a Difference with Quentin Skinner', Political Theory, vol. 30, pp. 339-56.

PETTIT, Philip [2006] 'The Determinacy of Republican Policy: Reply to McMahon' Philosophy and Public Affairs, Vol. 34, 2006, pp. 275-83.

RAWLS, John [1971] A Theory of Justice, Belknap Press.

RAWLS, John [1993] Political Liberalism, Columbia University Press.

SCHEFFLER, Samuel [2005] 'The Division of Moral Labour', Proceedings of the Aristotelian Society Supplementary Volume, pp. 229 – 253.

SENSAT, Julius [2003] 'Classical German Philosophy and Cohen's Critique of Rawls', European Journal of Philosophy, 11/3 (December), pp. 314-353.

SMITH, Paul, [1998] 'Incentives and Justice: G. A. Cohen's Egalitarian Critique of Rawls', Social Theory and Practice, vol. 24, no. 2.

SUNSTEIN, Cass [1988] 'Beyond the Republican Revival' Yale Law Journal, 1539.

DE TOCQUEVILLE, Alexander [] Democracy in America

THOMAS, Alan [1997] 'Liberal Republicanism and Civil Society', Democratisation, pp. 26-44.

THOMAS, Alan [2006a] Value and Context: the Nature of Moral and Political Knowledge, Oxford: Oxford University Press.

THOMAS, Alan [2006b] ‘Cohen’s Critique of Rawls: A Double Counting Objection’, paper presented to the Association for Social and Legal Philosophy (ASLP) annual conference, Dublin.

Wall, Stephen [2006] ‘Rawls and the Status of Political Liberty’, Pacific Philosophical Quarterly.

WALZER, Michael [1984] Spheres of Justice, Basic Books.

WHITE, Stuart [2006] ‘Rawls, Republicanism and Property Owing Democracy’, paper presented to the Association for Social and Legal Philosophy (ASLP) annual conference, Dublin.

WILLIAMS, Andrew [1998] ‘Incentives, Inequality and Publicity’, Philosophy and Public Affairs, 27, 3, Summer, pp. 225 – 247.

¹ Not a development, I should add, of which he approves!

² I gave a paper on a parallel theme at the meeting of the Association for Social and Legal Philosophy in Dublin, 2006, co-incidentally as Value and Context was published, and found that Stuart White was thinking along very similar lines to my argument in Part Four of that book in his own paper at that conference, ‘Rawls, Republicanism and the Idea of a Property Owing Democracy’ [White, 2006]. White argues that, “Classical republicanism is committed, by definition, to a particular sociological thesis about the importance of active political participation to the maintenance of just social institutions. Political liberalism as such does not contain this sociological thesis. But political liberalism does not necessarily deny this thesis; and, if one accepts it, then, as a political liberal, one might also accept the institutional implications that the classical republican draws from it”. [White, 2006, p. 3] The point of agreement between us is that justifications that violate political liberalism must be set aside, but “not if the justification is that political participation and associated virtues are necessary or important to secure just institutions”, [ibid., p. 4].

³ In retrospect some of the earlier discussions of the relationship between liberalism and republicanism generated more heat than light precisely because they were focused on whether one view was correct to the exclusion of the other. Such papers as Burt [1993a, 1993b], Herzog [1986] and Patten [1996] all protested that attempting to write the history of political reflection, particularly in the American tradition, in a way that downgraded Locke and elevated “the Machiavellian moment” was implausible. Burt and Herzog further argued that there were no resources in contemporary reflection for the recovery of republicanism, pointing to the role in the tradition of the all-powerful founder who imposes republicanism in a transformatory way. Patten argued that republicanism added nothing to the content of the liberalism of Rawls and Dworkin (but he explicitly exempted Philip Pettit’s work from his critique). More recent work, particularly that of Philip Pettit and Charles Larmore, has helpfully dropped this issue of mutual exclusion: both liberalism and republicanism are family resemblance concepts with significant degrees of overlap. I will say something about the two issues of substance – the matter of founding and whether republicanism adds anything to Rawlsian liberalism – in this paper.

⁴ Taken together they confirm that a form of republicanism can say something novel about the justification for a view of distributive justice, but the content of that egalitarian theory is not novel: it is Rawls’s original view, interpreted precisely as he intended it to be interpreted.

⁵ Early papers that argued for a rapprochement between liberalism and republicanism were Sunstein [1988] and Michelman [1988]; those papers were not always sensitive to the distinction between the Athenian and Roman traditions within republicanism that are discussed further below. That distinction has been at the forefront of recent work; it separates, for example, such important statements of the republican tradition as Dagger [2003] and Pettit, [1999].

⁶ I exercise some interpretative license here, but I think this makes the best overall sense of Cohen’s argument. He does speak of “conditions for community” and their breach, and connects motivation to membership of a given political community.

⁷ So my conclusion harmonises with that of Dagger [2006].

⁸ This is Larmore’s avowed aim; Pettit’s work, in my view, shows how this convergence is possible, but it is not his aim to demonstrate it. He tends to place artificial distance between his own view and Rawls’s but, as Larmore shows, there is no real conflict here and Pettit is making more precise issues that are in Rawls simply indeterminate as he had no reason to draw the sharper distinctions that Pettit draws. [Larmore, 2004]

⁹ It is ironic that Rawls notes in this passage that the only difference between his views and classic republicanism is the political sociology of democratic regimes as my main aim is to argue that these will, in fact, be identical.

¹⁰ I am not going to discuss the difficult question of the transition from existing political arrangements to a liberal-republican society in this paper, but I do note the concern expressed by critics of republicanism that it gives no account of this. (See footnote 3 above.) Clearly, there will be no epochal act of founding by the kind of coercive means Machiavelli praises. However, the liberal-republican hopes that the contingent history of the adoption of the view and a shared common history will suffice to replace these acts of founding as a focus of a shared identity.

¹¹ Burt [1993a] complains that the republican tradition over-moralises its praise of public interests and is deeply suspicious of private interests; as part of her attempt to ground a motivational basis for republicanism in the motivations of people “as they are” she attempts to connect republicanism to private interest. I agree that the idea of dialogic rationality can bring some unhappy Kantian moralising in its train, with other-regarding laundered preferences that emerge from the process of rational dialogue being contrasted with exogenously given preferences or interests. But this is not a necessary concomitant of the idea of publicity that draws solely on the idea of equal respect for persons. [Larmore, 2004] The republican needs some principled account of which interests are properly part of the political process and which are not.

¹² My own contribution to this debate was to argue that the articulation of themes from the republican tradition was not an option for the political liberal, as his or her view is built around a very demanding ideal of citizenship whose pre-conditions require explanation, provided that this explanation does not violate Rawls’s own constraints on legitimacy. [Thomas, 2006a] I argued that without the option values of citizenship learned and exercised in civil society and without a regime of public virtue in the moral background culture of a Rawlsian state, the emergence and maintenance of political liberalism became very hard to understand.

¹³ This is Rawls’s understanding of an equal distribution where no-one is any worse off than he or she need be and the requirement of efficiency has been taken into account.

¹⁴ It is worth bearing in mind in what follows that Rawls’s use of the term “institution” is very wide: “a public system of rules which defines offices and positions with their rights and duties, powers and immunities, and the like” [Rawls, 1971, p. 5]. He gives as examples “games and rituals, trials and parliaments, markets and systems of property. An institution may be thought of in two ways: first as an abstract object, that is, as a possible form of conduct expressed by a system of rules; and second, as the realization in the thought and conduct of certain persons at a certain time and place of the actions specified by these rules” [ibid., p. 55]

¹⁵ Cited also by Scheffler, [2005], pp. 238-239.

¹⁶ The main line of criticism in Gaus’s objection to the whole idea of a republican political economy (he takes as his target Cass Sunstein) is that it seems to epitomise a moral critique of free market transactions. [Gaus, 2006] However, that objection seems to me to rest on a category mistake: market transactions can be neither fair nor unfair. The motivations and character of those who engage in them can be fair or unfair, for example, by exploiting a threat advantage.

¹⁷ This list requires some caveats, that I have omitted for the purpose of exposition here. First, Dagger is unhappy with the emphasis on inheritance tax if this interferes with the justice of the family. [Dagger, 2006] Second, whether or not a Rawlsian scheme is best implemented via subsidies paid to those who occupy the worst off representative group (such as unskilled workers) or via a guaranteed minimum wage has been interestingly discussed by Van Parijs [2003]. It seems to me that a republican would offer further arguments for the former option than those considered by Van Parijs: if workplaces have been democratised then they are a further context for the exercise of civic virtue and it is better for all citizens to have the opportunity to so participate than not.

¹⁸ Smith goes on to add, “There is a certain irony in the fact that it is the liberal Rawls who conceives economic equalization effected by a structure of institutions to equalize economic bargaining power and it is the Marxist Cohen who conceives equalization effected by morality restraining the exercise of unequal power”, [Smith, 1998, p. 227]

¹⁹ In stage one, then, we have the use of the veil of ignorance and the model of the informationally restricted original position. No institutions are chosen, simply those principles that will be used later to select between proposed institutional structures. In the second, constitutional, stage one’s particular identity is still behind a veil of ignorance but one does know the general facts about one’s society. At this stage, in a constitutional convention, the equal liberties are specified and adjusted. In the third, legislative, stage policies are formulated that implement the second principle for socioeconomic distributive justice. (This division of responsibilities can in turn be seen as a reflection of the lexical ordering of the underlying principles. [Rawls, 1971, p. 199]) The fourth stage is simply that of execution where judges and civil servants regulate the implementation of policy and citizens follow the principles laid down in all the three prior stages with full information.

²⁰ I am grateful to Kathryn Brown for her help with this paper and to both Stuart White and Richard Dagger for very kindly taking some trouble to send me offprints of their papers. In both cases I learnt a very great deal from their work. My indebtedness to Charles Larmore’s recent work on the convergence between his own political liberalism (and Rawls’s parallel theory) and republicanism should be apparent throughout.