### Framework

**Morality must be internally motivating – only acting in accordance with your own choice is constitutive of agency and generates normativity.**

**Gewirth 84,** Alan Gewirth (UChi Prof) “THE ONTOLOGICAL BASIS OF NATURAL LAW: A CRITIQUE AND AN ALTERNATIVE.” 29 American Journal of Jurisprudence. 95. 1984. HeinOnline.Let me briefly sketch the main line of argument that leads to this conclusion. As I have said, the argument is based on the generic features of human action. To begin with, **every agent acts for purposes** he **[they] regard**s **as good. Hence,** he **[they] must regard as necessary goods the freedom and well being that are the** generic features and **necessary conditions of** his **action** and successful action in general. From this, **it follows that every agent logically must hold** or accept **that** he has **[they have] rights to these conditions.** For if he were to deny that he has these rights, then he would have to admit that it is permissible for other persons to remove from him the very conditions of freedom and well-being that, as an agent, he must have. But it is contradictory for him to hold both that he must have these conditions and also that he may not have them. Hence, on pain of self-contradiction, every agent must accept that he has rights to freedom and well-being. **Moreover, every agent must** further **admit that all other agents also have those rights, since all other** actual or prospective **agents have the same** general **characteristics of agency** on which he must ground his own right-claims.¶ What I am saying, then, is that every agent, simply by virtue of being an agent, must regard his freedom and well being as necessary goods and must hold that he and all other actual or prospective agents have rights to these necessary goods. **Hence, every agent, on pain of self-contradiction, must accept the following principle: Act in accord with the generic rights of** your recipients as well as of yourself. The generic rights are rights to the generic features of action, **freedom**, and well-being. I call this the Principle of Generic Consistency (PGC), because it combines the formal consideration of consistency with the material consideration of the generic features and rights of action

**However, the non-interference model of freedom allows absolute institutional control—non-domination solves.**

**Pettit 97,** Philip Pettit (Laurence Rockefeller University Professor of Politics and Human Values at Princeton University). “Freedom with Honor: A Republican Ideal.” Spring 1997. <http://www.princeton.edu/~ppettit/papers/FreedomwithHonor_SocialResearch_1997.pdf> And so to my claim about the constitutional consistency of freedom as noninterference with institutional humiliation. For the lesson of our reflections is that **if the task is to promote negative liberty** overall then **the best constitution**al arrangement for doing that **may involve leaving some** people **with** a certain **power of interfering in** the **lives of others**. But if some people have such a power of interfering with others then, cases of covert manipulation apart, it will generally be salient to relevant parties that they have that power: everyone is going to be interested, after all, in whether some people dominate others in this way and it will usually be evident from the allocation of resources that they do or do not exercise such domination (Pettit, 1997, ch. 2). And **where** it is salient to all that **a dominates b,** then it will equally be salient that **if b does anything in the domain of a’s power,** then **b does that by** the **implicit leave**—by the grace and favor—**of a. There may not be much actual interference** practiced in the relationship **but it will still be** the case, and it will still be saliently the case, **that b acts** and lives **at the mercy of a. With such manifest domination, of course, humiliation routinely follows**. The subordinate party has to look out for the moods and feelings of the dominating person. They have to make sure that they stay on their best side. **They will naturally seek to ingratiate themselves with their superior**, if that is possible, **and** they **may** even find themselves inclined to **bow and scrape**. The subordinate party will live in a position where **their grounds for self-respect are** severely **compromised**; they will be forced to accept a considerable measure of humiliation. I earlier associated the absence of humiliation with enjoying a voice and being given an ear. The connection between domination and humiliation comes out nicely in the loss of voice that domination entails. The dominated person is obliged to watch what they say, having an eye to what will please their dominators; they have to impress their dominators, wherever that is possible, and try to win a higher ranking in their opinion. But **such a person will naturally be presumed to lack an independent voice**, at least in the area where domination is relevant. They will fail to make the most basic claim on the attention of the more powerful, for they will easily be seen as attention-seekers: they will easily be seen in the way that adults often see precocious children. They may happen to receive attention but they will not command attention; **they may happen to receive respect but they will not command respect.**

**[Optional] Non-domination is the only notion of freedom that can apply to state actors. Prefer civic republicanism—state interference promotes freedom if it ensures non-domination.**

**Waltman 2**, Jerry Waltman (taught political science at the University of Southern Mississippi for 25 years; in 15 of those he participated in the British Studies Program.  He currently holds an endowed professorship in political science at Baylor University, where he teaches British politics and comparative public law.  He received his Ph.D. from Indiana University, and is the author of eight books and numerous articles in academic journals on both British and American politics.  In addition to his years spent on the British Studies Program, he has traveled and taught in the UK on many occasions). “Civic Republicanism, The Basic Income Guarantee, and the Living Wage.” USBIG Discussion Paper. No. 25, March 2002. Civic republicanism's origins lie in the ancient world, in the political theory undergirding several notable Greek city-states and the Roman republic. (2) Thereafter, it lay dormant until resurrected in the Italian city-states of the Renaissance, and then by the "Commonwealth men" of seventeenth century England. From the latter, it was transported to the American colonies and flowered during the Revolutionary era and immediately afterward. While republican thinkers from these various periods parted company on several matters, their unifying focus was that **the polity is a self-governing community of citizens**. The aim of the civic republican polity is maintaining the liberty of its citizens. **Since liberty cannot be achieved outside a community**-a wild animal can be "free" but it cannot be said to have "liberty"-**the individual** citizen must be intimately connected to the community. He **must believe that** his **[their] interests are inseparable from those of the community**, and that the role of citizen is a natural part of life. The state can rely on its citizens, who after all are the state, to exercise civic virtue and to consider the needs of the community along with their own. The citizenry governs itself by the process of deliberation, a deliberation devoted to finding and pursuing the public interest. To this end, political institutions in a republic should evidence a certain balance and be rather slow acting, at least under ordinary circumstances. Representative democracy, which allows republics to be larger than city-states, is a method for the further protection of liberty. It is not, pointedly, an end in itself. **Unlike liberal individualism, which posits no overriding end for the polity, civic republicanism stands** emphatically **on liberty** as its central value. Liberty is taken to mean being free from domination. More formally, according to Richard Petit, a leading contemporary republican theorist, "One agent dominates another if and only if they have a certain power over that other, in particular a power of interference on an arbitrary basis." (3) Domination can therefore take either of two forms. In the first, one private individual holds power over another (dominium); in the second, it is the state which exercises the domination (imperium). Both are equally odious to republicanism. If I am dominated, I am not free, no matter what the source of the domination. **To be a citizen is to be** at all times and all places **free of domination**, since citizenship is synonymous with the enjoyment of liberty. Prohibiting dominium presupposes that no citizen can be the servant of another, for servanthood brings domination with it by its very nature. If you are my servant and I order you around, you are quite clearly being dominated. Nevertheless, it is important to note that **you are dominated even if I chose not to order you around** (for whatever reason). **You still cannot look me in the eye as an equal**, for we both know that "The Remains of the Day" is more realistic than Wooster and Jeeves. Not only may I alter my reserved role at any time without consulting you, but you will also be ever mindful of my ability to do so, and that cannot help but affect how you think, feel, and act. You and I are both aware that there may come a time when you will have to tread gingerly. Citizens of a republic simply cannot have such a relationship. As Petit said of civic republicans: The heights that they identified held out the prospect of a way of life within which none of them had to bow and scrape to others; they would each be capable of standing on their own two feet; they would each be able to look others squarely in the eye. (4) Or, as Walt Whitman succinctly described a citizen, "Neither a servant nor a master am I." (5) **Governmental power can** of course **be a source of domination also**, for the enormous power of the state is ever pregnant with the potential for domination. **There is, however, a critical difference** here. **Where**as **interference**, real or potential, **by one individual over another**'s choices **is** by its nature **domination, government**al **interference** in one's affairs **may** or may **not be.** This is **because liberty can only be** made **meaningful in a community, and** the **needs of the community will** necessarily at times come into **conflict** with one or more individuals' autonomy, or at least with individuals' autonomy as they would define it. It is the community that makes liberty possible, and a citizen's freedom is inseparable from the interests and health of the community. As Blackstone noted, "**laws, when prudently framed, are** by no means subversive but rather **introductive of liberty**."

**Thus, the standard is consistency with non-domination; or the conditions that ensure an agent is never at the mercy of the arbitrary will of another.**

**Prefer it –**

**[1]** **Non-domination is a pre-req to any other framework since in order to make any choice or perform any action, you must be able to have the freedom to take that action without arbitrary interference. Non-domination ensures agential uncertainty because there will always be the possibility of prevention by the dominator which freezes action.**

**[2] Even if non-domination fails, non-arbitrariness is a side constraint – [a] Controls the internal link to oppression since undermines the ideology behind such discrimination – the removal of arbitrary manipulation eliminates the structural position necessary to treat individuals differently [b] Obligations – Only a non-arbitrary principle can hold agents morally accountable since otherwise we can’t know what our obligations are.** **Cimini 2,** Christine. “PRINCIPLES OF NON-ARBITRARINESS: LAWLESSNESS IN THE ADMINISTRATION OF WELFARE.” Rutgers Law Review, 2005, papers.ssrn.com/sol3/papers.cfm?abstract\_id=2112102.The requirement that laws and regulations be set out with clarity is a theme woven throughout legal jurisprudence. It addresses concerns that **individuals should be able to adapt their behavior and** that **enforcement** officials **should have objective standards** to guide their decision-making. The premise that individuals should have clear knowledge of the laws that apply to them, in order to adequately conform their behavior, underlies many of the substantive legal areas discussed above. **Without such** a **requirement, "the law is so arbitrary that citizens will be unable to avoid punishment based solely upon bias or whim**." For example, **a basic principle underlying the vagueness doctrine is that laws should be sufficiently clear to provide people** of ordinary intelligence **with a reasonable opportunity to understand what conduct is prohibited**. Thus, if a law is so lacking in standards that individuals cannot be certain what conduct is prohibited, it violates the vagueness doctrine. Similar concerns about fair notice to the public also exist in the punitive damages and choice of law contexts where significant jurisprudence requires fair notice251 and predictability.252 Finally, one of the basic requirements of the non-delegation doctrine is that delegations to administrative agencies be accompanied by "intelligible principles." As in the above contexts, this "intelligible principles" requirement is designed to allow individuals subject to administrative decision-making to be better able to plan their affairs.253

### Contention

**Thus I contend the elimination of standardized conditions do not foster conditions of non-domination –**

**[1] The aff is a rejection of a system of non-domination since it rejects the principle of non-arbitrary standards of evaluation. Even if the content of that standard is not perfect, the mere fact there is a standard prevents domination since the results of the exam are not entirely at the will of the grader, which is always net preferable since it will always be comparatively more arbitrary and removes the structural control of the student.**

**[2] The aff is a shift away from objective standards of academic accountability and towards domination – admissions become arbitrary identity tests that leave applicants at the mercy of admissions officers. Hartocollis 18,** Anemona. “Harvard Rated Asian-American Applicants Lower on Personality Traits, Suit Says.” The New York Times, The New York Times, 15 June 2018, [www.nytimes.com/2018/06/15/us/harvard-asian-enrollment-applicants.html](http://www.nytimes.com/2018/06/15/us/harvard-asian-enrollment-applicants.html). **Harvard consistently rated Asian-American applicants lower than others on traits like “positive personality,” likability, courage, kindness and being “widely respected,” according to an analysis of more than 160,000 student records** filed Friday by a group representing Asian-American students in a lawsuit against the university. Asian-Americans scored higher than applicants of any other racial or ethnic group on admissions measures like test scores, grades and extracurricular activities, according to the analysis commissioned by a group that opposes all race-based admissions criteria. But the **students’ personal ratings significantly dragged down their chances of being admitted**, the analysis found. The court documents, filed in federal court in Boston, also showed that Harvard conducted an internal investigation into its admissions policies in 2013 and found a bias against Asian-American applicants. But Harvard never made the findings public or acted on them. Harvard, one of the most sought-after and selective universities in the country, admitted only 4.6 percent of its applicants this year. **That has led to intense interest in the university’s closely guarded admissions process**. Harvard had fought furiously over the last few months to keep secret the documents that were unsealed Friday. The documents came out as part of a lawsuit charging Harvard with systematically discriminating against Asian-Americans, in violation of civil rights law. The suit says that **Harvard imposes what is in effect a soft quota of “racial balancing.” This keeps the numbers of Asian-Americans artificially low, while advancing less qualified white, black and Hispanic applicants**, the plaintiffs contend. The findings come at a time when **issues of race, ethnicity, admission, testing and equal access to education are confronting schools across the country, from selective public high schools**[**like Stuyvesant High School**](https://www.nytimes.com/2018/06/05/nyregion/carranza-specialized-schools-admission-asians.html?module=inline) in New York to elite private colleges. **Many Ivy League schools**, not just Harvard, **have had similar ratios** of Asian-American, black, white and Hispanic students for years, despite fluctuations in application rates and qualifications, raising questions about how those numbers are arrived at and whether they represent unspoken quotas. Harvard and the group suing it have presented sharply divergent views of what constitutes a fair admissions process.“It turns out that the suspicions of Asian-American alumni, students and applicants were right all along,” the group, Students for Fair Admissions, said in a court document laying out the analysis. “Harvard today engages in the same kind of discrimination and stereotyping that it used to justify quotas on Jewish applicants in the 1920s and 1930s.” Harvard vigorously disagreed on Friday, saying that its own expert analysis showed no discrimination and that seeking diversity is a valuable part of student selection. The university lashed out at the founder of Students for Fair Admissions, Edward Blum, accusing him of using Harvard to replay a previous challenge to affirmative action in college admissions, Fisher v. the University of Texas at Austin. In its 2016 decision in that case, the Supreme Court ruled that race could be used as one of many factors in admissions. “Thorough and comprehensive analysis of the data and evidence makes clear that Harvard College does not discriminate against applicants from any group, including Asian-Americans, whose rate of admission has grown 29 percent over the last decade,” Harvard said in a statement. “Mr. Blum and his organization’s incomplete and misleading data analysis paint a dangerously inaccurate picture of Harvard College’s whole-person admissions process by omitting critical data and information factors.” In court papers, Harvard said that a statistical analysis could not capture the many intangible factors that go into Harvard admissions. Harvard said that the plaintiffs’ expert, Peter Arcidiacono, a Duke University economist, had mined the data to his advantage by taking out applicants who were favored because they were legacies, athletes, the children of staff and the like, including Asian-Americans. In response, the plaintiffs said their expert had factored out these applicants because he wanted to look at the pure effect of race on admissions, unclouded by other factors. Both sides filed papers Friday asking for summary judgment, an immediate ruling in their favor. If the judge denies those requests, as is likely, a trial has been scheduled for October. If it goes on to the Supreme Court, it could upend decades of affirmative action policies at colleges and universities across the country. **Harvard is not the only Ivy League school facing pressure to admit more Asian-American students. Princeton and Cornell and others also have high numbers of Asian-American applicants. Yet their share of Asian-Americans students is comparable with Harvard’s**. In Friday’s court papers, the plaintiffs describe a shaping process that begins before students even apply, when Harvard buys data about PSAT scores and G.P.A.s, according to the plaintiffs’ motion. It is well documented that these scores vary by race. The plaintiffs’ analysis was based on data extracted from the records of more than 160,000 applicants who applied for admission over six cycles from 2000 to 2015. They compare Harvard’s treatment of Asian-Americans with its well-documented campaign to reduce the growing number of Jews being admitted to Harvard in the 1920s. Until then, applicants had been admitted on academic merit. **To avoid adopting a blatant quota system, Harvard introduced subjective criteria like character, personality and promise. The plaintiffs call this the “original sin of holistic admissions.” They argue that the same character-based system is being used now to hold the proportion of Asian-Americans at Harvard to roughly 20 percent year after year**, except for minor increases, they say, spurred by litigation. **White applicants would be most hurt if Asian-American admissions rose, the plaintiffs said. On summary sheets, Asian-American applicants were much more likely than other races to be described as “standard strong,” meaning lacking special qualities that would warrant admission, even though they were more academically qualified**, the plaintiffs said. They were 25 percent more likely than white applicants to receive that rating. They were also described as “busy and bright” in their admissions files, the plaintiffs said. One summary sheet comment said the Asian-American applicant would “need to fight it out with many similar” applicants. The plaintiffs’ papers appeared to offer other examples of grudging or derogatory descriptions of Asian applications, but they had been redacted. In its admissions process, Harvard scores applicants in five categories — “academic,” “extracurricular,” “athletic,” “personal” and “overall.” They are ranked from 1 to 6, with 1 being the best. Whites get higher personal ratings than Asian-Americans, with 21.3 percent of white applicants getting a 1 or 2 compared to 17.6 percent of Asian-Americans, according to the plaintiffs’ analysis. Alumni interviewers give Asian-Americans personal ratings comparable to those of whites. But the admissions office gives them the worst scores of any racial group, often without even meeting them, according to Professor Arcidiacono. Harvard said that while admissions officers may not meet the applicants, they can judge their personal qualities based on factors like personal essays and letters of recommendation. Harvard said it was implausible that Harvard’s 40-member admissions committee, some of whom were Asian-Americans, would conclude that Asian-American applicants were less personable than other races. **University officials did concede that its 2013 internal review found that if Harvard considered only academic achievement, the Asian-American share of the class would rise to 43 percent from the actual 19 percent**. After accounting for Harvard’s preference for recruited athletes and legacy applicants, the proportion of whites went up, while the share of Asian-Americans fell to 31 percent. Accounting for extracurricular and personal ratings, the share of whites rose again, and Asian-Americans fell to 26 percent. What brought the Asian-American number down to roughly 18 percent, or about the actual share, was accounting for a category called “demographic,” the study found. This pushed up African-American and Hispanic numbers, while reducing whites and Asian-Americans. The plaintiffs said this meant there was a penalty for being Asian-American.“Further details (especially around the personal rating) may provide further insight,” Harvard’s internal report said. But, the plaintiffs said in their motion Friday, there was no further insight, because, “Harvard killed the study and quietly buried the reports.” Harvard said that the review was discounted because it was preliminary and incomplete. At the end of the admissions process, the class of applicants is fine-tuned through a so-called “lop list,” which includes race. Almost the entire page in which the plaintiffs describe that fine-tuning has been blacked out. Mr. Blum, the founder of Students for Fair Admissions, said Friday that it was “disreputable” of Harvard to complain that information was being taken out of context while at the same time insisting on significant redactions of the evidence. In a heavily redacted section, the plaintiffs describe how Harvard and 15 other elite schools share notes about the race of admitted students at a meeting of the Association of Black Admissions and Financial Aid Officers of the Ivy League and Sister Schools every year. The court papers portray them as a sort of secret society of admissions officers exchanging information about race, a sensitive aspect of admissions. Harvard’s class of 2021 is 14.6 percent African-American, 22.2 percent Asian-American, 11.6 percent Hispanic and 2.5 percent Native-American or Pacific Islander, [according to Harvard’s website](https://college.harvard.edu/admissions/admissions-statistics).