Lovett's Conception of Non-Domination and Its Implications for Distributive Justice: An Egalitarian Critique

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Republicanism is often seen as that alternative to liberalism, or variant of it, that provides more promising intellectual resources for critiquing *laissez-faire* capitalism and market society than the available alternatives, most notably socialism (which has, in the eyes of many, been discredited with the end of the Cold War).[1] In particular, the neo-republican perspective according to which the state ought to uphold every person's freedom not merely from coercion, but also from *domination*, is often thought fertile egalitarian territory given its potential sensitivity to ways that people might be wronged short of the obvious harms on which libertarians, and other market-advocates, exclusively focus.[2] In other words, if you worry that people might be unjustly treated in or under a liberal market order, and suspect that limits on material inequality are needed to address this, you might think that republicanism is the school of thought for you.[3] Yet in this paper I provide some reason to think that the most systematic treatment of this neo-republican position to date lacks the grounds for criticising capitalism that its egalitarian sympathisers would wish it to have.

[1] Gaus (2003); Dagger (2006); White (2011).

[2] There are, of course, almost as many "republicanisms" as there are theorists employing the term. In this paper, I restrict my usage to those thinkers who advocate the promotion of non-domination as the central purpose of, and constraint on, political institutions (most notably Philip Pettit and Frank Lovett). This usage of "republicanism" should be contrasted with a usage identifying common ideas and influences across time in the Western canon. As Gaus (2003) puts it: "the idea of 'republicanism' can be detected in Sparta and the Roman republic, the Italian city-states of the Renaissance, the 'north Atlantic' republican tradition of writers such as James Harrington (1611–77) and, of course, in the philosophy of founders of the United States such as James Madison (1751–1836)".

[3] As this comment suggests, I largely restrict my focus to domination in the private realm rather than domination by the state itself. Specification of the former—what Pettit labels *dominium*—is necessary in delineating what, for the republican, is the goal of the state. Specification of the latter—what Pettit calls *imperium*—is necessary in delineating the limits on the state in pursuing this goal.

The brand of contemporary republicanism I am concerned with is associated most closely with Philip Pettit.[4] Nevertheless, I focus on Frank Lovett's *A General Theory of Domination and Justice* for two reasons.[5] First, in this work Lovett has taken Pettit's vision to a new level of precision and parsimony. Lovett certainly cannot be accused of failing to give "domination" a cogent definition,[6] or of providing us with an ideal that is too general to be of assistance for concrete policy analysis.[7] Second, Lovett claims that while his account of justice—which he calls "justice as minimising domination" (JMD)—is, in the first instance, concerned with individual *freedom* (i.e. freedom from domination), it has powerful *egalitarian* implications when it comes to policy in the economic sphere.[8] In particular, Lovett argues that the mandate of minimising domination necessitates an unconditional basic income for all—so that any person in the economy who is dominated—in particular by their boss—can always exit the labour market.[9]

Focusing on Lovett, then, helps to clarify my central contention. On my reading of the republican ideal of non-domination, as best articulated to date, there are always going to be a variety of ways to minimise domination, each of which will carry very different implications with respect to the distribution of goods like work, wealth, leisure, and economic opportunity. In a way, this is not so surprising, as the republican ideal articulates what might be called a "rule-of-law" conception of social justice. Under such a conception, justice is centrally concerned with how social processes are structured in terms of power, rather than with the outcomes of

[4] The definitive statement is Pettit (1996).
[5] Lovett (2010).
[6] In his review of Lovett, Hacker-Cordón (2011) claims that other republican theorists—including Quentin Skinner, Maurizio Viroli, Iris Marion Young, Ian Shapiro, and James Bohman, as well as Pettit—have critically failed to provide a sufficiently concrete definition of domination, despite its use at "rhetorically decisive junctures".
[7] McMahon (2007) and Costa (2007) have criticised Pettit on this basis. For a reply see Pettit (2006b).
[8] Here, Lovett again follows Pettit (1996, pp. 140–43 and 158–63).
[9] Lovett (2010, pp. 193–210). If the reader takes an *unconditional* basic *income* to be politically implausible or empirically impractical, then generous welfare provisions—even if they are *conditional* and *in-kind*—can serve the same place in the argument. I too make this substitution for the purposes of the paper.

those processes. The central insight is that inequalities in power between the actors (individual and collective) partaking in those processes should not be allowed to *freely* determine distributive outcomes. For were this to be the case, some people would not merely have more authority than others, but *personal* power *over* others. And surely any slightly plausible political ideal requires all persons to have equal status. As such, the republican recommends instead that law constrain, mould, and shape whatever power inequalities there might of necessity, or permissibly, be.

Under the republican ideal of non-domination, law should normally obligate persons to act in a given way (as well as ensuring, as a practical matter, that they *in fact* act that way), rather than leaving it up to them to decide what they will. And in those fewer occasions when the law need not dictate choice, thereby permitting some freedom to choose—law ought nevertheless to establish the *end* towards which that choice is directed. So, for example, slavery is the epitome of injustice as far as the republican is concerned—no matter how benevolent the slave master, or happy the slave—because what the slave will be directed to do is left entirely to the slave-master to decide (indeed, the slave-owner's ultimate discretion with respect to his or her slave figures prominently in the *definition* of slavery).[10] However, even if the law *somewhat* constrained what slave-owners might do with their slaves—forbidding certain forms of corporal punishment, say, but legally permitting all other possible choices of the master—slavery would still be unjust to the extent that the end towards which the slave-owner might direct their slaves remains a matter of their private will. They may well direct their slave to work at some minimally burdensome task that most freemen would envy; but they *could* equally well command them to submit to physical pain in order to satisfy some sadistic proclivity.

[10] Pettit (1996, pp. 31–35). In this section, Pettit quotes authors from the three post-ancient periods that Gaus links to the republican tradition: namely Machiavelli, Harrington, Priestley and Price.

It is not surprising that a rule-of-law conception of social justice might be indifferent between distributions—at least across some range of distributive outcomes—because the law can, of course, take many different *forms*. As long as different forms of the law have different distributive implications then, a purely rule-of-law conception of social justice will be indifferent between them. However, this may not be so obvious to the reader. In particular, it might be thought that the republican conception of non-domination is sufficiently subtle to provide critical resources that are *immanent* to the law. As such, while the republican conception of justice remains a rule-of-law conception, only *one* possible form of law, and therefore distributive outcome or set of distributive implications, might be thought to be tolerated by that conception.

In the following pages, therefore, I will attempt to explain why I believe that the republican conception of justice—the ideal of non-domination—does not necessitate the egalitarian constraints that Lovett recommend. I will proceed in the following manner. First, I will outline Lovett's account of the concept of domination. This discussion will be far too brief to do justice to Lovett's book, but will nevertheless be useful to the unfamiliar reader. Having done so, I will be in a good position to briefly remind the reader why republicans have seen non-domination as central, or indeed exclusively constitutive of, "justice" (i.e. that normative account of the state's mandate and the constraints on the means it might use in fulfilling that mandate).

In the remaining sections of the paper I make my six substantive arguments. The first is that JMD appears oddly unmoved by what seems like an obvious injustice—the imposition by one actor of a material cost on another actor without the latter's consent—just so long as the two actors involved are not in a "social relationship". Second, JMD seems to ignore the plight of needy people as long as they are not in a position to trade away their freedom from domination (by, for example, entering an employment contract entailing domination). Third, Lovett's ideal

of justice is confusingly indeterminate when it comes to the problem of tackling domination in the workplace (a problem that arises when the *only* constraint on how employers might treat employees—and why they may treat them in that way—is the possibility of employees resigning).[11] Lovett and other republicans argue for generous welfare entitlements, so that any person subject to domination in the workplace could always exit that relationship. But it would seem that *banning* labour contracts that would facilitate domination would fulfil the ideal equally well. Surely we need some other value beyond that of non-domination—in particular egalitarian ones—in order to balance these two policy options? Indeed—and this is my forth point—the republican account of what constitutes a morally problematic relationship between employer and employee finds it difficult to recognise such relationships if they occur in a perfectly competitive market (as the cost of any worker resigning in such a context is zero). Fifth, even if we say that the *unemployed* poor are still in salient social relations—and might thereby be dominated—tackling domination by instantiating law is insufficient for justice to be secured. Surely the law must take a form that is sufficiently sensitive to the needs of the disadvantaged to be fully justified? Finally, a very similar point can be made with respect to the relationship between boss and worker: we want the boss's power to be both limited and directed by law. However, we need other values to ensure that this law takes the right form: one that does full justice to workers.

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[11] Other scholars have argued that republicanism is indeterminate in its policy recommendations—see McMahon (2005; 2007) and Costa (2007). My criticisms are distinct both in that (a) the indeterminacy I

In the view of its critics, liberalism is insufficiently sensitive to ways that people might be wronged that fall short of coercion or other violations of consent. That is why republicans additionally seek to secure people from *domination*, and are not afraid of a little state coercion—provided that that state takes the appropriate form of a constitutional democracy—to achieve that end. As Michael Walzer characterises the relevant political ideal, a "society free from domination" is "the lively hope named by the word equality: no more bowing and scraping, fawning and toadying; no more masters, no more slaves".[12] Or, as Philip Pettit puts it, the non-domination ideal addresses the inevitable social inequalities entailed by "having to live at the mercy of another":

> It is the grievance expressed by the wife who finds herself in a position where her husband can beat her at will, and without any possibility of redress; by the employee who dare not raise a complaint against an employer, and who is vulnerable to any of a range of abuses, some petty, some serious, that the employer may choose to perpetrate; by the debtor who has to depend on the grace of the moneylender, or the bank official, for avoiding utter destitution and ruin; and by the welfare dependent who finds that they are vulnerable to the caprice of a counter clerk for whether or not their children will receive meal vouchers.[13]

Not all scholars have been as precise as they might have been in pinning down the meaning of "domination". But Lovett gives us a definition that allows us to differentiate those inequalities in power or authority that are normatively troubling from those that are not.

Lovett's conception of domination is made up of several interrelated parts. First, domination can only occur when two or more actors (individual persons or collective agents) stand in a *social relationship*.[14] According to Lovett, a social relationship is in place as long as what it is best for one actor to do depends on how the other actor behaves, or is likely to behave

[12] Walzer (1983, p. xiii).
[13] Pettit (1996, p. 5).
[14] Lovett (2010, pp. 34–38).

in response. In other words, a social relationship is in place between two actors just as long as their interaction can be modelled, in game theoretical terms, as one in which neither has a *dominant strategy*. To give an illustrative example, a social relationship exists between a typical employee and employer because the former must consider how the latter is likely to respond when determining how he or she should act in the workplace. How to treat colleagues, whether to try to shirk burdensome responsibilities, whether to ask for overtime or seek to impact executive decisions: how to act in all these ways will depend on how the employer will respond. Will they be encouraging or punitive? How will their response bear on how the employee's future work-life or career trajectory will turn out?

In contrast, the seller and prospective purchaser of a copy of the New York Times at a bustling station newsstand are not in a social relationship. It doesn't really matter how the prospective purchaser behaves—whether he or she is surly and rude, or obsequious and flattering—they won't get a better price. On the other hand, there is nothing the seller can do to receive a higher payment—whether by adopting an aggressive or acquiescent negotiating strategy. The market for newspapers is sufficiently competitive that either party could find another trade partner willing to exchange at the market price.

Not all social relationships entail domination (either by one or both parties), however. First, an agent within a social relationship is potentially subject to domination only if the costs of exit from that relationship (in their view at least) are sufficiently high. *Dependency*, in other words, is a necessary (but not alone sufficient) condition of domination.[15] Thus, for example, an employee is not dominated by his or her boss no matter how much mental strain is expended in smoothing the waters of that relationship as long as the employee is independently wealthy—and could easily be without the job in question.

[15] Lovett (2010, pp. 49–52).

Finally, and most significantly, a dependent member of a social relationship is only subject to domination if the other member of that relationship—the actor whose behaviour they must respond to and anticipate—can exercise their choice on an *arbitrary* basis. It is not merely power, or an inequality of power, in other words, that makes for domination; it is *arbitrary* power—power that is unconstrained or influenced by effective social or legal norms (Lovett says "rules, procedures, or goals" that are "common knowledge to all").[16] This is what makes the power of the slave-master the epitome of domination. Contrast the power of the slave-master with the power of an employer, even in a labour market that is uncompetitive (and in which, therefore, the employee is at least somewhat dependent on his or her employer). Both the slave-master and the employer exercise choice over others with whom they stand in some relationship. But only the slave-master is *entirely* unconstrained in that choice. In contrast, the employer is limited, both with respect to how he or she may use an employee as a *means* (by the stipulations of the labour contract and whatever workplace regulations are in place) and with respect to the *end* towards which those means are directed (while the employer is limited, to a degree at least, by the dictate of profitability, a slave-owner is free to indulge their sadistic compulsions, if this is what they so wish).

I.

Perhaps what is most odd about Lovett's conception of justice is that it appears to sometimes exclude from justice's concern the imposition of costs (i.e. externalities) on others. This seems strange because if there is anything that is uncontroversial in debates about distributive justice—and very little is—it is that material contraventions of the harm principle are, in ideal theory at least, wrong. To be fair, Lovett's conception of non-domination does not exclude all such

[16] Lovett (2010, p. 111).

impositions, only those where the unfortunate recipient lacks any resources—in the form of behavioural options—that would deter, or at least limit, the harmful behaviour. However, at least in this range of cases, Lovett appears to lack the intellectual resources to condemn the relevant behaviour. Such cases fall outside the remit of justice because when there is nothing that someone subject to an externality can do to get the actor who is responsible for that imposition to alter their behaviour, those two actors *cannot be said to be in a social relationship*. And if the two are not in social relationship, there no possibility that one is dominating the other, no matter how great the costs of escaping the situation or unconstrained by effective social or legal norms the actor responsibility for the externality might be.

To see what I find troubling, consider the textbook scenario in which a factory dumps pollution onto a neighbouring farm. It seems to me that there are very few people indeed that could envisage such an act as being consistent with justice. But suppose that there is nothing that the owner of the farm can do to get the factory to reduce its waste. Say that the owner of the factory does not have anything by way of a moral conscience (perhaps it is a corporation) and has a formidable team of security guards and lawyers, so that they cannot be swayed by pleading or threats. Further suppose that the farmer is poor—and doesn't have access to the financial means to purchase a reduction in pollution—or that the factory-owner wishes to drive the farmer off his/her land as part of an expansion strategy, such that they would not reduce pollution for any price.

This would seem to me to be a paradigmatic instance of injustice. But notice that if there is nothing the farmer can do to get the factory-owner to change their behaviour (i.e. the factory owner has a "dominant strategy", to use the language of game theory), the two actors are not in a social relationship. And if they are not in a social relationship, the factory-owner cannot be

accused of domination, no matter how costly it might be for the farmer to escape the situation or unconstrained and therefore arbitrary the factory-owner's power might be.

Indeed, Lovett illustrates a way in which persons might stand with respect to one another that does not constitute a "social relationship" (and which, therefore, is a non-starter as a candidate for a social tie entailing domination) with an example that is almost as controversial:

> "Not all relations among people are social relationships, so defined… A classic example is the so-called tragedy of the commons scenario. Imagine a group of families sharing a common lake. Each family can, with some degree of effort, properly dispose of their waste, or else, with no effort, merely dump it in the lake. In the former case, each family must bear the entire cost of the proper disposal themselves; in the latter case, since their waste is dissipated thought the lake, each family hardly notices its marginal contribution to lake pollution… But from each family's point of view, it does not matter what the other families do: regardless of whether the others pollute the lake or not, the trade-offs facing each family individually favour polluting. This, of course, is ultimately worse for everyone (hence the tragedy). But the relevant observation here is a narrow one. Since the preferred course of action for each individual in such scenarios does not depend on what others do, they are not engaged in a social relationship.[17]

Now, say that *every* family would be *equally* better off if they *all* paid for proper waste disposal (rather than dumping their waste in the lake). Whether it would be wrong for any *particular* family to do so or not is clearly beyond the remit of this paper—certainly the question is open to scholarly debate. Kantians would be tempted to say that it would be wrong for a particular family to drop their waste in the lake—even if at least some other families did so—because the action-governing maxim "dump waste into the lake" cannot be *generalised* without contradiction (either the common-pool resource would be exhausted—rendering dumping waste an impossibility—or else our family would be worse off if *all* families acted on this same maxim). While Hobbesians of a certain stripe might say that it is only wrong to dump waste in the lake if there is assurance that *other* families will not do so (as would probably be the case in the absence

[17] Lovett (2010, p.35)

of effective legal sanctions). The pertinent point, however, is that it seems too swift to say that one does no injustice in imposing costs on others, contributing to a collective action problem, and free-riding (at least when some others refrain from polluting) *merely* because there is nothing that others could do to disincentive you from acting in this way.

One does not have to consider the complexities of common-pool resources or public-good provision, however, to gauge the general concern. Even in a world lacking such complexities—a Coasian world of comprehensive private property rights—the problem is obvious. To impose a cost on another person—at least a serious material cost of the right kind, as in the example just provided—is surely an injustice, regardless of whether the person subject to it has any options before them that might mitigate the problem. Indeed, perhaps we should be *particularly* worried about the imposition of costs on others when those others lack any power to limit those costs. When people lack the power to protect themselves, imposing costs on them does not seem like a mere mal-distribution, but a *demeaning* way to treat a *vulnerable* agent.

A related but distinct problem with Lovett's account of justice can be seen if one considers cases in which the person subject to a negative externality *does* possess options that might mitigate the problem. Consider again the case of a farmer who sees his land degraded by pollution. This time, however, let us say that he or she possesses sufficient financial resources to pay—after a price has been negotiated—for a reduction in that pollution. It is clear that, in contrast to the former permutation of this hypothetical scenario—the farmer and the factory-owner now stand in "social relation". (The factory-owner no longer has a dominant strategy, as it might be worth his or her while to reduce the level of pollution, or cease polluting altogether, if the farmer can make an attractive enough offer.) If the factory owner is, then, *dependent* on this relationship (let us say no one will buy his or her land in its current state, so there is no way of

escaping the situation) and there are *no effective social or legal norms—rules or procedures—constraining* the factory-owner (he or she is free, for example, to hold out for a higher price purely out of spite, should they so wish), then it is clear that the farmer is dominated.

My contention, though, is that securing justice in this case requires more than the imposition of *any* such norms, but rather the imposition of norms of the *right kind.* Consider a legal regime under which prices for pollution-mitigation are regulated (say that they may not deviate from what economists model as the price in a perfectly competitive market), and polluters who are considering accepting payments are effectively constrained by the mandate of profit-maximisation (they cannot, for example, indulge their personal prejudices for fear of running afoul of anti-discrimination legislation). Although our farmer would not be dominated in such a world, they could surely still be treated unjustly. Most people subscribe to some general proposition that, like Mill's harm principle, condemns a polluter who dumps waste onto a neighbour's land—even if, in doing so, that polluter refrains from crossing some threshold that they have been paid to respect. If we are right in thinking this, then there remains an injustice as long as the legal norm that constrains the factory owner does not *force him or her to bear all the costs of pollution*—even if *any* legal regime would effectively combat domination. A legal regime under which there is a *de facto* right to pollute, in other words, is not consistent with justice; a legal regime under which polluters must pay for the full-costs of their activity is.

II.

Recall that Lovett and other republicans argue for generous welfare entitlements.[18] The worry here is that, in the absence of such provisions, very needy people will *trade away* their freedom from domination. Consider the position of people who are miserably poor. No matter how robust their sense of self-worth—and their desire to see their equality of status reflected in their relationships with others—they might well consider it worth the sacrifice to give up their freedom from domination in return for satisfaction of their basic needs. At the extreme, it is not inconceivable to imagine someone selling themselves as a slave, or into bonded labour, in order to secure their survival. But it might be more instructive and useful to imagine something short of this. Picture a developed country with a very meagre social safety net. It seems more likely that, in such a setting, poor people will consent to job offers that proffer unspecified power on the part of bosses, than they would if there were adequate welfare provisions for persons lacking work. This sort of labour contract, in which bosses might demand almost anything of workers, and in which the only constraint on bosses' choices is the possibility that workers might quit—something that is highly unlikely if one's basic needs cannot be met without work—represents the epitome of domination in the modern world. The argument for generous welfare entitlements then, is that persons who are relatively poor must not be *so* poor as to face an incentive to sign-up to jobs that will involve domination by bosses.

There are, however, several problems with this argument. First, it seems to wrongly downplay the needs of people who are not in a *position* to trade away their freedom from domination. Consider two members of the same political unit (however defined). Both of these persons are in dire poverty—such that they would willingly trade away their freedom from domination for a humiliating job—but only one of them lives in a region that is sufficiently

[18] Dagger (2006); Pettit (2006; 2007); Lovett (2009; 2010, pp. 190–200); White (2011).

prosperous to actually proffer such economic opportunities. Say that one of these persons lives in a bustling city, while the other lives in an isolated post-industrial town. Or—if one maintains that distributive justice is global in scope—one of these persons is a Chinese peasant living close to the economically dynamic east coast, while the other lives in a failed state in Sub-Saharan Africa. It seems clear to me that minimising domination would dictate that the former person ought to be provided a social safety net, but the latter need not. But there is at least some case to be made for the view that the *opposite* should be the case. When it comes to the very poor, surely we should be most concerned with helping those who *lack* opportunities to improve their condition (however inconsistent with equality of status these opportunities might be)? For they are the ones for whom there is no other means available to secure satisfaction of their basic needs.

It may well be that there is a way to deal with this problem that relies on the distinction between beneficence and justice. It might be, in other words, that something is *also* owed to those who are both in dire need and not in a position to trade away their freedom from domination, but the basis and nature of the relevant obligation is different to that which is owed to persons vulnerable to relationships of domination (such as, for example, labour contracts facilitating domination). Perhaps those in dire need are owed *beneficence* or *charity*, while persons likely to enter relationships of domination are entitled to provisions as a matter of *social justice*. There may be something to this view. However, such a view will remain troubling to egalitarians as long as beneficent duties are taken to be weaker than obligations of justice. After all, obligations of beneficence are usually thought (a) secondary to obligations of justice, such that the latter must be fulfilled first, (b) imperfect, such that persons are accorded considerable

latitude in how they might choose to fulfil them, and (c) outside the remit of political obligation, such that it would be wrong for the state to coerce persons into fulfilling them.

III.

Perhaps a more serious problem for Lovett's conception of justice as non-domination, however, is that there is more than one way to prevent people from trading away their freedom from domination. In other words, the ideal of non-domination is indeterminate, at least with respect to this important case. True, one way to deal with the temptation of poor people to sell themselves out of non-domination is to provide them with sufficient resources to render such an exchange unattractive. But a solution that might be thought more straight-forward would be to *ban* such exchanges.[19] Every state in the world has a ban on slavery. Why not extend such a ban to labour relations that fall short of slavery, but are nevertheless unjust under the ideal of non-domination? In effect, of course, most if not all countries regulate the labour market in such a way that employment relations that would otherwise occur are prevented. In the absence of occupational health and safety laws, for example, people might well sign contracts entailing health risks that are deemed socially unacceptable—even if they knew the dangers. Why doesn't minimising domination instead require similar regulations, albeit ones that are explicitly motivated and limited by the unifying rationale that persons ought not to be *dominated*?

Lovett is aware of the possibility that domination in the workplace might be countered via regulation (specifically the barring of labour contracts that, if signed, would lead to domination of employees by employers) rather than more generous welfare entitlements. However, he worries that any state that sought to regulate labour contracts in such a way would

[19] Harbour (2012) points out that promoting non-domination make require interference of this kind.

itself "become a great source of domination".[20] This response is, however, inadequate. First and most importantly, it is not clear how any system of *legal* regulation, properly implemented, could entail domination—no matter how much that system might interfere with liberty as conventionally understood, or stifle allocative efficiency and impede economic growth.[21] Recall that, according to Lovett, domination only occurs when one actor might act with respect to others (specifically those others with whom that actor is in a strategic relationship) in a way that is effectively unconstrained by "rules, procedures, or goals" that are known to all. But the point about *legal* interference is precisely that that it is rule-governed and goal-orientated, rather than arbitrary. When the government establishes, under constitutional procedures, that its goal is to prevent domination, and issues legislation (i.e. rules) which, if effectively implemented, would achieve this, domination cannot be a concern. Even when some bureaucratic official has the power to permit or deny a particular contractual arrangement, they cannot be accused of domination as long as they follow the established decision-procedure for a case of this kind—or at least base their discretionary choice not on personal prejudice but on promoting the public goal that is their professional responsibility. The other reason why Lovett's response is inadequate is that it is not clear that taxation and redistribution (as necessitated by generous welfare entitlements) would be any less intrusive. Indeed, to the extent that people always have an incentive to avoid tax, it may need to be much more intrusive. In contrast, persons subject to domination often have reason to bring their situation to the attention of legal authorities.

It isn't clear, therefore, that minimising domination requires generous welfare provisions. Indeed, it would seem as if eliminating domination in the workplace is consistent with a series of policy alternatives—from only regulation on the one hand, to only welfare entitlements on the

[20] Lovett, (2010, p. 197).
[21] Pettit (2006).

other, with a whole range of mixtures in between. My contention, then, is that a full account of justice—one that can give us guidance in picking between these alternatives—must integrate other values. I suspect that egalitarians would argue that there are independent reasons to prefer generous welfare entitlements to regulation, even if *part* of the motivation for the former is addressing the wrong of domination. I think they would also argue that regulation of labour contracts would be required *even if* generous welfare entitlements meant that no worker was dominated in their work relations—to ensure that, for example, they received a fair wage (I return to this point under VI below).

IV.

There is another problem with Lovett's argument that countering domination in the employer–employee relationship requires generous welfare provisions. Consider the position of an employee who is party to a significantly-incomplete labour contract with a boss. Say that the contract says nothing about what hours are to be worked, under what circumstances overtime will be required, when leave is permitted, etc. Further suppose that that worker lives in a country with limited enforcement of workplace regulations, so that, at least with respect to work hours, bosses are free to base their decisions on any grounds that they should wish. It is obviously tempting to say that such a worker is dominated. When they choose to arrive and leave work each day, when they seek leave, and for how long they request leave, will all depend on how they think their boss will respond. Will they take the worker's choice as signalling a lack of commitment to the business, and penalise them, or will they see these choices are reflecting a healthy view of work–life balance, and reward them? But notice that Lovett's definition does not allow us to say that such a worker is dominated as long as they are not *dependent* on the

relevant job (both dependency and arbitrary power are necessary, the reader will remember, for a social relationship to be deemed one of domination).

Imagine, then, that the relevant labour market is *perfectly competitive*, so that the cost of exiting any particular labour contract—the cost of quitting or being fired—is zero. This is because there are, out there in the world, a near-infinite number of identical employers offering identical labour contracts (as per the definition of a perfectly competitive market). It would seem that we cannot say that workers who are party to such contracts are being dominated—no matter how much they must kowtow to their employers. Although such workers are certainly subject to the arbitrary power of their bosses, they are not *dependent* on the relationship that entails that arbitrary power.[22]

The implication for social policy, therefore, would seem to be that generous welfare entitlements are only necessary for those persons who operate in labour markets that are not perfectly competitive. In competitive sectors, however, unemployment benefits may not even be required. But from an egalitarian perspective, this would seem to be precisely the wrong way around. Arguably, we should be particularly concerned about workers who are worse off all-things-considered, particularly workers in low-wage jobs. Yet it is precisely low-wage jobs that are most likely to be in sectors that are competitive in labour supply. Also, surely we ought to be less concerned about people who are in a position to negotiate their salaries and conditions (and are therefore not in a perfectly competitive market, by definition). For to be in a position to negotiate one's contract means that one has a rare skill or particular ability, and are therefore likely to command a higher salary and greater social esteem.

[22] Lovett himself says that no pair of buyers and sellers in a perfectly competitive market are, being price-takers, strategically situated, and therefore cannot be implicated in domination of one another. See Lovett (2010, pp. 35–36, 53, 63, and 79). For other discussions of the way that market competition might promote freedom from domination, see Pettit (2006) and Jubb (2008).

Indeed, it might even be said that the republican ideal of non-domination only requires unemployment benefits for workers whose skills place them in a labour sector that cannot be *made* competitive. There are various ways that the government can promote competition; laws against collusion and predatory-pricing are only the first step. Competition can also be promoted by subsidising market entry (for new employers)—either directly or indirectly, as via funding for education, research-and-development, and infrastructure. The problem for Lovett's conception of non-domination, in other words, is not only that it is indeterminate between providing generous welfare entitlements and regulating labour contracts, but that it is indeterminate between either of these options (or some plausible combination of the two) and a third alternative: namely promoting competition in the labour market. Again, the egalitarian will be tempted to argue that in balancing the former policy options against this third alternative, we need to consider some other values. In particular, egalitarians will tend to argue that competition policy is valuable to the extent that it promotes efficiency, but ought to be supplemented by policy to maximise the advantage of the *worst-off*, or to reduce *unfair inequalities*.

V.

Let us change course for a moment, move away from the relationship of domination between employer and employee, and return to the case of the unemployed first discussed under II above. Recall that, in this section of the paper, I made the claim that the republican ideal of non-domination appears worryingly indifferent to the situation of disadvantaged people who are not in a *position* to enter a relationship of domination. Because such people are in no danger of entering dominating-employment, so the argument went, the republican need not provide them with welfare entitlements to dis-incentivise such a move. It may be, however, that the republican

has a rejoinder here. Even if there are some very needy people who are not in danger of entering dominating-*employment*, they might still be dominated, or in danger of domination, via a social relationship of *another kind*. The republican might thereby justify measures to assist them.

Consider the position of an unemployed person living on the street. Say that this person has a mental illness that makes them a very unattractive employee as things stand (with their illness being untreated). Were employment the *only* relationship which that person might enter into, JMD would not require providing them with assistance, no matter how great their need or deserving they might be. But other activities that that person might engage in could bring them into something that would constitute a social relation: consider begging, or collecting bottles from the recycling containers of local restaurants to later exchange for cash. Either of these activities entails social relations just as long as certain ways of engaging in these activities will be more effective than others. Clearly, some begging strategies will alienate or frighten passers-by, while others will elicit their pity. And some ways of behaving while collecting bottles will provoke restaurant managers to interfere with the activity, while others will not. It seems probable, then, that even those disadvantaged people who are not in a position to enter employment will still be in social relationships (on Lovett's definition).

Lovett is certainly cognisant of the fact that not all social relations, and therefore relations that might entail domination, are cooperative. Indeed, in line with Pettit and other republican writers, he specifically mentions dependence on *charity* as a paradigmatic case of domination:

> Because we do not regard the satisfaction of basic needs below some minimum level as optional, when unable to satisfy them on our own we become dependent on the charity of those with the ability to do so for us. "Private charity breads personal dependence," Michael Walzer writes, "and then it breeds the familiar vices of dependence: deference, passivity, and humility on the one hand; arrogance on the other…" It follows that being dependent on a person or group who has the power to arbitrarily withhold the goods or services necessary to meet

> one's basic needs… amounts to domination. The fact that the person or group in question happens to charitably supply them, if indeed they do, is neither here nor there.[23]

The problem, however, is that an actor soliciting charity is only dominated if the extent to which their needs are satisfied is left to the private whims of fortunate others, rather than being effectively constrained and directed by some legal or social norms—whether rules, procedures, or goals—that are common knowledge. Consider the following scenario: there is a strong social norm—i.e. one that almost all people are motivated to abide by—condemning giving money to the homeless. Say that according to prevailing religious beliefs, homelessness and mental ill-health are thought to be punishments from God, such that it would actually be *wrong* to assist beggars. It seems that the ideal of non-domination would see nothing wrong (from the perspective of justice at least) if the homeless were to die of starvation. This is, of course, an extreme scenario. It is difficult to envisage a society in which, even if a *starving* person were to beg for money, no one would assistant them. I call on this somewhat implausible hypothetical only to illustrate a more general point: namely that the republican conception of justice is too thin to tell us what the social norm regulating the relationship between the very needy—those persons who are so disadvantaged that they cannot hope for employment—and their fellow citizens should actually *be*. Should these norms dictate generous and unconditional assistance, or meagre and highly conditional provisions?

It might be thought, however, that this is not a very instructive example. If nobody would provide the homeless with charity no matter what they did, then it is not that their social relations no longer entail domination, but that they are not in social relations *at all*. This is not the only example, however, that can be called upon to make the same point. Picture a scenario in

[23] Lovett (2010, p. 195).

which there is the following norm: advantaged people should give to those homeless people they encounter any coins that they might have, but nothing more, regardless of whether the latter behave so as to inspire sympathy or fill onlookers with repulsion. It certainly seems sensible to say that, in a scenario like this, beggars are free from domination. For they face no pressure to toady-to or charm passers-by. If, their situation makes them hurt, angry and frustrated—and justifiably so—they are free to express this, and won't be further disadvantaged by doing so. But can it really be the case that justice is indifferent between a scenario in which homeless people are provided with mere pennies to one in which the state provides meals, housing, and treatment for mental health problems? Once again the egalitarian would argue that our public reasoning must be informed by other values if we are to be able to make a defensible choice amongst various ways of tackling homelessness.

VI.

An analogous point, indeed, can be made with respect to justice in the workplace. Recall how in section IV I made the argument that it is not clear that a boss can ever be accused of dominating a worker—no matter how unconstrained that boss's power (imagine them making their employee's work-life living hell for sport)—so long as the labour market is perfectly competitive. This is because, in a perfectly competitive market, the cost of exiting any *particular* employment relation is zero, and therefore no worker can be said to be dependent on their employer. This, however, may misconstrue how we should think of dependence. It is at least clear that a capital-poor employee in an adverse relationship with an employer faces greater pressure to remain in his or her current situation (despite exit costs being zero) than does the capital-rich employee who could always strike out on their own, as an entrepreneur. It might

even be that we should say that an actor in a relationship is dependent—even if there are a whole range of other relationships they could easily enter instead at minimal cost—just so long as these alternatives are sufficiently unattractive.

Introducing a sufficiency threshold of this kind would require, of course, allowing values beyond non-domination (at least as Lovett defines it) to intrude on the republican conception of justice. However, doing so may actually enable us to preserve its spirit, as it seems indisputable that perfect competition can coexist with the woes of arbitrary power. Picture a labour market for low-skill factory workers in a vibrant industrialising region of a developing country. Further suppose that despite the dynamism of this region, with new factories being built every day, workers are signatories to significantly-incomplete labour contracts (contracts that could be made more complete, better explicating both party's particular legal duties across the full range of plausible states of affairs, without significant social cost). Now, imagine that the government of that country has few workplace regulations in place—health and safety standards, equal opportunity and anti-discrimination legislation, and the like. Further suppose that there is no social-safety-net in this country, such that unemployment is not a viable option.

Surely the workers in such a market are dominated? Their bosses can act almost exactly as they like. And the workers in this scenario face all the problems that cast non-domination as such an appealing justice ideal. First, they cannot tell (given the absence of effective legal constrain on their bosses) just what any particular work day will bring, and must suffer the stress and anxiety attendant on this uncertainty. Second, because they can never be entirely certain how their bosses will react to their behaviour in the workplace, they can never relax—be themselves or speak their minds. Rather, they must constantly be in strategic mode, seeking to provoke only those reactions from their bosses that will allow their workday to run smoothly.

Not only is being in this mode burdensome and alienating, but to the extent that the worker has to act deferentially and kowtow to his or her boss, it is also demeaning. Finally, and *even if their bosses are sufficiently predictable and benevolent*, workers in such a situation are clearly subordinates. The structure of their relations with their bosses gives the latter not merely greater professional authority, but personal power *over* the former.

Let us accept, then, that workers in such a world *are* dominated—regardless of how competitive the labour market might be—and consider what the republican account of justice would recommend. The reader will recall that one option that is consistent with this ideal—if not necessitated by it—is regulation. The government could *ban* labour-contracts that bring into being relations of domination between employers and employees. The reader might wonder, however, what sorts of contracts would fall short of this benchmark. Clearly, what is at issue is not how much workers are paid, or whether their health is protected in the workplace, but the manner in which bosses exercise authority. On my reading of the republican conception of justice, regulating labour contracts so as to prevent domination would require barring only those contracts that are significantly *incomplete*. A complete contract is one that fully specifies the rights and responsibilities of the parties to that contract across all workplace scenarios that could conceivable arise. In doing so, it effectively constrains bosses—no matter what the power imbalance with respect to their employees would otherwise be—to act in this or that way, or to make their decisions in line with this or that goal. More-or-less complete contracts, in other words, remove bosses' capacity to act on an *arbitrary* basis—at least when they are enforced. Instead, bosses must act as the contract dictates. In a way, the employer in a complete contract no longer has power *over* an employee at all. Rather, the *contract* has power over both employer

and employee. As such, it can plausibly be claimed that while boss and worker occupy different positions in the division of labour, these positions have equal status.

In contrast, an incomplete contract gives that party with greater bargaining power a free license to use their leverage whenever they want, and for whatever ends they want. For illustration, consider again the example of a contract that is incomplete in that it says nothing about the basis on which leave will be granted (neither the grounds on which a worker will be granted leave, nor the guidelines that management will use to make that determination). A worker who is party to such a contract is necessarily, I think, in the insecure position of someone who is subject to arbitrary power. They are certainly unable to know ahead to time whether they will be able to get leave when they actually need it. This uncertainty not only entails psychological strain, but makes planning difficult. The worker must always have back-up plans in place, and must put off making necessary decisions about any leave period until after leave is granted. They must also be in a strategic mode, only asking for leave at the right moment, and only for a period that won't inconvenience their boss. If someone is party to a labour contract that does not specify when they are *entitled* to leave, they cannot stand on their rights in the knowledge that the law will protect them. And even when bosses are predictably benevolent, such that neither of these problems are particularly worrisome, it is undeniable that they are superordinate, and any leave that the worker might get is at the boss's grace.

I certainly think there is something to the view that justice requires more- rather than less-complete contracts—or otherwise workplace regulation to fill the gaps left in labour contracts. I disagree with the implication of JMD, however, that this is *all* that justice requires. Imagine that the state intruded into the example above, requiring that contracts include detailed provisions specifying leave entitlements. I don't think that justice ought to be indifferent

between a contract specifying that no parental leave will be granted with one that specifies some period of parental leave. Remember, too, that a lack of provisions concerning leave is just one of a myriad of ways in which a contract might be incomplete. What sort of health and safety protections a worker is to expect ought, I think, to be specified at the time of employment (either directly in the contract or via government regulation to fill a gap left in an incomplete contract). And whether race, gender, or sexual orientation will be a barrier to promotion ought also to be clear. But this is not *enough* to secure justice. Even non-egalitarians would admit that a contract that specifies that race will be an explicit barrier to promotion is inconsistent with justice all-things-considered.

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Despite being, in the first instance, a specification of freedom, the ideal of non-domination is admirably accommodating of a significant egalitarian complaint. Proponents of equality have long worried that the material inequalities that will inevitably arise under a classically liberal, and market-orientated, order will ultimately result in a society in which citizens can no longer look one another in the eye. In seeking to eliminate arbitrary power and personal subservience—and bring inequalities in *power* under the constraint and direction of law—the republican ideal goes a long way to address this concern. At least as defined by its most systematic defender, however, this ideal does not go far enough. Even in a rule-governed order under which no agent—individual or collective—can exercise their private discretion in such a way as to disadvantage vulnerable others, unquestionably unacceptable inequalities in outcome—including wealth and opportunity—might arise to prevent all citizens from assuming equal standing.

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