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Inclusivity and Equality: Freedom of Thought, Conscience and Religion within Republican Society

Alan Coffee

Abstract: Balancing citizens' freedom thought, conscience and religion with the authority of the law which applies to all citizens alike presents an especial challenge for the governments of European nations with socially diverse and pluralistic populations. I address this problem from within the republican tradition represented by Machiavelli, Harrington and Madison. Republicans have historically focused on public debate as the means to identify a set of shared interests which the law should uphold in the interests of all. Within pluralistic societies, however, a greater attention must be paid to the background social conditions that may disrupt the deliberative process and lead to factionalism and instability. This includes certain changes in perspectives by both religious and secular citizens.

Keywords: *freedom, conscience, religion, republicanism, diversity, pluralism*

Introduction: “an empire of laws”

It was when the Tarquin dynasty was overthrown, according to Livy, that Rome became a free nation. No longer would the Romans be subject “to the caprice of individual men” – which was the mark of slavery – but instead they would be governed by “the overriding authority of law” (1960: 105). In order to preserve their freedom under the law, Livy pointed to two essential features of government: the law must treat everyone equally and act in the interests of all. What this meant was that, first, the law was to apply to all citizens alike and admit “no relaxation or indulgence” towards those who might wish to circumvent its provisions by using influence or privilege or claiming special circumstances (1960: 108). The strict application of the law’s terms, however, was not sufficient. Where the burdens of complying with the law’s provisions fell disproportionately on some citizens rather than others, the situation was regarded as oppressive. Where such inequalities were proven, the law was subsequently changed.¹ In short, no one was to be above the law and neither was anyone to fall below the protection of the law.²

¹ See Livy’s account of the Revolt of the Debtors (Livy 1960: 129–131). Oppression by unjust laws imposed by one’s fellow citizens was regarded as no less an evil than the threat of slavery by foreign enemies.

² See Machiavelli’s *Discourses on Livy*, 1970: 183, 231–2.

Since this time, republicans have regarded the character of their laws and their supreme authority in regulating the relationships between citizens as definitive of their distinctive political position.³ In Harrington's words, a republic is to be an "empire of laws and not of men" (1992: 21). Notwithstanding this proviso, however, the fact remains that laws are inevitably drawn up by men. This presents the citizens of a republic with the problem of settling upon an appropriate set of laws that meet the dual requirements of treating everyone equally whilst serving all their interests. In part, this challenge is one of determining what the relevant interests are that ought to be served by the law. The interests of the population, Harrington observes, are diverse and diverse interests are apt to give rise to diverse ideas about the way in which people want to be governed. Differences of opinion and interest between the citizens will arise even amongst relatively homogenous societies, since what is in the private interests of individuals will not necessarily reflect what is in the shared interests of the citizens. Republicans have long argued that the shared, or common, interests of the people ought to be arrived at through public discussion usually through a deliberative process of some sort which, in the modern context, typically refers to debate in the public sphere and a parliamentary democracy. Deliberation is, of course, no guarantee of consensus or agreement: as Harrington observes "reason is nothing but interest" and so as outlooks, opinions and interests within the population diverge, so the difficulties involved in reaching an agreement are magnified.

One particular area in which the citizens of a number of European countries are currently engaged in determining the extent of their shared interests concerns the exercise of an individual's freedom of "thought, conscience and religion". In the pluralistic and socially diverse context which characterises many European populations, the challenge is to ensure that the expression of citizens' religious and ethical beliefs are consistent with the authority of a legal system which meets Livy's requirements of equality and inclusivity. In the language of the *European Convention on Human Rights*, we might characterise this issue as balancing the "freedom to manifest one's religion or beliefs" with the limitations by law "necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others" (Article 9). Since the law must represent the common interests of the citizens and treat them equally, the ideal situation is for the law to take one general form which applies to everyone alike. However, where this is not possible compromises may have to be made. Where matters of conscience and religion are concerned, the stakes can be high and citizens may feel that where a ruling does not adequately accommodate their beliefs, they are faced with a choice between complying with the law and remaining in good standing with their conscience or with their church.

³ See also Pettit 1997: 174–6; Skinner 1998; Laborde – Maynor 2008: 1–12.

It has never been entirely straightforward for legislators to strike the balance between governing in the interests of all and protecting the interests of a few. However, the pluralism of modern European states has added to the difficulties involved. A number of trends within contemporary European states have contributed to this pluralist context. The enlargement of European Union, for example, has brought together citizens from a diversity of nations, ethnicities and religious traditions. Migrants from non-European backgrounds have, in addition, brought new cultural perspectives, beliefs and values which are not always reflected in the existing legal or institutional structures of the nations in which they live. Thirdly, the demands of secular legislation have, at times, also come to be seen as being at odds with historical religious privileges and the expectations of those who hold certain religious beliefs. This diversity has brought to light a number of disputes about the limits within which one can manifest one's religion with the result that traditional solutions have come under pressure and must now, perhaps, be rethought. To take a perennial example, one might think of the *affaire du foulard* in France where the state's commitment to *laïcité*, or secularism – a doctrine that was shaped in the wake of the disestablishment of the Catholic Church in 1905 – has since the late 1980s been challenged by Muslim students.⁴ Whereas the students regard the wearing of headscarves in state-run schools to be an essential feature of their freedom of conscience and religion, the official line has been that this practice is incompatible with the secular nature of the state's public sphere.

A second illustration, concerns the controversy that surrounded the *Sexual Orientation Provisions of the Equality Act* that came into force in the United Kingdom in 2007, making it illegal for providers of goods and services to treat members of the public differently based on their sexual orientation. Although this legislation is aimed at commercial and government providers, included within its scope are the undertakings of registered charities. Religious activities themselves are not directly affected (church membership or the appointment of ministers can still be restricted because of sexual orientation). However, where religious organisations are involved in charitable work they must comply with the provisions. Specifically mentioned as falling within the act's scope are the operation of adoption and fostering agencies. This has caused church-affiliated agencies to object that their employees would be required in the course of their work to go against their religious and ethical convictions. Placing children for adoption with gay couples, it was argued, was incompatible with the workers' beliefs about the nature of the family as an essentially heterosexual institution. Without a special exemption from the act, the agencies protested, they would be forced to close. No exemption, however, was granted.

⁴ For the history of this debate from a republican perspective, see Laborde 2005.

Differences of belief or interests between citizens do not concern republicans so long as they can be accommodated within a legal system which meets the conditions outlined above. Where differences cannot easily be reconciled, however, republicans fear that not only may the interests of individual citizens be harmed but that there is a risk that factions and divisions may develop with the potential to undermine the stability of the republic itself. The strength of feeling on certain religious or ethical issues, it is sometimes feared, may lead citizens to demand legal exemptions, special treatment or even the establishment of parallel legal systems. There would then be a danger that the authority of the law – which Livy pointed to as the essence of a free state – may become weakened to the point that the allegiance of the citizens shifted to alternative sources of power (such as one’s church, for example).

Rather than regarding controversies of the kind described above as clashes between a kind of freedom (of conscience) and the limitation to be placed on this freedom by laws which uphold this and other freedoms for all – as the wording of Article 9 suggests – republicans understand the issue at stake to be one of ‘domination.’ I explain this term in detail below, but the basic idea is that where a citizen is dominated, either by the government or by other citizens, he or she has a claim to be protected by the law. In Section II, I set out the formal criteria by which cases of domination are to be assessed. Where citizens believe themselves to be dominated, it will be against these criteria that their case for protection and redress will be determined. Any test for domination, however, I will argue, is inevitably applied within a social and political context. This being so, when the formal considerations by which matters of domination are assessed are applied in concrete situations, they run the risk of being influenced or obscured by tacit forms of bias within the minds of the arbitrators.

Non-Domination and Public Reason

Republicans regard the central mandate of the government to be to promote what is called ‘non-domination’ (Pettit 1997).⁵ The notion of domination governs the relationships both between the state and the citizens and amongst the citizens themselves, placing restrictions on what others (including the state) can do any individual whilst at the same time entitling each person to a voice in the political processes by which the terms of those restrictions are set. Where either condition has not been met then a person is said to be dominated, a state which is incompatible with the status of being a citizen.⁶ It is as individuals that citizens have the right not to be dominated. However, what constitutes domination within a given society is something which is decided collectively through public discussion in which both individuals and bodies representing group interests may participate.

⁵ Priestley uses the term ‘oppression’ rather than domination (1993: 13).

⁶ Pettit 1997: 51–58.

The restrictions on what can be done to an individual are usually expressed as a maxim taking the following form: nobody may interfere in the interests of another citizen without being forced to respect that person's relevant interests. This condition is designed to hold together two principles. First, every citizen is said to know his or her own interests best. No one should be able to interfere in another person's life without having to respect the ideas and opinions – or as it is often put, to “track the interests” – of the person suffering that interference. This idea is familiar as the ‘harm principle’ of standard liberal theory (Mill 1974). However, republicans are not required to track *all* a person's interests, but only what are deemed their “relevant” interests. If all the personal interests of every citizen had to be taken into account, there would inevitably be clashes between conflicting sets of interests. In light of this, it is not just any interests we may happen to have that others must track, but only those interests we share with all other citizens as members of the same political community. These are our ‘avowable’ rather than our private interests and represent the common good. Individuals are not dominated, republicans argue, when others are forced to track those of their interests that form part of the common good. If citizens are to have any exemption or special treatment under the law, what they must demonstrate is that the interest of theirs that has been compromised is an interest which is (or ought to be) one which the citizens share.

The common good does not refer to a substantive ideal such as a set of religious beliefs or a national outlook – there is, in any case, little chance of this sort of comprehensive perspective being shared in a pluralist Europe. Rather, it is said to follow from the one fundamental interest we are all said to share in being free from arbitrary external interference (Priestley 1993: 12). The freedom to practice one's religion unimpeded is considered a part of this presumptive aim as much as any other form of civic freedom: “civil liberty is... on the same footing with religious liberty. Just as no people can lawfully surrender their rights to govern themselves or dispose of their property as they see fit, so no one can be expected to give up their freedom to decide for themselves what mode of religion to practice” (Price 1992: 33). However, republicans do not enshrine these freedoms as ‘inalienable rights’ which have to be balanced against the inalienable rights of others. Instead, social freedom is held to be realisable only within an appropriate institutional structure in which each individual citizen is treated as an equal and given a voice, and where any curtailment of a person's freedom is only ever justified for a strictly limited set of reasons over which all citizens have a say in defining.⁷ When republicans claim that the citizens should deliberate about where to draw the line between individual

⁷ Price and Priestley do refer to ‘natural’ or ‘unalienable’ rights. This language echoes Lockean natural rights language, but serves much more loosely simply as an expression of the importance attached to republican freedom rather than to a set of personal rights. See Pettit 1997: 101.

freedoms (thought, conscience or religion) and the limitations necessary to maintain stability, then, it is this notion that they have in mind: determining the extent of our 'relevant' interests which everyone else must track.

The concepts involved in the republican ideal of citizenship are illustrated through the language and imagery of the Roman ideal. To be a slave on the Roman model was to be within the power of someone else – a master, or a *dominus* (hence the idea of being 'dominated'). The master, or dominating power, had the power to interfere in the life of the slave at will and according to his or her own discretion, or *arbitrium* (hence 'arbitrary' interference). Citizens had no master and, therefore, nobody had arbitrary power over them. This is not to say that citizens could do anything they liked or that nobody could interfere in their affairs at all, only that this interference could not be arbitrary – at anyone's will and discretion. The coercive and interfering power of the law, however, was not considered arbitrary so long as it conformed to the conditions stated above, namely that it answered to the interests that each of the citizens share and that every citizen was given a voice in coming to settle upon what these interests were.

Citizens come to identify their common interests through the institutions and forums of civil society and democratic processes of government. The purpose of these processes is to frame laws that will enable individuals to live independently, as citizens *sui iuris* and possessing a significant degree of personal freedom consistently with the fact of their living together within a republic. Traditionally, the ideal of non-domination, rather than reflecting the ideas and interests of the powerful or the majority, has been taken to imply a strong protection of the vulnerable and marginalised sections of society.⁸ As a contemporary illustration we can point to some of the policies adopted by the Spanish Socialist Party (PSOE) under José Luis Rodríguez Zapatero since coming to power in 2004. Operating explicitly within a republican framework, the Spanish government has introduced legislation to protect women from domestic violence, to equalise gender opportunity in the workplace, to recognise same-sex marriages and to grant legal status to 700,000 illegal migrants.⁹ These measures were designed to answer to the shared interest that all citizens have in avoiding domination and protecting their freedom and independence, although the specific measures themselves were sometimes highly controversial and rejected by significant proportions of the population.

Republicans are able to advocate controversial policies whilst maintaining their stance that the law must act in the shared interests of all the citizens by appealing to the fundamental interest each person has in not being dominated. In Price's terms, listed above, this means that we have an interest in preserving our ability to decide

⁸ See both Price 1992 and Priestley 1993.

⁹ Pettit 2008; Coffee 2009.

how to pursue our goals, dispose of our property and exercise our consciences free from the threat of arbitrary control by others. In order to ensure that the law itself tracks this most general shared interest, republicans typically require that in public discussion about what the content of the laws should be, citizens restrict themselves to employing only language, values and ideas that are accessible to all members of the community and which no one would have a good reason to reject. Coercive and intrusive laws, on this approach, are justified not by the fact of everybody's agreement, but by the lack of anyone's reasonable rejection. Philip Pettit – the most prominent contemporary defender of republicanism – argues that something will “represent a common interest of a population just so far as co-operatively admissible considerations support its provision” (2001: 156). Co-operatively admissible considerations, he adds are those which “anyone in discourse with others about what they should jointly or collectively provide can adduce without embarrassment as relevant matters to take into account.”¹⁰ By placing this restriction on the manner in which debate is conducted, it is argued, individuals are prevented from advocating their private or sectarian interests ahead of those they share in common with others. In this way, blatant self-interest in debate is ruled out – we cannot claim that everyone else ought to pay tax, for example, except for us. Also ruled out, on Pettit's formulation, however, are direct appeals to the particular moral or religious commitments which some people have, but which others in the community cannot be expected to endorse. Public considerations do not define the content of our common interests, but only control the manner in which we identify what those interests are. Once we implement a set of procedures which ensure that these conventions and considerations are used and upheld, then, says Pettit, everything else is “up for grabs” (1997: 201).

If we apply these conditions to the requirements of the *Equality Act*, a general case can be made that to suffer discrimination in the form of being refused goods or services, or to be offered these on terms different from other members of the population, on the grounds of sexual orientation is to be dominated. For a supplier of goods or services to treat someone this way, is to exercise a form of arbitrary control – since this treatment is not forced to track their interests, or, since the idea of sexual orientation is general, to track the common interests of the population. In other words, all citizens, and not just homosexual ones, have an interest in not being subjected to discrimination of this sort. There is no intention by the act to compromise religious freedom and so faith-based activities are excluded from the act's scope. However, when religious organisations operate as charities (for which there is state support), they are deemed to be breaching the shared interest of not

¹⁰ Pettit attributes this formulation to Habermas. As I read him, however, Pettit's restrictions on what is eligible for public deliberation are much narrower than those that Habermas allows. See Habermas 2006.

being discriminated against because of one's sexual orientation and so are bound by the provisions.

For a counterclaim by the agency workers to be successful, on this account, they would need to show that they were also dominated to the extent that the state had arbitrarily interfered with their freedom to manifest their religion and that their interests freely to exercise their freedom of thought, conscience and religion had not been tracked. They would also have to show, using language and arguments which were accessible to all, that this was an interest they shared with other citizens, even non-religious ones. In the case of the agency-workers, for example, references to the idea of marriage as a Christian institution or their conviction that their work was a response to their Biblical faith would be inadmissible. Muslim students attempting to make their cases about the importance to them of wearing the *hijab* would face the same difficulty. As we have outlined the concept of what constitutes a collectively admissible consideration, then, this may often be a very demanding standard to meet for religious or ethically motivated claimants.

I will not attempt to determine what the right outcome should be in these cases. Rather, in the next section I will consider whether such an idealised form of deliberative process based upon only "co-operatively admissible considerations" can, in fact, uncover all and only instances of the shared and collective interests of the population and, so, whether it could ever serve as an effective test for domination. I will conclude that on its own it cannot, and that to force people to deliberate solely according to these conditions is itself a dominating act which unfairly burdens some parties to the discussion. If they are to apply their restrictions to the content of public deliberation without prejudice or domination, I will argue, republicans must at the same time pay close attention to the social context in which the discourse takes place, and to the dispositions displayed by the participants on all sides.

Social Domination and the Status Quo

Although we have said that equality before the law is a founding principle of republicanism, we should note that this requirement protects only those individuals who have been recognised, or included, as citizens. Historically, the proportion of the population who qualified as citizens was often comparatively small. In Roman times, of course, slaves were by definition excluded. However, even a writer as influential as Kant was content to restrict the franchise of citizenship to include only adult propertied males (1991: 78). Nowadays republicans allow no such exclusions, adopting instead a "principle of inclusivity" which sets the boundaries of qualification for citizenship as widely as possible and which, ideally, should include all those who live under the authority of a given law or its institutions (Pettit 1996: 286). Driving this commitment to inclusiveness is a more general normative

principle, often regarded as indispensable for any plausible modern political theory – the equal moral worth of all individuals.¹¹ Pettit puts it this way: “any plausible political ideal must be a political ideal for all.”¹² By this, republicans mean that (1) all social groups are to be included fully as citizens; and (2) that the members of each group are given an equal or fair value for their citizenship.

However, as things stand, not all social groups do get a fair value for their citizenship. Some sections of society are underrepresented legally and politically or have on average lower incomes and poorer access to social resources than the rest of the population. Any group of citizens suffering these kinds of social disadvantages, of course, would have a good case to claim that they are being dominated and so to seek the protection of the law and, perhaps, some redress or compensation. The members of these social groups, however, may regard themselves as dominated in a less clear-cut manner than over their access to economic or political resources. They may believe that their beliefs and moral convictions are not understood or accepted the mainstream of society and that the state’s principle institutions are unwilling or unable to accommodate them on the same basis as individuals belonging to other social groups. Muslim girls, for example, even where they support a principle of separation between church and state, may feel that the burden they suffer by abandoning the *hijab* is more onerous than school officials or public administrators realise, and that there is no equivalent role in other religions to that played by their headscarf. For this reason they may believe that they have been picked out under legislation that does not track their interests, or indeed, represent the common interests of the group and that they are, for this reason, dominated. Where citizens are genuinely dominated they have grounds to claim protection under the law including being exempted from certain of its conditions. The difficulty is, however, that where citizens are misunderstood, or even stigmatised or viewed in a stereotyped manner, then their ability to influence public debate or to make their case about domination in arbitration tribunals will be severely hindered.

The requirement that parties are required to make their cases using only considerations which no one could reject is intended to remove this difficulty, by ensuring both that parties only bring matters of acknowledged public interest to the forum, and that their case is heard according to the same impartial standard. Actual discussion, however, inevitably take place in a particular cultural context of ideas and concepts within which common practices and a widely shared sense of social legitimacy are made possible. Given the presence of this social context, it seems highly possible that cultural factors, in the form of subtle historical perspectives, shared conceptual schemes and complex sets of interrelated norms, will shape and

¹¹ See, for example, Raz 1986: 194, Dworkin 1977: 180, Kymlicka 1989.

¹² Pettit 1997: 96.

constrain the manner in which the deliberative and contestatory processes which are said to protect citizens from being dominated will in fact operate. The effect of these cultural background commitments, I will argue, can be remarkably difficult to identify by those who are under their influence. As a precondition to debate, then, the requirement that all parties stick the ideal of public discourse proposed by republicans such as Pettit is more onerous and more complicated to enforce and apply than is often supposed.

It is often easier to illustrate this point using examples from a different historical context, since we are no longer influenced by the particularities of that debate. Here we can use Kant's restriction of citizenship to men as a paradigm example. For the most part, Kant is meticulous in his articulation of moral and political freedom in strictly universal terms. Freedom is seen as "the only original right belonging to every man by virtue of his humanity" and based on "innate equality" and "a human being's quality of being his own master" (1996: 30). Despite this reasoning, however, Kant nevertheless somewhat casually restricts this freedom – freedom being dependent on citizenship, he says – in this way: "the only qualification required by a citizen (*apart, of course, from being an adult male*) is that he must be his own master... and must have some property" (1991: 78, my italics). Of course, Kant was only exposing his tacit acceptance of at least part of the socio-cultural and legal background of his time. However, whilst it was unimaginable for Kant that women could be independent citizens, so it is equally unimaginable for us that they should not be. The lesson we can draw from this, is that it may be no less hard for us to break out of our own background conceptual assumptions. If this is so, then the danger is that when our own marginalised, stigmatised or alienated groups attempt to speak out on other issues which matter to them, we may hear them with the same sort of prejudice that Kant displayed.

When minorities contest laws and practices in such a way as to go against the background values and received opinions of the dominant group, there is a possibility that decisions will not be settled not according to 'the best reasons' objectively conceived, but by the (arbitrary) strength of prevailing public opinion. Whilst professing to be impartial, the contestatory process takes place against a baseline of accepted norms and *de facto* institutional practices similar to what Cass Sunstein calls "status quo neutrality", or the taking of current ways of life as the neutral order of things (1993: 3–7).¹³ Rather than the criteria of public reason acting as a neutral

¹³ Cecile Laborde also uses the idea of status quo neutrality in a republican context of multicultural debate. Laborde, however, refers to the unreflective acceptance of "some background institution or distributive pattern for granted and, as a result [failing] to provide an impartial baseline from which" to discuss current issues of domination etc. (2008: 13). I am referring here, however, to the unreflective acceptance of normative or conceptual ideals as representing a 'neutral' order of things and so failing to provide a baseline about what counts as a 'co-operatively admissible consideration'.

and non-sectarian standard by which disputed cases of domination can be adjudged against the common interest, the danger is that republicans will simply be applying the standards of the ruling elite or the dominant social group. For example, where Catholics and secular French officials have made their peace with the 1905 dis-establishment of the Church and the resulting requirements of *laïcité*, and take this settlement to be the baseline for discussions about the role of religion in the public and private spheres, Muslims may well wonder if and how they have been included in this arrangement. Similarly, where English Christians believe that not only is the secular elite hostile to their point of view but that on the pretext of using only neutral language they are also required to present their own arguments in the very secular terms to which they are opposed, they may also come to see themselves as disenfranchised and dominated.

The danger of minorities being unable to express their own alienation in terms that can be understood or accepted by the dominant powers is real. However, we should remember that in cases such as the *Equality Act*, the legislation had been designed with the intention to protect another vulnerable, historically marginalised and underrepresented group, namely those discriminated against on the grounds of their sexual orientation. In drawing attention to the dangers faced by one set of dominated citizens through the imposition of a certain set of deliberative standards, we must be wary of falling into an opposite (but surely equal) danger of appearing to legitimate the oppression of others by those very citizens that may subsequently result. There can, therefore, be no question of republicans adopting the sort of ‘difference-politics’ or ‘soft-multiculturalism’ that has often been criticised for protecting group practices as part of a policy of recognising religious or cultural identities even where these practices have the potential to dominate their own group members or other sections of the community.¹⁴ Some cultural groups, for example, may fail to educate women within their families above a certain age, or may not allow them to learn the host nation’s language if it is not their first language, on the rationale that within their culture women have no need for an education or language skills. Since it cannot be an avowable common interest shared within the community for individuals to be denied an education which serves as the foundation of one’s independence, then regardless of cultural practices, this seems to be an obvious case of domination against which republicans must legislate.

We have ruled out, then, both an appeal to the theoretical ideal of a set of collectively admissible considerations and the relativistic acceptance of different cultural or religious standards. The question then remains whether citizens can indeed break the deadlock in disputes over matters of conscience where both sides appear to have

¹⁴ See, for example, critique of multiculturalist approaches that appear to overlook this danger in Galeotti 2004, chapter 7.

a legitimate claim to seek protection from becoming dominated in a manner which does not itself invite further domination.

Conclusion: “refining and expanding the public outlook”

Where citizens reach a state of deadlock over matters of conscience or belief there is a risk of this leading to the formation of mutually hostile sectarian groups, or factions, which threaten the stability of the political community by fostering and nurturing loyalties other than to the institutions of the state. Under these conditions republican worry that individuals may trade their freedom as citizens under the law for the patronage of sectarian leaders who promote only a narrow range of group-specific interests in exchange for the support of a section of the community. Such allegiance is said to weaken not only the cohesion of the state but also the authority of the law.¹⁵

Because of the intensity with which they are held, matters of religion and conscience are often said to have an obvious potential to give rise to factions. The dangers of mismanaging the differences between citizens on matters of conscience – whether by doing nothing to contain these divisions or by further entrenching them through heavy-handed action – then, are great. However, as James Madison, in his analysis of the problem of factionalism, notes these are by no means the only, or even the most significant, cause of social division (Hamilton et al., 1987: 124).¹⁶ The risk of factions developing between groups committed to pursuing divergent interests, he argues, is an inevitable consequence of our social freedom, including the exercise of personal conscience and economic activity. Since the most fundamental duty of the state is to uphold the freedom of the citizens, he reasons, the causes of factions can never be eliminated. In other words, Madison believes that there is no prospect of a socially or religiously homogenous community persisting in freedom which will not face the challenges posed by factional division. Since the causes of factionalism cannot be eradicated, he suggests that republicans must instead focus on moderating its effects. His diagnosis, I believe, shows what would be required for republicans to address the tensions brought about by religious and ethical differences in our own time.

Madison believes that the law itself can have only a limited role in controlling the effects of social factions for the same reason that Harrington noted, namely that the laws are made by people, and whoever they may be, people are susceptible to the temptation to legislate in their own favour (1987: 125). Even if enlightened lawmakers were able to set aside their own interests and perspectives, he adds, the indirect

¹⁵ Miller 2008: 138; Machiavelli 1970: 153–164.

¹⁶ The unequal division of property is said to be the “most common and durable source of factions”.

effects and remote consequences of their decisions would be so complicated and difficult to foresee that almost any proposed law would be seen as conflicting with the interests of one section of the community.¹⁷ Since the tendency for citizens to see things from their own perspectives is so strong, then the solution according to Madison can only be this: “to refine and enlarge the public views” (1987: 126). It would, he argued, be possible to create a broader and more inclusive perspective of what is in the common interest which commands the loyalties of these various groups. The purpose of this enlargement and refinement is twofold: to bring local and sectional interests into the wider public view; and, at the same time, to instil a desire within parochial groups to consider the public good ahead of their own (1987: 126–7).

Both sides to the process of enlarging of people’s views are necessary. This means, first, that minority interests must be both expressible and able to be heard by the wider community. I have argued that the standard republican commitment to public debate based on the principles of public reason and collectively admissible considerations fails on this count since it is unable to incorporate the interests of those social groups whose interests are not easily expressed in its terms. However, sectarian groups – religious and non-religious alike – must, for their part, take responsibility for restricting their demands to those that fall within the idea of the common interests of the political community. Encouraging and enabling each group to exercise such a restraint, of course, is not easy but where the first condition of ensuring that everybody’s interests are heard in public discussion has been met, then the chances of achieving this second condition will be greatly enhanced.

The question then remains, how are republicans to ensure that the voices of each group within society are heard? Rather than enforcing a common standard of what is to count as an admissible consideration for debate, the argument here is that on all sides of a dispute, the citizens should come to adjust their outlooks so that they no longer regard their opponents as not having any legitimate claim to be taken seriously in public debate. In the context with which we are concerned, what is required is this. Religious groups must enlarge their perspectives to accommodate certain ideas which accompany the idea of living in a pluralistic society, such as the diversity of opinions other than their own and the separation of secular from sacred society. In part, this will entail an acceptance of the priority that public reason and collectively admissible considerations have in political discourse over exclusive religious arguments. In the same way, however, the perspectives of secular citizens must be similarly enlarged so that they come to see religious practice as a valid form of life in this same pluralistic political landscape rather than regarding them

¹⁷ Richard Bellamy makes a similar point regarding the difficulties of attempting to legislate in this way in pluralist societies (2008: 169–70).

as, for example, relics of a bygone age with no inherent claim to a place in modern society.¹⁸ The religious views on homosexuality and women's dress that we have discussed, then, may be thought flawed by non-religious citizens but they should not be dismissed as illegitimate candidates for discussion.

Exactly how this public enlargement of perspective is to be brought about, however, is a matter on which republicans have never been very precise. Madison had in mind deliberation by elected representatives from each group, chosen for their wisdom, patriotism and commitment to justice.¹⁹ It would be wonderful if such representatives could reliably be found. In their absence, more promising contemporary republican solutions might include the enabling of wider forms of public conversation based on the operation of a lively civil society, access to the media for marginalised groups, localised forums for debate and direct contact between citizens from the various sections of society who might otherwise have very little social contact.²⁰ Whatever the means, however, if republicans are to ease the tensions between religiously and ethically divided citizens whilst retaining their commitment to public debate as the means of upholding freedom and avoiding domination, then the outcome must be the preparedness of the citizens to enlarge their own outlooks about the range of ideas that are admissible within the deliberative process itself.

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¹⁸ Habermas 2006: 13–6.

¹⁹ Madison believed the alternative to representatives was direct participatory democracy in which each person voted for his (or, later, her) own preferences.

²⁰ See, for example, Young 2000 (chapter 5).

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