Disability, Justice and Freedom as Non-Domination

Marie Sépulchre
Postdoctoral Researcher, Department of Sociology, Lund University

ABSTRACT
Disability scholars have recently proposed that republican theory is relevant to think about justice in relation to disability. Following in their footsteps, this article submits that the republican conception of freedom as non-domination provides a fresh angle to legitimise disability rights in terms of justice and prevent their interpretation as charity or privileges. This proposition takes its point of departure in Nancy J. Hirschmann’s claim that freedom rather than distributive justice should be the bedrock of disability rights and in Philip Pettit’s conceptualisation of republican freedom as a distinct type of freedom. The article proceeds with a consideration of how claims of justice built on freedom as non-domination fare compared to two other foundations of justice that are commonly invoked in relation to disability rights – namely, equality and our shared vulnerability. Finally, the article suggests that republican theory opens new avenues of inquiry in disability studies and outlines a research agenda.

KEYWORDS
Disability; domination; republican theory; justice, equality; vulnerability; costs; United States; Sweden

Introduction
Granting equal rights to disabled people seems to be generally perceived as a good idea, as shown by the incredible speed at which the United Nations Convention on the Rights of Persons with Disabilities (CRPD) was adopted. It was the fastest negotiated human rights treaty in history and it received the highest number of signatories on its opening day. However, disability rights often lack full implementation and are criticised because of their costs. They are therefore ‘vulnerable rights’.

According to Bagenstos, disability rights are particularly vulnerable to criticism and backlash because they are not underpinned by a discourse of justice. It appears indeed that solid arguments are wanting when it comes to the question: Why should...
society guarantee the rights of disabled people? And what does society owe disabled people in terms of justice?

Disability scholars have recently proposed that republican theory is relevant to thinking about justice in relation to disability and diagnosing the injustices faced by disabled people. Following in their footsteps, this article submits that the republican conception of freedom as non-domination provides a fresh angle to legitimise disability rights in terms of justice. This proposition takes its point of departure in Hirschmann’s claim that freedom rather than distributive justice should be the bedrock of disability rights and in Pettit’s conceptualisation of republican freedom as a distinct type of freedom that can be used as a moral compass in a complex world.

The suggestion to draw on republican theory in disability politics comes, however, with an important caveat. While this article endorses its general conception of republican freedom, it warns that Pettit’s theory cannot be adopted uncritically because it contains ableist elements. In this respect, Pettit is not different from Rawls and many other theorists of justice, who state at the outset that their theory does not apply to disabled people. The article posits that, despite its ableist premises, the core of Pettit’s theory, which conceives of freedom as an ideal to be achieved in a world characterised by relationships of dependency and inequality, is well suited to justify disability rights. Further, it suggests that Lovett’s and Shapiro’s conceptions of justice as minimising non-domination offer ways to remedy the ableist premises of Pettit’s theory because they emphasise protection against domination, without asking, as Pettit does, that individuals have ‘the mental and bodily ability’ of making and enacting choices to enjoy their freedom.

Having outlined the conception of freedom as non-domination and pointed to its relevance with respect to disability rights, the article proceeds with a consideration of how claims of justice built on freedom as non-domination fare compared to two other foundations of justice that are commonly invoked in relation to disability rights – namely, equality and our shared vulnerability. The article shows that arguments of justice based on equality and shared vulnerability, respectively, stumble upon cumbersome questions that can be avoided by using arguments grounded in freedom as non-domination. This is not to say that arguments in terms of equality and shared vulnerability should be abandoned. Rather, freedom as non-domination is presented as a useful additional tool for asserting disability rights in terms of justice and preventing their interpretation as charity or privileges.

It should also be specified that this article does not aim to elaborate a general theory, nor does it outline specific policies. Its ambition is to develop an argument that draws on general principles but considers feasibility with respect to given institutional arrangements. For this purpose, the article discusses examples from disability politics in the United States and Sweden. These two countries were chosen because they illustrate two different approaches to disability politics in the Global North – an approach based on civil rights in the United States and an approach characterised by social welfare rights in Sweden. Since the article was written with examples of Sweden and the United States in mind, more investigation is needed to explore the utility of republican freedom elsewhere and, particularly, in the Global South.
By its proximity to real-life politics, this article will be relevant to disability advocates, policy makers and politicians. In addition, it is suggested that the conception of freedom as non-domination opens new avenues for disability research. These suggestions are outlined as a research agenda in the last part of this article.

2. Placing Freedom at the Heart of Arguments of Justice

When it comes to existing theories of justice, Hirschmann observes that the question of disability is generally approached as a question regarding the allocation, distribution, entitlement to and adequacy of resources, that is, as a matter of distributive justice. She criticises this approach by pointing to research on welfare in the United States and argues that, when disability rights are understood as social or welfare rights, they are subjected to invasive controls and suspected of fraud, and perceived as charity or special benefits. This phenomenon was also observed in Sweden, where disability activists openly criticised the state for presenting disabled people’s rights in terms of special rights and privileges rather than as citizenship rights, and for using humiliating procedures to implement their right to personal assistance. Referring to T.H. Marshall, Hirschmann remarks that, under such conditions, welfare is not ‘a right of citizenship, but an alternative to citizenship, as the condition for accepting welfare seems to be that you have to give up your equal standing as a citizen’. Instead of a (distributive) justice framework, Hirschmann maintains that disability rights should first and foremost be motivated by a concern for freedom.

The notions of freedom and citizenship have been criticised for excluding disabled people. Particularly, feminist and disability scholars have shown that conceptions of freedom envisioning self-sufficient, disembodied and rational individuals are inadequate to capture the situation of disabled people. Yet, others have drawn on the same notions to acknowledge the importance of full membership for disabled people. While current conceptions of freedom and citizenship are largely ableist, this article adds to the body of research considering that these notions have an ‘inclusive potential’ because they are constantly being debated and re-imagined. Specifically, this article offers that the republican conception of freedom can be a useful resource to legitimise disability rights in terms of justice, provided that it is not based on ableist assumptions.

Republican theory is a tradition of political thought that has its roots in ancient Roman philosophy and was developed further by influential writers, from the fifteenth-century Italian Renaissance to the eighteenth-century English commonwealth and American founding era. In the past few decades, there has been a renewed interest in this line of thought, among others with the publication of Pettit’s book, Republicanism: A Theory of Freedom and Government, which calls attention to a particular conception of freedom: freedom as non-domination. Pettit makes the case that republican freedom is distinct from the two types of freedom famously distinguished by Berlin – namely, negative freedom (freedom as non-interference or liberal freedom) and positive freedom (freedom as self-mastery and active citizenship).
Freedom as non-domination is, basically, about the possibility to make choices without fearing the arbitrary interference of others, that is, interference unconstrained by external rules. The typical example taken by republican thinkers is the master–slave relationship. The slave is dominated by the master because the latter has the possibility to interfere arbitrarily on the life of the former. Pettit\textsuperscript{25} emphasises that it is not the intervention per se that defines the situation of domination, but the fact that the master has the possibility to interfere, as they wish, in the life of the slave. In other words, the slave is dominated because they live at the mercy of the master’s will.

Another example is the relation between husband and wife under legal coverture. Although the husband may have the best intentions towards his wife, the fact that her rights are subsumed under his causes a situation of domination. Pettit explains that,

\begin{quote}
It is possible for those who do the dominating, for example, to take their superiority so far for granted that it does not even strike them that the parties they dominate may bristle under the yoke. Think of Helmer Thorvald, the husband in Ibsen’s play A Doll’s House. He is clearly aware of dominating Nora, his wife, and indeed clearly believes that this domination is good for her. [...] The lesson is that, even where domination exists and is recognized, it may not be seen for what it is when the dominated cannot speak for themselves.\textsuperscript{26}
\end{quote}

Domination happens when the dominating party can act without taking into account the preferences of the dominated party, which has little or no control over the situation and inadequate protection against abusive treatments. Disability scholars will inevitably draw a parallel to the situation of many disabled people, who have been – and many still are – deprived of their legal status of citizenship, with little or no control over important aspects of their lives.

Republicans attach much importance to legal protections against domination. They conceive of freedom as citizenship, understood as a legal status conferring the means to avoid being dominated, either by other individuals (which they call domini\-num) or the state (which they call imperium).\textsuperscript{27} In contrast to the liberal conception of freedom as non-interference implying that people should, to the largest extent possible, be free from the laws, republicans view that people are free by the laws.\textsuperscript{28} However, as republicans are aware that the state itself can be a source of domination, their positive attitude towards the law goes hand in hand with a strong commitment to checks and balances and democratic structures providing citizens with real means of influence and contestation. Freedom, in the republican sense, requires ‘eternal democratic vigilance’\textsuperscript{29}. It is noteworthy that this vision of a strong democracy reflects one of the main slogans of the disability movement: \textit{Nothing about us without us}.\textsuperscript{30} Another central slogan of the disability movement – \textit{No pity}\textsuperscript{31} – requires the recognition of disabled people as equal citizens. This feature is paramount in republican theory because, ‘[i]n this tradition, the ideal of the free citizen requires a civic status that enables each to stand on an equal footing with others’.\textsuperscript{32} Supplying resources is not enough in the republican conception of justice; people need to be recognised
as and feel that they are effectively equal citizens. In the language of the CRPD, this feature points to the recognition of the intrinsic worth and dignity of disabled people. Finally, Pettit stresses that the status of the free person ‘requires that you be securely resourced and protected against others, yes, but it also requires that this entrenchment register as a matter of common awareness’. This condition implies, with respect to disabled people, that their status as free citizens is common knowledge in society, which is stipulated in Article 8 of the CRPD on awareness-raising.

3. Freedom as Non-Domination in Disability Research

A few scholars have recently used republican theory to examine the situation of disabled people. Focusing on the situation of people placed in institutional care services, Series and Hewitt voice that the Deprivation of Liberty Safeguards under the Mental Capacity Act 2005 in the UK have the potential to reduce domination because they constrain the professionals’ decisions regarding deprivation of liberty. In the same vein, O’Shea suggests that mundane interferences by staff or family members on the choices of people with psychosocial or cognitive impairments, such as when to eat and when to use the telephone, can amount to domination. He introduces the term ‘micro-domination’ to name ‘the capacity for decisions to be arbitrarily imposed on someone, which, individually, are too minor to be contested in a court or a tribunal, but which cumulatively have a major impact on their life’.

Building on O’Shea’s work, Arstein-Kerslake and Flynn stress the importance of curtailing relationships of domination, including micro-domination, that take place in home, group home or family settings. They argue that Article 12 of the CRPD, which recognises disabled people’s right to legal agency, is key to protect people’s decision-making rights.

Adopting a broader outlook, De Wispeleare and Casassas suggest that republican freedom is useful to diagnose the injustices faced by disabled people in general. The relevance of this suggestion is apparent in my study of the claims of disability activists in Sweden, which distinguishes between claims for equal citizenship and claims for protection against domination. An example of the latter regards the activists’ mobilisation against arbitrary needs assessments and budget cuts in the personal assistance scheme, as illustrated by the following quote from the disability activist Emma Johansson,

My fear of reassessment is palpable and every time I come home and see mail on the floor of my hallway, a lump of anxiety appears in my stomach. What if it is the Swedish Social Insurance Agency? And in front of me, I only see the foundation upon which my life is built crumble.

I suggest that the situation of personal assistance users in Sweden qualifies as a situation of domination because they are either deprived of this crucial support measure or fear that it may be withdrawn from one day to the other.

De Wispeleare and Casassas conclude that republican freedom is a promising perspective to develop a theory of social justice taking disability seriously because of two aspects. First, non-domination offers a common philosophical foundation for a
theory of justice for disabled and non-disabled people alike. Second, the institutional remedies envisioned by republican freedom dovetail with the demands expressed by the disability movement requesting influence in the decision-making processes concerning disabled people. This article adds to this proposition by showing the relevance of republican arguments for underpinning disability rights by arguments of justice and opening new avenues for disability research.

4. Towards a Non-Ableist Republican Theory

As mentioned earlier, Petitt’s conception of freedom as non-domination cannot be adopted uncritically because it contains ableist assumptions. Central to his argument is that people should be free — and this includes having the necessary resources — to make choices regarding their basic liberties. So far so good. The problem is that Pettit explicitly excludes disabled people by tying his theory to the condition that people have the mental and bodily ability to make choices regarding their freedom. Apart from being ableist, Pettit’s condition of mental and bodily ability is, in my opinion, unnecessary. The relevance of Pettit’s theory to think about justice for disabled people is evident in the following quote, which underlines the importance of ensuring, not only that individuals have the necessary resources to enjoy their freedom, but also that these resources are provided in a non-dominating way.

> If people depend in an enduring way on the philanthropy of benefactors, then they will suffer a clear form of domination. Their expectations about the resources available will shift, and this shift will give benefactors an effective power of interference in their lives. Thus, suppose you have a continuing medical problem and depend on the pro bono services of a doctor or hospital to help you out. Once established, this dependence will put the doctor or hospital in the position of a master; you will depend for the ability to exercise various basic liberties on their not withdrawing from the relationship and leaving you in the lurch.44

It is striking that, without aiming to consider the situation of disabled people, this quote summarises arguments against charity and medical power found in disability research.45 Here, Pettit shows that domination arises when one party has the power to interfere arbitrarily on the life of another party. Whether or not the dominated party has the mental and bodily ability to perform a choice seems therefore irrelevant to establish the presence of domination.

The suggestion that able-bodiedness is an irrelevant criterium in republican theory is sustained by a consideration of the republican theories proposed by Lovett and Shapiro, respectively. Lovett46 maintains that ‘persons or groups are dominated to the extent that they are dependent on social relationships in which other persons or groups hold arbitrary power over them’, that is, power unconstrained by rules and procedures. Pointing at the link between distributive justice and non-domination, Lovett posits that domination will be minimised if people have a certain level of resources, which can be guaranteed by the introduction of a basic income.

In a similar vein, Shapiro47 places relationships of dependency at the heart of his discussion of domination. He stresses that domination is particularly severe when a
powerful party abuses their power to control the resources concerning the basic interests of another party. Here, Shapiro refers to *basic interests* rather than basic needs to include people’s physiological needs as well as the resources enabling them to ‘participate fully in a democratic political order’. 48 This distinction is crucial with respect to disability rights, which, as stipulated by the CRPD, concern the whole range of fundamental human rights enabling disabled people to participate in society on an equal basis with others.

It is beyond the scope of this article to discuss these theories further. For the sake of the present argument, it suffices to point out that both Lovett and Shapiro understand republican justice as the minimisation of domination in relationships of dependency. By placing the issue of dependency at the core of discussions about justice, it is worth noting that Lovett’s and Shapiro’s theories are in agreement with Kittay,49 who urged political theorists to acknowledge the salience of relations of dependency in society, not to avoid such relationships – they are inherent to our human condition – but to consider the risk of domination they entail.

The inequality of power is endemic to dependency relations. But not every such inequality amounts to domination. Domination involves the exercise of power over another against her best interests and for purposes that have no moral legitimacy.50 Although she does not place herself in the republican tradition, Kittay’s quote echoes the republican concern for situations of domination in relationships of dependency.51 It would need more work to fully develop a non-ableist republican theory of justice, but this section aimed to make two points. First, republican thought does not need to lean on ableist premises. Second, the emphasis on non-domination is highly relevant to think about justice for everyone, including disabled people.

5. Equality, Vulnerability and Freedom as Non-Domination

To highlight the relevance of republican theory to disability activists, policy makers and scholars, this section examines two other foundations of justice that are commonly used in disability politics: equality and our shared vulnerability. Drawing on examples from disability politics in Sweden and the United States, I demonstrate that, notwithstanding their value, both conceptions stumble upon cumbersome questions that can be avoided if arguments of justice are underpinned by the conception of freedom as non-domination.

5.1 Equality

The principle of equality underpins most arguments regarding the rights of disabled people in current disability laws and politics. The Americans with Disabilities Act of 1990 (ADA) – which is the main civil rights law prohibiting discrimination based on disability in the United States – starts with Chapter 126 entitled ‘equal opportunity for individuals with disabilities’. In Sweden, the Act on Support and Service to Persons with Certain Functional Impairments of 1993 (LSS Act) – which stipulates
several social rights, including the right to personal assistance – states that ‘this law shall promote equality in living conditions and full participation in the community’. Although they understand it in different ways, both laws rely explicitly on the notion of equality.

The passage of these laws were milestones in the disability politics of their respective countries. However, they have faced serious backlash and the goal of equality for disabled people has been curtailed by the courts’ and welfare agencies’ narrow interpretations of the law texts.53 Examining the situation in the U.S., Bagenstos observes that the difficulties faced by the ADA are rooted in the way the statute was passed in 1990:

*The ADA was a bipartisan achievement largely because the efforts to pass the statute – in a brilliant tactical move – skirted difficult arguments about justice. Instead, they relied explicitly on a discourse of costs and benefits – and they relied implicitly on a discourse of charity and pity, even though the latter discourse was in tension with basic principles articulated by the disability rights movement.*54

Bagenstos’ point is that, rather than the disability advocates’ claim for equality of opportunity, it was the cost-benefit analysis and the enduring view that disabled people are deserving recipients of charity that persuaded Congress to pass the law. Costs-effectivity and charity are also at the core of the debates regarding the justification of disability rights in Sweden. The decision of the legislator to include personal assistance in the LSS Act was informed by a pilot study showing that this measure was cheaper compared to other welfare arrangements for persons with severe disabilities.55 Yet, the LSS Act has been heavily criticised because of its costs and many people have lost their right to personal assistance following welfare cuts.56

Monetary savings and the status of disabled people are two central issues in contemporary disability politics based on justice as equality. In this context, disability advocates must address the following questions raised by those who believe that disability rights should be limited: (1) Are disability rights really cost-effective? (2) Why should society recognise disabled people as equal citizens?

5.1.1 Are Disability Rights Really Cost-Effective?

Based on the analysis of blog posts and debate articles written by disability activists in Sweden, I suggested elsewhere that the activists tackle the issue of costs in three ways.57 The first one consists of criticising the association between rights and costs. The activists emphasise that disabled people are equal citizens and claim that disability rights are not a matter of costs but a matter of legal rights. This argument bypasses the cost-effectivity question (1) and leads directly to question (2) – to which I will return in the following sub-section.

A second argument consists of embracing the issue of costs in disability politics and requesting a fair redistribution of resources. That is, the activists argue that society should pay the bill of disability rights because it is the just thing to do. This argument does not provide a justification for the cost of disability rights. Rather, it opens the door to questions regarding the understanding of equality and the practicalities of a
fair redistribution of resources, such as (3) Who qualifies as a disabled person? (4) What is the ‘just’ limit of redistribution, that is, when do we know that we have provided enough resources? (5) Should society strive to achieve equality of opportunity or equality of outcome? The difficulty is that, as pointed out by Hirschmann, viewing disability rights through the lens of distributive justice jeopardises their status as fundamental human rights.

The Swedish disability activists’ third argument consists of reframing the issue of costs in disability politics and asking for a smart redistribution of resources. According to this argument, the figures of the cost of disability rights debated in the public sphere are incorrect, among other things because they overlook the savings that are generated by guaranteeing these rights to disabled people. Hence, the disability activists seek to strengthen the cost-benefit analyses upon which disability rights rely by pointing at calculation errors. The problem with this argument is that it is not backed by economic analyses. Indeed, there are no large-scale analyses showing the consequences of personal assistance – or other disability rights – for the Swedish national economy. Likewise, the cost-benefit argument fails to provide a solid justification of disability rights in the U.S. As mentioned earlier, the ADA was based on the premise that it would be cost-effective. However, three decades after the enactment of this law, the employment rate of disabled people in the U.S. remains low and it has been debated whether the ADA has contributed to increasing the number of disabled people in employment at all.

A possible way forward lies in the argument that the state should guarantee disability rights, not because they are cost-effective, but because disabled people are equal citizens, which requires answering question (2).

5.1.2 Why Should Society Recognise Disabled People as Equal Citizens?

Like many other countries, Sweden and the U.S. adopted legal measures to ensure equal rights and opportunities for disabled people. Drawing upon this legal framework, many activists argue that society should recognise disabled people as equal citizens because their equal rights have already been recognised by the law. However, this legal argument does not provide justifications in terms of justice. Moreover, the interpretation of law texts can vary and disabled people in Sweden and the U.S. have learned this the hard way. Although the law remained unchanged in Sweden, the number of people being granted personal assistance has dropped in recent years, following a stricter interpretation of the entitlement criteria stipulated by the law. Similarly, few plaintiffs in the U.S. have won their cases under the ADA because of the court’s narrow interpretation of the term ‘disability’. As indicated by these examples, the definition of the category ‘disabled people’ is a hot potato in disability politics and interpretations can vary if they are not guided by clear principles of justice.

The disability movement was sparked by the rejection of medical definitions and essentialist conceptions of disability. Disability, it was claimed, is not a person’s attribute but a situation of oppression created by a societal environment that does not take disabled people’s needs into account. This conception is commonly referred
to as the social model of disability. Yet, the social model’s open-ended definition of
disability runs into difficulties when used in claims of justice based on equality
because of the relational nature of equality, implying, in this case, equality between
disabled and non-disabled people. Approaches of justice based on equality require
therefore defining: (3) Who qualifies as a disabled person?

Next to pointing to the law, some disability activists claim that disabled people
should be recognised as equal citizens because they contribute to society. However,
this social contract argument is weak in a cultural context in which disabled people
tend to be viewed as objects of charity and net-receivers, rather than as valuable con-
tributors. Indeed, social contract theories of justice tend to assume that disabled
people ‘have no claims to justice on us because they allegedly bring nothing of value
to the negotiation table’. Hence, social contract theory prompts the question: (6)
Are disabled people valuable citizens?, and the burden of persuasion falls on the
disability advocates.

The social model of disability has been the main response of the disability move-
ment. It posits that disabled people are hindered by societal barriers and that
eliminating these barriers will enable them to participate fully in society, including
in the labour market. However, this argument is weak when it comes to legitimising
the rights of persons who are unable to engage in paid work.

From a philosophical point of view, Kittay shows that many theories of justice
based on equality are flawed because they overlook the reality of dependency in the
course of our lives. She highlights that it is simply not true that we are all always able
to contribute equally.

A conception of society viewed as an association of equals masks inequitable dependencies, those of
infancy and childhood, old age, illness and disability. While we are dependent, we are not well posi-
tioned to enter in competition for the goods of social cooperation on equal terms.

Kittay criticises the theories of justice relying on the principle of equality understood
as reciprocity between equal individuals. Instead, she proposes acknowledging the
existence of the multiple relationships of dependency we are all embedded in.

As mentioned earlier, theories of justice based on equality are underpinned by a
differentiation between ‘disabled’ and ‘non-disabled’ people. It follows that part of
the difficulties encountered by disability rights advocates amount to what Minow calls the ‘difference dilemma’. Advocates claiming equality for disabled citizens face
a dilemma because, in requesting rights tailored to the particular needs of some
citizens – such as personal assistance or sign language interpretation – they risk jeop-
ardising their status of equal citizenship. Minow’s way out of the difference
dilemma is to deconstruct the legal categories of difference. In the case of disability,
some have suggested that this can be done by an appeal to our shared vulnerability.

5.2 Shared (Bodily) Vulnerability
Contemplating the situation of disability rights in the United States, Knight notes
that many disabled people live in poverty because the programmes implementing
their social rights remain underfunded. This is the case, she argues, because these programmes do not have the support of the majority of the population, as many people believe that they are not concerned by disability. Instead of designing programmes targeting the ‘special needs’ of disabled people, Knight suggests adopting a universal approach grounded in the recognition of our shared vulnerability. She gives the example of Sweden, whose former Prime Minister Palme explained, in the 1970s, that ‘able-bodied Swedes are willing to contribute the resources necessary to support a strong welfare state because they know that their turn at being dependent will inevitably come’.

To establish her approach conceptually, Knight refers to the theories of vulnerability proposed by MacIntyre and Butler. Emphasising that human beings are prone to impairment and illness because of their intrinsic vulnerability, MacIntyre maintains that political systems should be designed to accommodate vulnerable subjects. According to Knight, this theory has the advantage of deconstructing the able/disabled binary and thereby removing the stigma attached to people needing ‘special’ measures. She posits that a system of universal social rights will get broad support from the population when people realise that these rights concern them. However, Knight sees a major shortcoming in MacIntyre’s theory in that it fails to recognise that ‘while human vulnerability is a shared condition, it is not shared equality in a context of inequality’. To address this shortcoming, Knight turns to Butler, who highlights that human vulnerability is affected by power relations. Butler distinguishes between ‘precariousness’, which she defines as the universal condition of vulnerability, and ‘precarity’, which ‘designates a politically induced condition in which certain populations are dehumanized and become disproportionately exposed to injury, violence and death’. Connecting this theory to disability, Knight suggests that the precarity faced by disabled people can be remedied by mobilising coalitions and engaging with the state, which can act by implementing legal rights and social policies.

Knight’s argument presents, however, a number of difficulties. At the empirical level, it is worth noting that the social rights programmes in Sweden have not been as universal as Palme claimed them to be. It is, for example, telling that the book that sparked the disability movement in Sweden, entitled In the Backyard of the People’s Home, criticised the Swedish Social-Democratic political project for failing to include disabled people in its vision of the ‘People’s Home’. Further, the able/disabled binary in not erased in Sweden, as illustrated by the landmark law stipulating the right to personal assistance, called the Act on Support and Service to Persons with Certain Functional Impairments (the LSS Act), and other programmes targeting disabled people. The backlash regarding the right to personal assistance, called the Act on Support and Service to Persons with Certain Functional Impairments (the LSS Act), and other programmes targeting disabled people. The backlash regarding the right to personal assistance and sickness benefits, to name two examples, indicate further that social rights can be curtailed in Sweden, despite a discourse of universal welfare politics. Similarly, analysing recent political debates around social rights in the U.S., Bagenstos claims that ‘universalism is not a panacea’ when it comes to securing the rights of disabled people because of the lasting view that disabled people are dependent citizens in
need of help, rather than equal citizens taking part of social rights designed for everyone. It is also noteworthy that the shared vulnerability argument seems to be a poor basis for political solidarity among disabled people. A quick look at the development of the disability movements in Sweden and the U.S. shows us that it was not the recognition of their shared bodily vulnerability that united disabled people, but the realisation that they were unjustly denied opportunities to participate in society and the vision that things could be different.82

Besides these empirical considerations, the argument that the recognition of our shared vulnerability offers a good basis to secure the social rights of all citizens, including disabled people, presents conceptual difficulties because it fails to provide answers to two key questions in disability politics: (7) Why should society secure the social rights of disabled people? (8) How should resources be distributed?

5.2.1 Why Should Society Secure the Social Rights of Disabled People?
The shared vulnerability argument seems to offer a straightforward answer to this question: we should secure the social rights of disabled people because we can all become disabled. However, as illustrated by the examples of American and Swedish disability politics, the recognition of our shared vulnerability does not automatically lead to a broad support of disability rights – just like the knowledge that smoking is bad for our health does not necessarily imply that people quit smoking.

Further, the argument that we can all become disabled suggests that not everybody is disabled at this very moment. Recognising this situation, Knight refers to MacIntyre who notes that, since some individuals will sometimes need more resources, people should be prepared to ‘provide costly care to severely disabled individuals who will never return the favour’ because ‘[t]heir mischances could have been ours, our good fortune could have been theirs’.83 This argument cannot provide an adequate theory of justice because it relies on a vision of charity towards ‘unfortunate’ disabled people.

5.2.2 How Should Resources Be Distributed?
Another central question in disability politics regards the way resources should be distributed. A shared vulnerability approach favours universal measures. Such a perspective is adopted, for example, in contemporary disability politics promoting ‘universal design’. Besides its universal component, the definition of universal design provided by Article 2 of the CRPD recognises that assistive devices may be needed for some disabled people. The CPRD thereby highlights that the needs of disabled people cannot fully be covered by universal measures.84 This implies further questions that would need to be answered by a theory of justice: (9) How can we justify the provision of ‘special’ resources to disabled citizens? (10) What needs should society take care of? And the question raised above (4). What is the ‘just’ limit of redistribution, that is, when do we know that we have provided enough resources?

One could argue that these questions can be addressed by drawing upon the human rights paradigm.85 Indeed, since human rights rest on the recognition that
'embodied frailty is a human universal condition', they enable a shift of perspective from special rights for disabled people to universal rights for all human beings. However, this perspective would gain to be strengthened by additional arguments of justice to ensure that the CRPD and other human rights treaties specifying the rights of disabled people are not interpreted as costly charitable measures.

This section has shown that, with respect to disability rights, founding arguments of justice on the recognition of our shared vulnerability implies several difficulties at the empirical and conceptual level. I have organised the discussion around Knight’s argument that an appeal to universal vulnerability offers a way out of the difficulties associated with theories of justice based on equality. Reviewing MacIntyre’s and Butler’s theories of vulnerability, Knight argues that Butler’s theory is better suited to ensure the social rights of disabled people because it acknowledges that human vulnerability is affected by power relations. I concur but would like to point out that Knight’s theory does not gain its strength from the recognition that our physical bodies are vulnerable. Rather, it is the recognition that we are all vulnerable because our lives are embedded in relationships of dependency and power that lifts her theory of justice. In other words, I agree with Knight that an appeal to our shared vulnerability offers a way out of the difficulties associated with justice as equality but, instead of focusing on the vulnerability of our bodies, I propose drawing on republican theory to consider the vulnerability inherent to life in society characterised by relationships of dependency, that is, our vulnerability to domination. While we are all vulnerable to domination, this article argues that the circumstances of domination faced by disabled people merits particular attention.

5.3 Freedom as Non-Domination

This section returns to the questions that critics may raise with respect to disability rights and to which arguments of justice based on equality or shared vulnerability have difficulties answering. While republican theory is not a panacea, it presents the advantage of tackling these questions from a different angle.

Let us start with the questions regarding distributive justice. Arguments based on freedom as non-domination do not depend on the proof that disability rights are cost-effective, nor that disabled people are productive citizens. Rather than framing disability rights in terms of welfare measures, arguments drawing on republican theory direct the debate towards disabled people’s status as free citizens and the state’s responsibility to protect all citizens from domination, including disabled citizens. I believe that this is exactly what Hirshmann envisions when she states that discussions regarding disability rights should start from freedom. Further, building arguments of justice on republican freedom avoids the complication of finding standardised definitions for the category of ‘disability’. The key issue becomes to what extent a person faces domination, not whether she legally qualifies as a disabled person. These discussions need to be informed by knowledge about the particular situations of domination faced by disabled citizens. Regarding the ‘just’ limit of distribution, a debate grounded in
republican theory will highlight that domination can be minimised by securing people’s access to certain resources. As mentioned earlier, Lovett argues that this can be done through the introduction of an unconditional basic income. However, this proposition needs to be considered in light of the particular forms of domination faced by disabled people to make sure that some situations of serious domination are not left unattended. It is, for example, important to recognise that a basic income is unlikely to cover expenses for support measures such as personal assistance or sign language interpretation, which are sine qua non conditions for participating in society for some disabled people. Bearing this reality in mind, a debate informed by non-ableist republican arguments will ensure that the introduction of a basic income does not jeopardise access to other resources enabling people to live as free citizens. Here, Shapiro’s emphasis on the state’s duty to secure people’s basic interests and intervene in situations of serious domination is useful to distinguish between competing claims on resources. Lastly, drawing on republican theory implies placing the requirement of democratic participation and equality of status between citizens at the forefront of any discussion concerning the distribution of resources entailed by the implementation of disability rights.

The other set of questions raised in this article concerns the recognition of the equal citizenship and intrinsic worth and dignity of disabled people. The republican conception of freedom as non-domination does not depend on the recognition of the category ‘disabled people’ as equal citizens. It suffices to establish that society should be designed in a way that protects people from domination and that the state should be particularly vigilant about situations of serious domination, whatever member of society it concerns. Here, disability research has an important role to play in increasing our understanding of the forms of domination faced by disabled people. The approach taken by Pettit, Lovett and Shapiro is useful in this respect because, rather than seeking to establish ideal theories, they are concerned with real-world circumstances. Finally, Pettit suggests that the ideal of freedom as non-domination is valuable to find institutional arrangements that will be acceptable to citizens with contrasting political views. Indeed, founding a discussion on freedom as non-domination bypasses debates regarding equality of opportunity or outcome by stressing people’s common desire to be free to live a good life, without being subjected to or fearing the arbitrary interference of other parties. This article echoes the previous work in disability studies reviewed above, which demonstrates that the demand of freedom as non-domination is exactly what disability rights are about.

6. A Research Agenda on Disability and Republican Justice

This article has argued that republican theory offers useful tools to diagnose and combat the injustices faced by disabled people. This last section posits that these tools can be sharpened by disability studies and outlines, therefore, an agenda for future research.
6.1 What Are the Particularities of the Domination Faced by Disabled People?

Future research in disability studies can draw upon republican theory to inquire about the specific types of domination faced by disabled people, bearing in mind that disability intersects with an array of other circumstances and dimensions of power. The distinction between dominium and imperium is useful in this respect. Dominium, or private domination, concerns the domination that can occur in relationships of power and dependency between citizens, in settings such as the family, the neighbourhood, and the workplace. Imperium, or public domination, on the other hand, concerns the relationships of dependency and power between citizens and the state. Such situations of domination can happen, for example, when citizens are not able to have a voice and influence decisions concerning them, do not have access to justice, or when the distribution of resources is organised in a humiliating, invasive or uncertain way. These topics are well-known in disability research. Considering them from the angle of freedom as non-domination draws attention to the difference between interference and arbitrary interference, what it means to be a free citizen, and how domination can be avoided in the relationships of dependency that characterise life in society.

6.2 What Type of State Interventions Minimise (or Contribute to) Domination for Disabled People?

Participation in decision-making processes has been a key area of research in disability studies. Following the lead of Series,95 O’Shea96 and Arstein-Kerslake and Flynn,97 future research can draw on republican theory to investigate disabled people’s right to have a voice and participate in the decisions that concern them and the societies in which they live. More generally, future research can draw on republican theory to scrutinise state interventions and evaluate whether they contribute to minimising domination for disabled people or, on the contrary, fuel situations of domination. To use Pettit’s98 expression, the standard of freedom as non-domination can be used as a ‘moral compass’ to analyse and monitor the implementation of disability rights. Republican theory can, for example, be used in research concerning disabled people’s right to non-discrimination. Contrary to the view that antidiscrimination law protects individual rights, Bagenstos maintains that its actual raison d’être is to tackle the ‘pattern of social and economic subordination that has intolerable effects on our society’.99 Viewed through the lens of republican theory, antidiscrimination law can be understood as a strategy adopted by states to protect classes of people deemed to be particularly vulnerable to domination. Yet, this is not how most judges have interpreted disability discrimination in the U.S.100 and at the international level101 so far. One reason for this status quo is that research in the social sciences has largely overlooked disability as a dimension of social inequality and domination, and its interactions with other dimensions such as gender, ethnicity/race and class.102 This knowledge is crucial to develop adequate responses to minimise the situations of domination faced by many disabled people in contemporary society. Another example concerns social
rights. This article has highlighted the connection between distributive justice and protection against domination and pointed out that, while an unconditional basic income and other universal schemes may reduce domination in society, such measures may be insufficient to tackle the serious forms of domination faced by some disabled people. Drawing on republican theory, future research can assess the impact of various distribution schemes on disabled people’s vulnerability to domination.

6.3 To What Extent Can the CRPD Be Seen as a Means of Protection against Domination?

This article suggests that freedom as non-domination is relevant to understand the spirit of the CRPD and guide its implementation. Future research can draw upon republican theory to analyse how the CRPD was drafted, how it is being interpreted in various arenas and contexts, and how it is monitored. Arstein-Kerslake and Flynn called attention to the importance of CRPD Article 12, concerning legal agency, to curtail relationships of domination. Future research can follow their example and examine the role that the CRPD can play to minimise both dominium and imperium, and promote freedom in various arenas of social life, in the Global North as well as in the Global South. Further, this article has pointed at the connection between the republican conception of the free citizen and the CRPD’s emphasis on disabled people’s intrinsic worth and dignity. It has also drawn a parallel between Article 8 of the CRPD on awareness-raising and Pettit’s remark that people’s status as free citizens should be common knowledge in society. Future research can continue exploring the connections that can be made between republican theory and the CRPD, both at a conceptual and an empirical level.

Conclusion

This article has argued that placing freedom as non-domination at the heart of discussions of justice offers new ways to legitimise disability rights without jeopardizing disabled people’s equal standing as citizens. I would like to end by pointing out that stressing the connection between domination and disability does not mean that impairment automatically leads to domination, nor that disabled people will always be dominated. Rather, it follows from the recognition that, with respect to the organisation of contemporary societies, disabled people are particularly vulnerable to domination and that this knowledge is crucial if we are to create societies that are more just for everybody, including disabled persons.

Acknowledgements

The author is grateful for the insightful comments and suggestions of the two anonymous reviewers of this journal. The author wishes to thank Professor Ian Shapiro (Yale University) for his encouragement to pursue the exploration of non-domination in relation to disability. Many thanks to the participants of the Chaire Hoover seminar (University of Louvain) and the seminar of the Institute for Housing and Urban Research (Uppsala University) for their valuable feedback on previous versions of this article.
NOTES
1. This article uses the term ‘disabled people’ to underline its view of disability as a structural dimension of social inequality and injustice.
10. Pettit (n 6) 37.
11. Hirschmann (n 7).
16. Hirschmann (n 5) 46 emphasis in original.
17. Hirschmann (n 5).
18. See e.g., Eva Feder Kittay, Love’s Labour. Essays on Women, Equality and Dependency (Routledge 1999); Arneil (n 7); Knight (n 7).

22. Lovett (n 8).

25. (n 23).
26. Ibid. 60.
27. Pettit (n 23); Lovett (n 8).
28. Pettit (n 23).
29. Pettit (n 6) 139.
32. Pettit (n 6) 80.
33. Ibid. 57.
37. Ibid. 4.
41. Ibid. 127.
43. De Wispelaere and Casassas (n 5).
44. Pettit (n 6) 88.
48. Ibid. 22.
49. Kittay (n 18).
50. Ibid. 34.
51. The parallel between Kittay’s conception of domination and republican theory was also noted in Tom O’Shea, ‘Civic Republican Disability Justice’, in Adam Cureton and David T Wasserman (eds), *The Oxford Handbook of Philosophy and Disability* (Oxford Handbooks Online 2020).
52. LSS Act 1993, §5, author’s translation.

54. Bagenstos, ‘Disability Rights and the Discourse of Justice’ (n 4) 27.


56. (n 54).


58. (n 5).

59. In 2016, the Swedish government launched an investigation of the increasing costs of the LSS Act. The final report SOU, ‘Översyn Av Insatser Enligt LSS Och Assistansersättningen [Review of the Measures According to LSS and of the Assistance Allowance]’ (2018) suggests ways to decrease the net cost of personal assistance but does not look at the savings implied by this measure, neither does it address the cost involved in dismantling the LSS Act, leading to, among others, an increased workload for family members of disabled persons.


62. Berggren, Emilsson and Bergman (n 54); Brennan and others (n 54).


64. Charlton (n 30).

65. See e.g., Michael Oliver, Understanding Disability (Palgrave Macmillan 2009).


67. De Wispelaere and Casassas (n 39) 403.

68. (n 18).

69. Ibid. xi.


74. Ibid. 15.

75. (n 75).


77. Ibid. 18 emphasis in original.


79. Knight (n 75) 19.

80. Vilhelm Ekensteen, På Folkhemmets Bakgård [In the Backyard Of the People’s Home] (Bokförlaget Prisma 1968).


82. Charlton (n 30).

83. MacIntyre 1999 in Knight (n 75) 19.

84. See also Heikkilä, Katsu and Mustaniemi-Laakso (n 74).


87. (n 75).

88. Ibid.

89. Ibid.

90. Ibid.

91. (n 5).

92. (n 47).

93. Politics against Domination (n 48).

94. (n 6).

95. (n 34).

96. (n 36).

97. (n 38).

98. (n 6).


100. Bagenstos, ‘Subordination, Stigma and Disability’ (n 54).


103. (n 38).

104. (n 6).