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**Resisting the Global Leviathan**

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<b>Contents</b>	
<b>Abstract</b> .....	4
<b>Introduction</b> .....	5
<b>The Problem of Transnational Domination</b> .....	5
<b>Specifying the Methods, Scope, and Impact of the Thesis</b> .....	8
<b>The Structure of the Thesis</b> .....	11
<b>Chapter One – Domination and Republican Social Justice</b> .....	17
<b>Introduction</b> .....	17
<b>Republicanism: From Greece to the Early Modern Era</b> .....	18
<b>Positive Liberty, Negative Liberty, and the Occlusion of a Third Way</b> .....	23
<b>Freedom as Non-Domination: A Challenge to Freedom as Non-Interference</b> .....	27
<b>The Liber</b> .....	33
<b>Freedom from <i>Dominium</i></b> .....	41
<b>Structural Domination</b> .....	46
<b>Corporate Agents</b> .....	53
<b>Conclusion</b> .....	60
<b>Chapter Two – Securing Democratically Legitimate Governance</b> .....	62
<b>Introduction</b> .....	62
<b>Democratic Legitimacy</b> .....	63
<b>Against Constitutionalism – Against Democracy</b> .....	71
<b>The Common Good – Two False Starts</b> .....	78
<b>The Deliberative Good</b> .....	82
<b>The Deliberative Assembly</b> .....	92
<b>Undermining Democratic Legitimacy</b> .....	100
<b>Conclusion</b> .....	103
<b>Chapter Three – The Problem of Transnational Domination</b> .....	106
<b>Introduction</b> .....	106
<b>The Two Faces of Transnational Domination</b> .....	107
<b>Global Reciprocal Power</b> .....	113
<b>Self-Regulating Multilateral Governance</b> .....	117
<b>Individualised Transnational Domination and Deliberative Polyarchy</b> .....	126
<b>Conclusion - Towards Global Non-Domination</b> .....	132
<b>Chapter Four - A Framework for Transnational Republican Governance</b> .....	136
<b>Introduction</b> .....	136
<b>Specifying the Demos</b> .....	138
<b>The Overinclusive Demos</b> .....	143

<b>Transnational Frameworks</b> .....	147
<b>The Neo-Republican Global Covenant</b> .....	154
<b>Human Rights: Protecting and Resourcing Individual Choice</b> .....	160
<b>Boundary Courts</b> .....	164
<b>Conclusion</b> .....	170
<b>Chapter Five – Securing the Conditions for Transnational Republicanism</b> .....	172
<b>Introduction</b> .....	172
<b>Duties to Compatriots</b> .....	173
<b>Demoi without a Demos</b> .....	177
<b>Mythologizing and Excavating a Shared History: Crafting a Trans-nationalism</b> .....	182
<b>A Republican Civic Education</b> .....	187
<b>Cultural Imperialism: The Conflict between Human Rights and Ethical Commitments</b> .....	192
<b>Politics in the Vernacular and Deliberating across Deep Divides</b> .....	199
<b>Conclusion</b> .....	206
<b>Conclusion</b> .....	209
<b>Overview of the Thesis</b> .....	209
<b>Original Contributions of the Thesis</b> .....	213
<b>Limitations and Avenues for Future Research</b> .....	217
<b>Conclusion</b> .....	219
<b>Bibliography</b> .....	221

## **Abstract**

The aim of this thesis is to contribute to the burgeoning neo-republican literature by proposing a novel solution to the problem of transnational domination. In doing so, the thesis will offer a coherent and defensible account of transnational domination, one which claims that the problem of transnational domination can arise in two distinct forms. The first form of transnational domination occurs when external agents interfere or threaten to interfere in the affairs of states, since any interference with states will correlatively interfere with the lives of the individuals living within that state. The second form, what I will term individualised transnational domination, occurs when transnational control bypasses the state and interferes in the lives of individuals. Addressing the two forms of transnational domination and securing an internationally just political framework requires that we look to create a multi-level system of cosmopolitan democratic governance in which: states' capacity to secure social and political justice is protected; transnational agents, including multinational corporations, are subject to constitutional constraints; and individuals are able to influence and direct the governance that they're subject to, thereby rendering the framework democratically legitimate.

## Introduction

### The Problem of Transnational Domination

Over the last two decades, neo-republicanism has emerged as a contender to liberalism's preeminent status within political theorising. Theorists working within this broad tradition are united in the way in which they understand freedom as a status-concept. For neo-republicans, to be free is to enjoy independence from arbitrary control or domination,<sup>1</sup> and individuals are deemed to be free when they are protected from the capacity of others to exert arbitrary control over their lives and their choices.

While many theorists have offered novel accounts of how we might achieve individual freedom from domination, less attention has been paid to the problem of transnational domination, or how we might secure an internationally just world in which individuals are free from interference or the threat of interference. The problem, here, is that while it might be possible to design ideal republics in which citizens enjoy protections against domination, the transnational framework within which these republics are embedded may be such that internal non-domination is undermined by external agents. The central issue that this thesis therefore addresses is how we might develop a political solution to the problem of transnational domination, and thereby secure international justice, while simultaneously ensuring that individuals enjoy social and political justice.

Since Philip Pettit has offered the fullest account of neo-republican freedom, and has considered the problem of transnational domination at length, this thesis will primarily engage with his work. Indeed, he outlines one component of the problem of transnational domination succinctly when he argues that, 'If such a state were dominated by an outside agency, then its citizens would also be dominated by that agency, since any restrictions at the level of the state would inevitably involve restrictions on their democratic lives. And so we see that the ideal of the free person or citizen requires that the state that protects people against private domination ought to be, not only internally undominating, but externally undominated as well.'<sup>2</sup>

Pettit goes on to argue that socially and politically just states can be subject to external domination by a variety of international and transnational agents, including other states, institutions such as the World Bank and International Monetary Fund, governance institutions

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<sup>1</sup> It is important to note that in recent years there has been a gradual shift in neo-republican terminology, which is in part a result of the difficulties associated with defining arbitrary/non-arbitrary control. Pettit now prefers to use the term uncontrolled interference rather than arbitrary interference as the term 'arbitrary' may be misleading owing to modern connotations. See: Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012), p. 58.

<sup>2</sup> Philip Pettit, *Just Freedom: A Moral Compass for a Complex World* (New York: W. W. Norton & Company, Inc, 2014), p. 151.

such as the European Union, and multinational corporations. In order to address this issue, Pettit has offered us two accounts of how the problem of transnational domination might be addressed.

In *A Republican Law of Peoples* (2010) he argues that it would be necessary to develop a set of global regulatory norms or rules, which would discipline international agents and constrain their actions, and that weaker states would need to coalesce into blocs to counterbalance the power of stronger states. As will be evidenced in the first and third chapters, however, this is a strategy that Pettit rejected in *Republicanism: A Theory of Freedom and Government* (1997). Indeed, he argued in this earlier work that such an approach is an implausible means for securing non-domination between individuals because it would inevitably lead to a war of all against all and a correlative reduction in freedom for all agents. It is therefore unusual that Pettit applies this strategy to the international level.

In his most recent work, *Just Freedom: A Moral Compass for a Complex World* (2014), Pettit has amended his suggestions and outlined an account of international justice which would require that states agree to a series of multilateral arrangements which would create a global framework within which each state can exercise their sovereign liberties. The aim of this approach would be to create the global infrastructure in which states' capacity to secure social and political justice would be protected from external interference and would seem to suggest a more highly institutionalised international political system than that advanced in *A Republican Law of Peoples*.

While he offers us a plausible theory of international justice to supplement his accounts of social and political justice, I will argue that Pettit's most recent suggestions would similarly fail to secure non-domination. This is because his approach relies on states themselves being the primary enactors and guarantors for the overarching global infrastructure, and Pettit, in his earlier work, offers us an account of exactly why this is insufficient for securing non-domination. Indeed, at the domestic level he has convincingly argued that the problem of domination cannot be addressed by potential dominators vowing to forgo exerting domination because the option to do so remains within their purview. That is, he posed the question, 'Can I alienate my power of interference, and suspend the domination I practice, by persuading myself that it is wrong to interfere in your choice? Will the moral constraints that I thereby recognise act as checks on my will and serve to liberate you, whether wholly or in part?'<sup>3</sup> Importantly, he resoundingly answered in the negative because, 'Even if I form the view that it is wrong to interfere with you, it remains the case that I may prefer to practice interference, whether out of weakness of will, out of malice, or out of a will for evil; the option continues to lie within my capacity.'<sup>4</sup>

He concluded that, 'My power of interference in your choice, and my domination over you, can only be contained by external checks that remove or replace the interference option or

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<sup>3</sup> Pettit, *On the People's Terms*, p. 63.

<sup>4</sup> *Ibid.*, p. 63.

put it cognitively off the menu.’<sup>5</sup> This conclusion led him to defend the strategy of constitutional provision as the most appropriate means for addressing domination at the domestic level: this strategy requires that an external authority, in this case the state, is empowered to remove the option of interference from all individuals’ choice-sets. I think that a similar approach is necessary at a transnational level because even if states vow to uphold the global order, the option to renege on this promise remains within their reach.

Even more problematically, Pettit does not consider the possibility that control need not necessarily be exercised solely between transnational agents (i.e. between states, international organisations, transnational private institutions, and multinational corporations), but can bypass the state and be exercised by transnational agents over *individuals*. This phenomenon, what I will call individualised transnational domination, is a process in which control cuts across national borders, exerting a significant degree of coercion over spatially dispersed individuals in states which might enjoy external protections against domination. For example, if a state were to decide to close its borders against all Muslims or all blue-eyed individuals, this policy would not directly coerce a specific state but would control many spatially dispersed individuals. As such, it seems possible to claim that the control which is exercised will *bypass* the state and interfere with the lives of individuals.

It is important to be clear that while attempting to distinguish between transnational and individualised transnational domination, I am not suggesting that Pettit is unconcerned with the ways in which individuals’ lives are affected by transnational control. Indeed, his acknowledgement that, ‘any restrictions at the level of the state would inevitably involve restrictions on their democratic lives,’ evidences his concern for the effects of transnational domination upon individuals’ lives. Nonetheless, the distinction that this thesis will attempt to highlight is that Pettit understands transnational domination to occur when transnational agents interfere, or threaten to interfere, with the state, and this process correlatively interferes with individuals’ lives. Individualised transnational domination, however, is a process whereby the state is not interfered with, but individuals are. The concept of individualised transnational domination is therefore an attempt to supplement Pettit’s account of transnational domination, enabling us to distinguish between those forms of transnational control which interfere with the state (and correlatively interfering in the lives of the individuals who live within that state), and those forms of control which bypass the state and interfere in the lives of individuals.

Indeed, James Bohman, who has considered this problem at length, argues that the solution to what I will refer to as individualised transnational domination, is to redesign the international political system as an interactive deliberative polyarchy. This would require the creation of a federated system of global governance in which power is dispersed horizontally

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<sup>5</sup> Ibid., p. 63.

across demoi in which citizens are able to initiate deliberation and redesign the world around them. Although a plausible solution to this problem, Bohman's account fails to ensure that polities are capable of securing internal social and political justice and, as such, offers us an account in which one form of transnational domination might be addressed, but which permits other forms of domination to arise.

Pettit and Bohman's accounts therefore show that there are two forms of transnational domination which neo-republicans must aim to address simultaneously. Firstly, it is necessary to ensure that states' capacity to secure internal social and political justice is protected against external threats; and, secondly, it is necessary to address the ways in which transnational agents might bypass states and interfere with individuals. The aim of this thesis, as noted above, is to attempt to offer a solution to these twin forms of transnational domination through developing an account of neo-republican international justice.

Centrally, I will argue that attempting to resolve this problem should lead us to re-examine Pettit's earlier work on transnational domination in *Republicanism: A Theory of Freedom and Government*, and aim to replicate the strategy of constitutional provision beyond the state. Doing so, I will argue, requires the development of an independent, overarching authority capable of disciplining transnational agents, necessitating the creation of a multi-level cosmopolitan democratic framework. Within such a framework, states' capacity to secure social and political justice would be protected against external threats, and individuals would be able to influence and direct the political control that they're subject to at all levels of governance. Importantly, these transnational and global levels of governance would be able to properly regulate transnational agents, including states, international organisations, and multinational corporations. In addition, the fundamental basic liberties and welfare rights that Pettit believes would be necessary for securing personal independence and freedom would be granted the status of human rights and would enjoy global entrenchment and enforcement. In this way, it will be possible to address the two forms of transnational domination and thereby secure neo-republican international justice, while simultaneously ensuring that individuals enjoy social and political justice within states.

### **Specifying the Methods, Scope, and Impact of the Thesis**

Before detailing exactly how my argument will develop, it is necessary to briefly digress and note the underlying methods, scope, and intended impact of my thesis. Indeed, in developing a solution to the problem of transnational domination, I will primarily use the philosophical methods of conceptual analysis, consistency of argumentation, and logical progression, with the quality of my theorising being judged by its consistency, deductive closure, axiomatisability, and parsimony. This thesis should therefore be judged to be weak or strong according to the degree



to which it meets these criteria. It is useful to briefly consider each of these methods and criteria in turn.

Starting with the methods, conceptual analysis is a means to analyse and assess competing interpretations of political ideas, considering the advantages and disadvantages of these competing interpretations.<sup>6</sup> In the context of this thesis, conceptual analysis will be employed to primarily consider the concepts of domination, arbitrary and non-arbitrary control, the principle of affectedness, democracy, and rights. Building upon an analysis of these concepts, I will employ the tools of logical progression/inductive reasoning and consistency of argumentation to develop my theory of non-domination. Though subject to a number of critiques, including, most problematically, the fact that it relies on questionable premises and the biases inherent in the philosopher's understanding of the issue being analysed, inductive reasoning is necessary for my theory to be able to move from an analysis of concepts to more general suggestions about how domination might be addressed. This is because the premises (the ways in which I define and conceptualise key concepts) are all subject to uncertainty and challenge. It is therefore not possible to deduce from my initial premises any certain conclusions about how to achieve non-domination; instead, since the key concepts are subject to a great deal of debate and disagreement, the best that can be hoped for is that the conclusions reached are *probable* based upon the earlier assumptions. Though this means that the validity of my conclusions can only be judged as strong or weak (rather than valid or invalid), by ensuring that the arguments being made are consistent I hope that the inductive conclusions reached are as probable as possible.<sup>7</sup>

Importantly, this means that the criteria for assessing the quality of this thesis are going to be ones which assess the internal coherence of the theory, and whether the arguments offered are strong or weak. These criteria, outlined by Christian List and Laura Valentini, require that a theory have the following features: it must be logically consistent, with the statements and principles which comprise that theory being capable of being simultaneously true; it must be deductively closed, with all statements which are logically entailed by that theory belonging to that theory (and therefore are logically consistent with all other statements and principles as outlined in the previous criterion); it ought to be axiomisable, which requires that the theory is capable of being stipulated as a set of principles from which the entire theory derives; and it ought to be parsimonious, avoiding unnecessary complexity, and stated as simply as possible.<sup>8</sup>

It is also important to emphasise that this thesis will primarily focus on explicating the ideal requirements for securing non-domination, and developing context-independent principles

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<sup>6</sup> Christian List and Laura Valentini, 'The Methodology of Political Theory', in Herman Cappelen, Tamar Szabo Gendler, and John Hawthorne (eds.), *The Oxford Handbook of Philosophical Methodology* (Oxford: Oxford University Press, 2016), pp. 525-553 (pp. 526-535).

<sup>7</sup> *Ibid.*, pp. 538-544.

<sup>8</sup> *Ibid.*, 539-540.

for addressing the problem of domination. The reason for considering how non-domination might be realised in the ideal world, rather than in existing non-ideal conditions is that, as discussed by Adam Swift, ‘we need fundamental, context-independent, normative philosophical claims to guide political action even in nonideal circumstances’.<sup>9</sup> Indeed, before looking at how to address domination in the real world, it is necessary to first understand what domination is, how it can be identified, how it arises, and the trade-offs which may need to be made in order to address domination. Importantly, without a conceptual and analytical approach to values, it will be difficult to make, ‘substantive or evaluative judgments about the relative importance or value of the different values at stake,’<sup>10</sup> and we may, inadvertently, create further problems in our attempts to address domination.

Ideal theory, Swift argues, therefore supplements and supports the work of social scientists and those working in non-ideal theory. That is, while social scientists are tasked with telling us what states of the world can be realised, and how they might be realised in the here and now, those working in ideal theorising are tasked with advising us on which states of the world, and the means by which we might realise them, are better or worse.<sup>11</sup> This thesis will therefore largely focus on considering the concept of domination in an ideal context, with the aim of providing guidance to others who might be concerned with analysing how we might move towards a world in which domination is prevented or largely mitigated against.

With these comments in mind, it is necessary to define the scope and intended impact of this thesis. To that end, I will primarily contribute to the neo-republican literature in two ways: firstly, by offering a revised account of transnational domination, one which combines the insights of Pettit and Bohman; and secondly, by offering a novel account of how we can address the problem of transnational domination and secure international justice. Indeed, I will aim to show that transnational domination can occur in two distinct ways. Firstly, as argued by Pettit, transnational domination can occur when external agents interfere, or threaten to interfere, with socially and politically just states. Secondly, individualised transnational domination can occur when control bypasses states and interferes in the lives of individuals. As noted above, I believe that the solution to this problem is to develop a multi-level system of cosmopolitan democratic governance in which states’ capacity to secure social and political justice is protected, and in which individuals are able to influence and direct all of the political control that they’re subject to. In developing this theory, I will engage with the literature from other research areas, including theories of global governance, political science, education, e-democracy, and the history of

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<sup>9</sup> Adam Swift, ‘The Value of Philosophy in Nonideal Circumstances’, *Social Theory and Practice* 34 (2008), pp. 363-387 (p. 363).

<sup>10</sup> *Ibid.*, p. 369.

<sup>11</sup> *Ibid.*, pp. 368-371.

political thought. Nonetheless, it must be emphasised that in engaging with these areas, I will only do so to the extent that they are relevant to developing my own theory.

This thesis will also aim to contribute meaningfully and originally to the literature in five further ways. Firstly, I hope to demonstrate that the problem of adaptive preferences (a phenomenon whereby changes in individuals' preferences are related to individuals' beliefs about the unavailability of certain options rather than the intrinsic qualities of the available options) needs to be taken seriously by neo-republicans as such preferences can mitigate against individuals' capacity to enjoy personal freedom. Indeed, as will be shown in the first chapter, adaptive preferences can undermine individual agency and vitiate against freedom of opportunity and can therefore act as a constraint on individuals' capacity to lead lives of their own choosing. Secondly, I aim to show that Pettit's account of freedom can accommodate this insight, and it can be addressed within the context of his theorising through the creation of a formal deliberative institution. Thirdly, I aim to show that not only is neo-republicanism compatible with cosmopolitan democracy, but that securing non-domination requires that republics are embedded within an overarching framework of democratically shaped constitutionalism: securing social, political, and international justice requires the creation of a multi-level system of governance in which individuals would be members of a series of hierarchical demoi, each of which must remain democratically legitimate and subject to individuals' influence and direction. Fourthly, I will argue that it is necessary to redraw democratic boundaries in accordance with the principle of 'all possibly affected interests', and that this principle would need to be supplemented by a principle of subsidiarity in order to avoid excessive overinclusion when political decisions are made. I also aim to show that the creation of a series of boundary courts would be able to resolve jurisdictional disputes which may arise between different demoi. And finally, I aim to show that such a framework for governance could be realisable, and that this thesis is therefore not solely concerned with idealised abstract theorising but could offer us a novel means for securing international justice.

### **The Structure of the Thesis**

To that end, this thesis will be developed across six chapters. In what follows, I will briefly outline the primary objective of each chapter, the general structure of each chapter, and highlight how this contributes to the overall thesis. It is also important to note, here, that I have not included a chapter dedicated to a literature review, as might be found in other theses. The reason for this is that I will engage extensively with the literature which is relevant to the specific aims of each chapter as the thesis develops; this will ensure that all of the relevant arguments are considered, critiqued, or improved in the right context, rather than being noted and then discarded at the outset.

The first chapter, *Domination and Republican Social Justice*, will provide a thorough analysis of the concept of domination in order to provide the foundation for my own later arguments. To that end, I will start by outlining the historic roots of the concept of non-domination, and discuss its later eclipse by the non-interference conception of liberty. I will then analyse the distinction between positive and negative concepts of liberty, and explore Thomas Hobbes' conception of freedom as non-frustration, and Berlin's account of freedom as non-interference, arguing that neither account offers an adequate conception of freedom. I will then analyse Philip Pettit's account of freedom as non-domination, and argue that underlying his account of political liberty is an ideal of personal liberty; this ideal sees individuals as capable of engaging in self-rule and seems to provide the prism through which Pettit views the evils of domination. I will then explore Pettit's theory of republican social justice, with a particular focus on the claim that dominating agents must be subject to external constraints in order to be rendered non-dominating. After doing so, I will explore the 'critical' challenge to Pettit's republicanism, outlining Sharon Krause's arguments for expanding the concept of domination to include cases of systemic or structural domination. After outlining Krause's arguments, I aim to show, following Pettit and Frank Lovett, that domination is a phenomenon that occurs between agents, not agents and background structures, and that Pettit's account can therefore accommodate Krause's concerns. Importantly, I will also acknowledge the possibility that background structures may give rise to adaptive preferences which can undermine freedom of opportunity. I will then outline the problem of corporate agency, arguing that while it would be possible for states to develop legislation to constrain the actions of some corporate agents, such measures will be unable to address the dominating potential of multinational corporate agents since these agents may be able to easily evade national governments' attempts to constrain them. Indeed, given their capacity to move their operations elsewhere, multinationals have two distinct powers which they can use to dominate otherwise socially and politically just states: they can extract concessions from governments by threatening to leave; or they can leave in order to evade their responsibilities and seek more favourable terms elsewhere. Governments who are financially dependent upon multinationals, or countries in which significant numbers of citizens are employed by multinationals, will be acutely aware of a need to placate these agents and will seek to please them of their own volition. As such, this chapter will conclude that social justice cannot be fully realised while multinational agents can act with impunity.

The second chapter, *Securing Democratically Legitimate Governance*, will thoroughly examine Pettit's account of democratic legitimacy in order to show that it is possible to secure political control without giving rise to domination, while also arguing that securing social and political justice is insufficient for securing non-domination. This is because transnational agents, including multinational corporations, other states, and international institutions have the capacity to undermine social and political justice within states and, as I will show in the following chapter,

can interfere with individuals without necessarily interfering with just states. This chapter is therefore integral to the overarching aims of this thesis, and will be particularly important to the development of my own account of international justice, which seeks to combine Pettit's account of democratic legitimacy with an account of multi-level cosmopolitan democratic governance. To that end, this chapter will begin by outlining Pettit's account of democratic legitimacy, showing that guarding against *imperium* requires that individuals exert influence and direction over the ways in which they're governed. I will then outline and respond to two counterarguments to Pettit's account of non-arbitrary governance, as well analysing how direction over governance might be secured. In doing so, I will engage extensively with Jon Elster's arguments in favour of determining the common good deliberatively. I will then outline Pettit's account of the common good which requires that we derive a set of public, shared interests which cohere with the requirements of free and reasoned debate between equals, and which would arise spontaneously from dispersed deliberative interactions between citizens at a range of political and civil sites. Importantly, it will be argued that Pettit's account of the state and democratic legitimacy should be supplemented by a formal institution tasked with enabling citizens to deliberatively transform their raw preferences into informed preferences, and I will outline a digital deliberative assembly as an example of such an institution. After explaining how such an institution would support Pettit's theory and mitigate against the problem of adaptive preferences, this chapter will finally argue that a state's capacity to secure the basic liberties and enjoy democratic legitimacy is dependent upon the ongoing goodwill of external agents such as multinational corporations, other nations, and supranational institutions.

The third chapter, *The Problem of Transnational Domination*, will examine the twin problems of transnational domination and individualised transnational domination. The former conception of transnational domination, which Pettit himself theorises, acknowledges that states' capacity to secure social and political justice can be undermined by interference, or the threat of interference, from external agents. Individualised transnational domination, however, is a process whereby control bypasses the state and interferes in the lives of spatially dispersed individuals. Analysing these problems is central to the aims of this thesis as doing so will evidence that Pettit's account of transnational domination ought to be enlarged to accommodate the problem of individualised transnational domination, and that his account of international justice requires amendment in order to address both forms of transnational domination. To that end, this chapter will begin by outlining Pettit's conception of transnational domination and his accounts of international justice as presented in *A Republican Law of Peoples* and *Just Freedom*, arguing that both of his suggestions are problematic as they fall foul of powerful arguments that Pettit made in *Republicanism: A Theory of Freedom and Government*. Indeed, the primary concern is that neither of his strategies ensures that there are effective external constraints on transnational agents, and therefore the option of exerting domination is not effectively removed from these

agents' choice-sets. This chapter will also outline Bohman's account of transnational domination and argue that while he account takes the problem of individualised transnational domination seriously, his proposed solution of creating a global deliberative polyarchy would fail to secure global non-domination. This is because individuals would never be able to exert influence and direction over governance since demoi would be in a state of continuous flux, have an undefined jurisdiction (since democratic decision-making is decoupled from national communities and deterritorialised), and there would seemingly be no overarching authority capable of adjudicating on the appropriate competencies and powers of the competing demoi. Finally, the third chapter will argue that the analysis of Pettit and Bohman's accounts suggest that it will be necessary to address both forms of transnational domination simultaneously, and aim to replicate the strategy of constitutional provision at a global level.

The fourth chapter, A Framework for Transnational Republican Governance, will build upon the arguments of the preceding chapters in order to outline a transnational political system capable of providing the framework within which individuals can enjoy social, political, and international justice. This chapter will therefore provide my central contribution to the literature. It will do so by outlining a multi-level framework for neo-republican governance in which individuals would be members of a series of demoi, ranging from the local to the global, each of which would be subject to members' influence and direction, and in which the strategy of constitutional provision would be secured by democratically legitimate institutions at a global level. To that end, this chapter will begin by arguing that addressing the problem of individualised transnational domination requires that demoi must be constituted on the basis of who can be deemed to be *possibly affected* by a given issue in order to ensure that individuals who are interfered with are not excluded from influencing and directing the making of political decisions. Nonetheless, it will be argued that this principle must be qualified by a principle of subsidiarity in order to ensure that we do not adopt an approach which is excessively overinclusive, since doing so would enable many unaffected individuals to influence and direct decisions which could never plausibly affect them. After considering two accounts of transnational governance as possible means for pursuing the aims of neo-republican governance, it will be argued that David Held's cosmopolitan democracy, with suitable elaboration and refinement, could provide a framework in which non-domination could be secured. I will then briefly discuss the role of human rights within such a framework, arguing that Pettit's fundamental basic liberties and welfare rights which guard against dependence should be seen to be a set of human rights which must be globally entrenched and enforced, the contravention of which would justify intervention by the transnational and global community. Centrally, I will also outline Held's suggestion of creating 'boundary courts' as a means for resolving jurisdictional disputes between demoi and ensure that decisions are taken at the most appropriate location in accordance with the principles of affectedness and subsidiarity. This chapter will conclude by briefly explicating such a model,

arguing that it is important to ensure that the principles of affectedness and subsidiarity are upheld *within* states as well as at a transnational level.

The fifth chapter, *Securing the Conditions for Transnational Republicanism*, will outline and offer responses to a series of possible objections to cosmopolitan democracy and the framework for transnational governance outlined in the preceding chapter. Offering such a defence is integral to this thesis as each of the objections, if not surmounted, would seem to evidence that my account of international justice would be infeasible or undesirable. To that end, I will outline Robert Goodin's concern that such a transnational framework is unnecessary as states already fulfil the required function of discharging general moral duties; David Miller's argument that mutual trust and a shared identity are integral to the creation and maintenance of democratic communities, and these conditions are absent beyond the state; and Will Kymlicka's argument that linguistic barriers will mitigate against the possibility of realising transnational democracy. In response to these objections, this chapter will argue that we should aim to: promote a transnational nationalism as a supplement to existing nationalisms, emphasising a shared history and identity with a view to securing mutual trust and shared understanding within transnational demoi; propagate a civic education which would be designed to create virtuous citizens capable of discharging the basic duties of republican citizenship; and open up national public spheres to one another, with the aim of creating an interactive transnational public sphere. I will also consider the objection that 'crafting' citizens through a civic education may be experienced as a form of cultural imperialism. After outlining why this need not be a significant concern, I will acknowledge that this conflict is indicative of a larger problem: this problem is that the rights outlined in the preceding chapter may come into conflict with many ethical or cultural traditions. In response, it will be argued that such conflicts need not be insurmountable since many human rights can be endorsed by non-western doctrines and traditions and, even if this is not always the case, these rights can legitimately trump such doctrines because they secure the necessary preconditions for individuals to lead lives of their own choosing.

The final chapter will then briefly and concisely summarise my arguments, and outline some of the limitations of this thesis. It will also highlight some implications of this research for neo-republicanism and political theory more generally, and note some avenues for future research. I will also succinctly outline my answer to the problem of how we might develop a political solution to the twin forms of transnational domination, and thereby secure social, political and international justice. To that end, I will conclude that transnational domination can be addressed through the creation of a multi-level system of governance in which states' capacity to secure social and political justice is protected; the capacity of external agents to dominate states is neutralised by transnational governmental institutions; individuals are members of a series of overlapping demoi such that they can exert influence and direction over the ways in which they're controlled; and that this system of governance could be realised in the future through the

promotion of transnational nationalisms, a civic education, and the opening up of national public spheres to one another.



## Chapter One – Domination and Republican Social Justice

### Introduction

My aim in this chapter is to analyse the concept of domination which lies at the heart of neo-republican political theory, with a particular focus on Pettit's paradigmatic work. In doing so, I will provide the foundations for the later discussion of the problem of transnational domination, emphasising the difficulties posed by multinational corporations and the necessity of replicating Pettit's strategy of constitutional provision at a transnational level. In addition, I will also aim to show, contrary to the claims of critical and radical republicans, that Pettit's account of domination does not need to be expanded to account for what they term 'structural' domination, as his theory already has the resources required to address the concerns of these theorists.

To that end, my argument will develop across eight sections. The first section will outline the historical roots of the concept of non-domination, and note its eclipse by the non-interference view of freedom. The second section will build upon this discussion by exploring the concepts of positive and negative liberty, arguing that it is possible to embrace positive liberty without advocating an intrusive or authoritarian state. The third section will then outline the neo-republican critique of the non-interference conception of liberty, and argue that individual liberty requires that individuals are free from frustration, interference, and domination when making their choices. The fourth section will then outline that Pettit's account incorporates a notion of self-mastery (specifically orthonomy) akin to conceptions of positive liberty, and it is this conception of orthonomy which seems to provide the prism through which Pettit views the evils of domination: that is, frustration, interference, and domination all undermine an individual's capacity to choose freely between options. I will also outline that securing individual liberty requires that individuals are protected from invasion, vitiation, invigilation, and intimidation, and that it is possible to have domination without interference, and interference without domination. The fifth section will then outline Pettit's suggestions for securing freedom from *dominium*, with a particular focus on the arguments in favour of pursuing the strategy of constitutional provision and his account of the basic liberties, and also indicating why he considers this to be a theory of republican social justice. The sixth section will then introduce a 'critical' republican objection to Pettit's theory, and outline how Pettit's theory can accommodate these concerns without being fundamentally altered. The seventh section will then explore the problem of domination by corporate agents, arguing that republican social justice cannot be secured while multinational corporations have the capacity to exert domination and evade proper constraint, suggesting a need to replicate the strategy of constitutional provision at a transnational level. The final section will conclude.

## Republicanism: From Greece to the Early Modern Era

It is useful to begin by outlining the historic roots of neo-republicanism and explore its recent revival. In simplified terms there are two strands of classical republicanism which inform contemporary political theory, one associated with the Greek city states, and one associated with the Roman Republic. The former emphasises the realisation of the good life and liberty through active membership in self-governing communities; while the latter, which we will be our primary focus, emphasises individual independence, the rule of law, and the mixed constitution as mechanisms which secure individuals' capacity to lead their own lives.

The neo-Athenian, or civic humanist, tradition builds on the Aristotelean belief that the good life is realised through active participation in the polis and the active cultivation of civic virtue. Theorists associated with this tradition emphasise the importance of these virtues as intrinsically valuable components of the good life and claim that political liberty can only be realised through active individual participation in self-governing communities.<sup>12</sup> On this view, citizens are required to immerse themselves in the life of the community – only then is political liberty truly achieved. This older republicanism still enjoys a degree of prominence within the communitarianism of Michael Sandel and Charles Taylor.<sup>13</sup>

Neo-republicanism, on the other hand, represents an attempt to modernise Roman republicanism, and its recent revival is particularly associated with Quentin Skinner and Philip Pettit. Skinner argues that Roman republicanism's conception of political liberty was largely derived from Roman moral philosophy, and is particularly associated with the work of Livy, Sallust and Cicero. For Skinner, the distinctive evil identified by Roman republicanism is the recognition that individuals can be rendered less free when subject to arbitrary power, rather than being rendered less free only when this power manifests as direct interference.<sup>14</sup> He argues that, 'the hated figure of the *dominus* in the republican tradition is someone who hopes to be able to exercise his or her invigilating powers successfully without ever having to stoop to actual

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<sup>12</sup> For those interested in the civic humanist variant of republicanism, see: Hannah Arendt, *The Human Condition* (Chicago: Chicago University Press, 1958); Athanasios Moulakis, 'Civic Humanism', in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Winter 2011 Edition), URL = <http://plato.stanford.edu/archives/win2011/entries/humanism-civic/>; J.G.A. Pocock, 'Civic Humanism and its Role in Anglo-American Thought', in *Politics, Language, and Time: Essays on Political Thought and History* (London: The University of Chicago Press, 1989) pp. 80-103; Quentin Skinner, *Liberty before Liberalism* (Cambridge: 1998).

<sup>13</sup> See: Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1998); Michael J. Sandel, 'The Procedural Republic and the Unencumbered Self,' *Political Theory* 12 (1984), pp. 81-96; Charles Taylor, 'Cross Purposes: The Liberal-Communitarian Debate', in Charles Taylor (ed.), *Philosophical Arguments*, (Cambridge: Harvard University Press, 1995), pp. 181-203.

<sup>14</sup> Quentin Skinner, 'The Paradoxes of Political Liberty', in Sterling M. McMurrin (ed.), *The Tanner Lectures on Human Values Volume VII* (Cambridge: Cambridge University Press, 1986), pp. 225-250 (p. 238).

interference.’<sup>15</sup> Importantly, this power of invigilation can be seen when, ‘the dominated correspondingly find their choices limited by what they believe their *dominus* or master may be willing to tolerate, and are forced to adjust their behaviour in the hope of staving off any interventions detrimental to their interests.’<sup>16</sup> The important point is that while the *dominus* may choose not to interfere in the dominated individual’s life-choices, they nonetheless have the capacity to do so and this capacity is detrimental to individual liberty. Skinner further claims that one of the evils of domination is that it undermines individuals’ capacity to make choices in a reason-sensitive way (this link between individual reason and choice is central to Pettit’s account, as we will see below), because another’s will enjoys an invigilating status within the dominated individual’s deliberations over how to act in a given situation, exerting a subtle and sinister degree of control.<sup>17</sup>

Skinner argues that this Roman conception of liberty was later revived in the Renaissance, as a way of defending the liberties of the city against the tyranny of the *signori* and the powers of the Church, and is particularly in evidence throughout Machiavelli’s *Discourses on Livy*. The tradition further developed through the English commonwealthmen, particularly Harrington and Milton, and their struggle against the despotism of the Stuarts. Machiavelli also influenced Montesquieu and the opponents of French absolutism in the eighteenth century.<sup>18</sup> Skinner goes on to argue that what preoccupied early modern theorists was not a theory of freedom of action, but what it meant to be a free person as part of a community. On Skinner’s interpretation, these theorists claimed that, ‘what it means to be a free person is not to be dependent— in the manner definitive of servitude – upon the will, and hence upon the mere goodwill, of anyone else.’<sup>19</sup> Following these insights, Skinner argues that:

*It is possible to act freely, [the early modern theorists] maintain, if and only if you are a freeman. If instead you live as a slave, you can never act as a free agent under any circumstances. This is not necessarily because your choices and actions will be impeded, but rather because they will never be the product of your own autonomous will. They will inevitably be a product both of what you will and desire and of what your dominus may be willing to permit.*<sup>20</sup>

While Pettit has also discussed neo-republicanism’s historic roots in a variety of places,<sup>21</sup> it is useful to focus on his discussion in *Just Freedom: A Moral Compass for a Complex World*

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<sup>15</sup> Quentin Skinner, ‘On the Slogans of Republican Political Theory’, *European Journal of Political Theory* 9 (2010), pp. 95-102 (pp. 96).

<sup>16</sup> *Ibid.*, p. 96.

<sup>17</sup> *Ibid.*, pp. 95-96.

<sup>18</sup> *Ibid.*, pp. 95-97.

<sup>19</sup> *Ibid.*, p. 97.

<sup>20</sup> *Ibid.*, p. 98.

<sup>21</sup> See, for example: Philip Pettit, *A Theory of Freedom: From the Psychology to the Politics of Agency* (Cambridge: Polity Press, 2001), pp. 144-149; Pettit, *On the People’s Terms*, pp. 6-10.

as here we learn of the rise of republican thought and its gradual eclipse by the Hobbesian concept of freedom. To that end, Pettit argues that the Romans believed, ‘that to live *in potestate domini*, in the power of a master, was enough in itself to make you unfree. Having a gentle master might be a boon in other ways, but it did not give you liberty.’<sup>22</sup> Indeed, he claims that to be a freeman or *liber* was to live a life distinct from that of a slave; those who enjoyed the status of a *liber* were protected against a master’s power in a range of basic choices. Importantly, it was through, ‘having the status of a citizen who is guarded by a law that is itself controlled by the citizenry,’<sup>23</sup> which secured an individual’s status as a freeman, thereby equating being free with being a citizen or *civitas*.<sup>24</sup> He goes on to emphasise that the Roman Republic sought to protect people, specifically propertied, male citizens, in their horizontal relationships with one another through the provision of an equal legal status which guards against *dominium*, and in their vertical relationships with the Republic through ensuring equality in exercising control over the law, thereby avoiding *imperium*. This conception of freedom, on Pettit’s view, required that the polity be organised around the principles of, ‘equality before and equality over the law.’<sup>25</sup>

Such equality was ensured through a mixed constitution which put power in the hands of, ‘mutually checking, popularly representative bodies and officials...the arrangement was constitutional insofar as public, impartial law governed it; and it was mixed insofar as it gave power to all sectors of society.’<sup>26</sup> Without going into detail on the institutional processes which supported the mixed constitution, it is important to note that a series of checks and balances, such as the election of senators for short terms, the oversight of elected officials, and the veto powers of the tribunes, all contributed, at least in theory if not in practice, to the maintenance of a society of free citizens who enjoyed equality before and over the law.<sup>27</sup>

With the downfall of the Roman Republic and the emergence of the Empire, republican thought declined in influence, only to enjoy a resurgence in the high Middle Ages. Pettit notes that the Italian city states, those who repudiated being subject to the Pope or local princes, came to organise their public life in a manner akin to the Republic. Venice, Florence, Pisa and Perugia all embraced republicanism to some degree, and Machiavelli, in his *Discourses on Livy*, developed republican ideas for contemporary use. To that end, he followed Polybius in hailing the virtues of the mixed constitution and civic freedom (freedom from others’ dominating influence), and emphasised the importance of a contestatory political system which would enable citizens to challenge political decisions. Pettit goes on to argue that after Machiavelli it became clear that republicanism makes three broad claims. Firstly, it emphasises the ideal of freedom as

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<sup>22</sup> Pettit, *Just Freedom*, p. 4.

<sup>23</sup> *Ibid.*, p. 4.

<sup>24</sup> *Ibid.*, p. 4.

<sup>25</sup> *Ibid.*, p. 4.

<sup>26</sup> *Ibid.*, p. 6.

<sup>27</sup> *Ibid.*, p. 6-7.

non-domination in social and political life. Secondly, promoting this ideal requires a mixed constitution. Thirdly, protecting the mixed constitution, and thereby securing the ideal of non-domination, requires a citizenry who are empowered and motivated to contest public power and exercise eternal vigilance over the polity's political system.<sup>28</sup>

Pettit argues that this republicanism later underpinned the political systems of the northern European countries who resisted or overthrew absolute monarchs, including the Polish and Dutch republics of the seventeenth and eighteenth centuries, and the English republic in the interregnum. While this political philosophy enjoyed the support of reformers and revolutionaries across Europe, Pettit claims that it was despised by absolutists who argued that peace required a single sovereign with absolute power. Jean Bodin and Thomas Hobbes, two prominent absolutists, each worried that neo-Roman republicanism would facilitate dissension and rebellion and thus made it the target of their criticisms.<sup>29</sup>

Indeed, the absolutists may have been right as, in the eighteenth century, republican ideals were embraced by American colonists and their British supporters, including Richard Price and Joseph Priestly, and used to criticise the British Parliament's control over the colonies. Following the imposition and repeal of the Stamp Act, Parliament announced a Declaratory Act which stated Parliament's right to make laws and statutes which were binding over those living in America. It was claimed that since the American's lacked electoral representation in the British Parliament, and the British members of Parliament were not subject to the laws which they passed in relation to the colonies, the colonists were entirely dependent upon the goodwill of the British Parliament. Indeed, this lack of control over the laws which governed them, and lack of control of the taxation to which they were subject, were instrumental in the colonists' rebellion against the British government.<sup>30</sup>

Similarly, republicanism's revolutionary potential found expression in Jean-Jacques Rousseau's *The Social Contract*, published in 1762. Pettit argues that despite embracing the ideal of non-domination, Rousseau followed Hobbes and Bodin in rejecting the idea of a mixed constitution, and the separation of power which this ideal affirms, and instead embraced the absolutists' claim that authority and sovereignty must be concentrated in one agent. Unlike, Bodin and Hobbes, however, Rousseau did not believe that this sovereign needed to be a single individual or elite group, but instead should take the form of a, 'sovereign assembly of the people.'<sup>31</sup> Rousseau believed that subjection to a lord or master (or monarch) would result in a lack of freedom but, in submitting to the dictates of the General Will, individuals retained their freedom through subjection to their own collective will. Rousseauian republicanism therefore

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<sup>28</sup> Ibid., pp. 7-8.

<sup>29</sup> Ibid., pp. 8-9.

<sup>30</sup> Ibid., pp. 9-11.

<sup>31</sup> Ibid., p. 12.

represents a break with Roman republicanism, since its focus is on the freedom of the collective rather than the individuals that comprise that collective, and should be seen as a progenitor of the communitarian tradition which emphasises that freedom is achieved through collective self-determination and civic participation.

Nonetheless, it was not Rousseau's innovations which eclipsed Roman republicanism, but the rising tide of liberal contractarian thought which emerged from Hobbes' *Leviathan*. Indeed, Skinner argues that Hobbes sought to show that it was only actual interference which rendered us less free rather than another's *capacity* to interfere and, as all governments interfere with their citizens, Hobbes believed that we have no reason to prefer a democratic government to an undemocratic one as each interferes with individuals in the same way.<sup>32</sup> This 'constitutional indifferentism' provided one of the central premises for *Leviathan* and was taken up by later thinkers.<sup>33</sup>

Indeed, one of these later thinkers was Jeremy Bentham who utilised the concept of freedom as non-interference as the cornerstone of his utilitarian philosophy. Pettit goes on to argue that as a social reformer, Bentham aimed to ensure that government was concerned with the freedom of all of its citizens rather than just an elite subset of propertied males. As a result, Pettit believes that Bentham consciously rejected the ideal of non-domination as too demanding a concept; that is, if Bentham had called for the expansion of freedom of non-domination for all citizens, women and children included, then a greater swath of reforms would have been necessary (such as a transformation of family law under which men enjoyed power over their wives, and employment law under which employers had power over their employees). As universal freedom as non-domination would have required radical and unwelcome changes, Pettit believes that Bentham opted for the weaker ideal of freedom as non-interference.<sup>34</sup>

While non-domination was challenged, and largely displaced by, the less demanding concept of freedom as non-interference, it faced a further challenge over its account of exactly what range of choices ought to be protected in order to secure individuals' status as freemen. Indeed, Pettit goes on to argue that seventeenth-century republicanism was concerned with guaranteeing the 'basic liberties'; these were a set of choices which were co-enjoyable by all citizens and were co-exercisable (that is, everyone could enjoy these liberties at the same time). These liberties included, for example, being able to say or think whatever an individual wanted to, religious freedom, and the capacity to choose which profession to engage in. But, with the rise

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<sup>32</sup> Skinner, 'The Paradoxes of Political Liberty', p. 238.

<sup>33</sup> For Skinner and Pettit's arguments, see: Quentin Skinner, *Hobbes and Republican Liberty* (Cambridge: Cambridge University Press, 2008); Philip Pettit, *Made with Words: Hobbes on Language, Mind, and Politics* (Princeton, NJ: Princeton University Press, 2008). For a critique of these arguments see: Ian Shapiro, 'Reflections on Skinner and Pettit', *Hobbes Studies* 22 (2009), pp. 185-191.

<sup>34</sup> Pettit, *Just Freedom*, pp. 13-16.

of the non-interference account of freedom and the view that freedom consisted simply in an absence of impediments to pursuing whatever one wants, the ideal of protecting the same range of choices for everyone was also supplanted. This is because what any two individuals want to do will be different, and therefore freedom from interference does not require a co-enjoyable and co-exercisable range of liberties; instead, it requires that individuals be able to determine exactly what constraints they are happy to operate under.

This change coincided with industrialisation and the emergence of contractualist thinking and classical liberalism. Classical liberals advanced the idea that individuals are free when they are able to contract into whatever arrangements they want (regardless of any background conditions which may entail unequal bargaining power), and that if an individual is willing to accept the terms, then they are free. Importantly, these thinkers also challenged the regulation of contracts, deeming regulatory interference to be inimical to individuals' actual freedom to be able to contract into whatever arrangements they chose (this is because non-interference requires that individuals be able to pursue their preferred option from a choice-set, including entering into disadvantageous contracts).<sup>35</sup>

Pettit argues that these two claims, that it is only *actual interference* and only interference in an individuals' preferred option which undermine freedom, led to the eclipse of Roman republicanism and its richer account of freedom as non-domination. Indeed, as we will see in the next section, these historic developments have led, in Skinner's view, to the neglect of a promising republican contribution to political theory.<sup>36</sup>

### **Positive Liberty, Negative Liberty, and the Occlusion of a Third Way**

Since Berlin's lecture on the 'Two Concepts of Liberty',<sup>37</sup> theories of political liberty have tended to be characterised as positive or negative accounts of freedom. Positive liberty, which varies in its prescriptions depending on the specific theory, concerns the possibility of acting so as to control one's own life, realise one's fundamental purposes, or realise self-mastery – the focus, here, is on the internal constraints on action. Negative liberty focuses on the absence of barriers or obstacles to acting. An individual is free in this sense to the extent that they are free from external constraints.<sup>38</sup>

In Berlin's view, the positive conception of liberty lends itself to a certain authoritarianism. Indeed, he argues that this view of freedom makes a distinction between what

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<sup>35</sup> Ibid., pp. 13-27.

<sup>36</sup> Skinner, 'The Paradoxes of Political Liberty', p. 238.

<sup>37</sup> Isaiah Berlin, 'Two Concepts of Liberty', in Isaiah Berlin (ed.), *Four Essays on Liberty* (Oxford: Oxford University Press, 1969), pp. 118-172.

<sup>38</sup> Ibid., pp. 118-172.

we might deem to be individuals' 'higher' or rational selves, and their 'lower' base self. The higher self is identified with reason and autonomy, and with an individual's capacity to identify their own good and take steps to realise that good. The lower self, however, is a morass of impulses, urges, and desires which intervene against the higher self's attempts to realise the individual's good. As an example, we can imagine an individual who, knowing the dangers of smoking, decides to quit. Their reasoned, autonomous self sets itself the goal of escaping this habit but the lower self mitigates against this goal by desiring to smoke. On this view, achieving individual liberty requires that an individual strives to gain control or mastery over their lower, partial self, entailing that an individual is positively free when the higher self masters the lower self.

The negative conception of liberty, however, is understood by Berlin to involve an absence of interference, where interference more or less consists of intentional obstruction or frustration of an individual's activities. This may involve direct physical interference, as when someone imprisons another individual or forcibly prevents them from doing what they want, or when someone's activities are curtailed by a credible coercive threat. Berlin, here, seems to follow Hobbes who argued that, 'A Free-Man is he, that in those things, which by his strength and wit he is able to do, is not hindered to do what he has a will to,'<sup>39</sup> and who also seemingly acknowledged that threats can similarly interfere in individuals' lives when they are, 'made to hold, by the danger, though not by the difficulty of breaking them.'<sup>40</sup> On this conception of liberty, 'I am normally said to be free to the degree to which no man or body of men interferes with my activity. Political liberty in this sense is simply the area within which a man can act unobstructed by others.'<sup>41</sup>

With these comments in mind, it is important to note that Berlin overstates the potential for positive liberty to collapse into authoritarianism and totalitarianism. Indeed, Berlin argues that the division between individuals' higher and lower selves opens the door to the coercion of individuals, 'for their own sake';<sup>42</sup> it enables other individuals or collectives to coerce individuals in the name of their 'true' self. In the smoking example above, it may enable another to intervene on the smoker's behalf, locking them in a room until their desire to smoke has abated. Berlin argues that, in such a situation, the intervening individual can then claim that while they have coerced the smoker, they have done so by reference to their higher self and their 'real' rational interests, thereby liberating them from their base desires and forcing them to be free.<sup>43</sup> More problematic, Berlin argues, is the possibility that proponents of positive liberty may go one step

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<sup>39</sup> Thomas Hobbes, *Leviathan*, (ed.) C. B. MacPherson (London: Penguin, 1968), p. 262.

<sup>40</sup> *Ibid.*, p. 264.

<sup>41</sup> Berlin, 'Two Concepts of Liberty', p. 122.

<sup>42</sup> *Ibid.*, p. 133.

<sup>43</sup> *Ibid.*, pp. 132-133.



further and equate the individuals' good with the good of a social group, such as a tribe, a race, or a state. Once an individuals' higher interests are equated with the interests of this wider group, and the defender of positive liberty remains convinced that coercing individuals in accordance with the higher self is merely supporting them in achieving freedom from their heteronomous self, they are, 'in a position to ignore the actual wishes of men or societies, to bully, oppress, torture in the name, and on behalf, of their 'real' selves, in the secure knowledge that whatever is the true goal of man ... must be identical with his freedom.'<sup>44</sup>

An example of an account which seems to raise the spectre of an over-intrusive state is Joseph Raz's conception of liberal perfectionism and 'valuable autonomous agency.' On Raz's view, it is not autonomy which is valuable in and of itself, since individuals may autonomously choose to do stupid or irrational things, but rather autonomy is valuable only when it enables individuals to realise the good life. Indeed, as argued by Raz, 'Since our concern for autonomy is a concern to enable people to have a good life it furnishes us with reason to secure that autonomy which could be valuable. Providing, preserving or protecting bad options does not enable one to enjoy valuable autonomy.'<sup>45</sup> On Raz's approach, securing valuable autonomous agency would permit governments to close off options which are not conducive to the good life, or make those options more costly to realise.

Similarly, we find a 'radical republican', Michael J. Thompson, arguing that individuals can only realise their true ends in societies in which hierarchical relations of domination and extraction are prevented. Living a free life, on Thompson's view, would require that, 'social formations characterised by hierarchical relations organised for the benefit of those more elite within the structure' be prevented; that individuals' efforts are aimed at the community's interests rather than their own private interests; and that the community's resources are used for the benefit of everyone, rather than being extracted by elites. It would therefore be necessary for politics to fulfil a 'positive' function in creating the institutional and social conditions in which people can develop as free community-oriented individuals, in which everyone is prevented from subverting common resources to private ends. This would require at least three things: that the state takes control of all economic, cultural, material, moral, and educational resources; that it ensures that this common fund of resources is used to enhance the lives of the community as a whole; and that it prevents capitalist enterprises from emerging, and instead encourages the creation of cooperative, self-governing firms, which the state is to steer towards the enhancement of the common good.<sup>46</sup>

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<sup>44</sup> Ibid., pp. 132-133.

<sup>45</sup> Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), p. 412.

<sup>46</sup> Michael J. Thompson, 'Two Faces of Domination in Republican Political Theory', *European Journal of Political Theory* (2015), pp. 1-20 (pp. 13-15).

In each of these accounts, we can see that it is possible that governance could start to evolve into authoritarianism, seemingly evidencing the veracity of Berlin's arguments against positive liberty. Indeed, Raz and Thompson both stipulate what freedom entails and then perform the sleight of hand which Berlin's critique is aimed at. That is, in each theory, the state is, 'in a position to ignore the actual wishes of men or societies, to bully, oppress, torture in the name, and on behalf, of their 'real' selves, in the secure knowledge that whatever is the true goal of man ... must be identical with his freedom.' While these accounts clearly do not countenance bullying, oppression, or torture, they do licence politics to coerce and control individuals in the name of their 'real' selves, regardless of whether or not individuals themselves actually want to engage in *valuable* autonomous agency or lead the communal lives that Thompson equates with their leading free lives.

While some theories of positive liberty therefore seem to raise the spectre of an over-intrusive state, such intrusiveness or authoritarianism does not characterise all theories which place value on individual autonomy or self-mastery. Indeed, it is perfectly feasible to attach central importance to these values, as those working in the Kantian tradition do, without this necessarily leading to authoritarianism. We find, for example, that T.H. Green attaches great value to individuals' capacity to act in accordance with the 'Good Will' or doing something worth doing or enjoying.<sup>47</sup> This view clearly represents an account of positive liberty, since it posits that freedom consists in acting in accordance with the Good Will rather than acting as one pleases, and yet does not necessitate the creation of a coercive or authoritarian government. Indeed, Green's approach is to argue that rather than promoting the Good Will, the aim of governance should be to create laws and rights (which ought to be justified on ethical rather than legal grounds, and in coherence with Kant's categorical imperative), which would secure individuals' capacity to lead purposeful lives in which they're able to realise the Good Will. This requires that rather than promoting each individual's positive liberty, the state is required to create the conditions in which individuals can realise the Good Will in their own way. In embracing Kant's categorical imperative, and thereby advocating a fundamental equality between agents, Green is able to privilege a concept of positive liberty and avoid the authoritarianism that Berlin associates with such an approach.

It might be similarly argued that John Rawls attaches a central importance to autonomy without defending an authoritarian state as a means to realising such autonomy. Indeed, the 'original position' and 'veil of ignorance' might be viewed as devices which are deployed to enable individuals' autonomous, 'higher' selves to legislate over their 'lower' heteronomous selves; in placing individuals behind a veil of ignorance, wherein they are denied knowledge of

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<sup>47</sup> Colin Tyler, 'Thomas Hill Green', in Edward N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Summer 2011 Edition), URL = <https://plato.stanford.edu/archives/sum2011/entries/green/>.

their lower passions and desires, Rawls ensures that the principles of justice which are selected are the product of rational, reasoned decision-making. As a result, individuals' autonomous wills determine the principles which structure their societies, but in a non-perfectionist manner. That is, the principles derived from the original position only prescribe the two principles of justice (the equal basic liberties principle, and the difference principle), which then ensure that individuals can lead meaningful, free lives within a just society.<sup>48</sup>

We can now see how Raz and Thompson's theories are subject to Berlin's critique of positive liberty but that Green and Rawls' accounts avoid Berlin's charges, and that it is possible to advocate a positive conception of liberty without defending an authoritarian regime as a means to realising such an end. While it is therefore true that some accounts of positive liberty may lead to authoritarianism, this brief discussion has shown that this is not necessarily true of all accounts which place value on autonomy or self-mastery. Problematically, however, the result of Berlin's overly simplistic characterisation of the two concepts of liberty and arguments against freedom as self-mastery or autonomy, is that it, 'forecloses a more or less salient third possibility.'<sup>49</sup>

Indeed, this third possibility, freedom as non-domination, combines elements of both the positive and negative accounts of liberty and, 'is negative to the extent that it requires the absence of domination by others, not necessarily the presence of self-mastery, whatever that is thought to involve. The conception is positive to the extent that, at least in one respect, it needs something more than the absence of interference: it requires security against interference, in particular against interference on an arbitrary basis.'<sup>50</sup> It is also, as we will see below, positive in a more foundational way since the problem of domination is that it undermines individuals' capacity to lead lives of their own choosing, in accordance with the principles and reasons that they avow. With this in mind, we can now turn to the neo-republican critique of freedom as non-interference and the case for construing freedom as non-domination.

### **Freedom as Non-Domination: A Challenge to Freedom as Non-Interference**

The non-interference view of freedom claims that an individual is free when they're not subject to obstructive interference, and might be construed in one of two ways. The first, a Hobbesian version of non-interference, would perhaps be better defined as 'freedom as non-frustration'. The second, which Pettit associates with Berlin, is what we might call 'freedom as non-frustration, actual or counter-factual,' and is closer to what we might consider to be freedom as non-

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<sup>48</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

<sup>49</sup> Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1997), p. 21.

<sup>50</sup> *Ibid.*, p. 51.

interference proper.<sup>51</sup> It is useful to consider each of these accounts of negative liberty in turn as they serve to highlight freedom as non-domination's distinct appeal.

Starting with the former of these two versions of non-interference, Pettit notes that Hobbes' view of freedom was such that your freedom of choice is only reduced when you're hindered in pursuing your actually preferred option; a hindrance which obstructed you from pursuing an option which you do not prefer would not reduce individual freedom since, as it happens, you do not actually want to pursue this option and therefore you will not be frustrated in your aims.<sup>52</sup> Nonetheless, Pettit goes on to argue that Berlin has shown that this view, that you're free if you are able to satisfy your preferred choice from a given set of options, is counter-intuitive. This is because you can satisfy your preferred option in a given choice-set in one of two ways. Firstly, you may act to remove any obstructions which stand in the way of satisfying your preferred option. Alternatively, you may 'retreat to the inner citadel'; that is, if someone cannot get what they want, they can learn to want only what they can get. But, as Pettit goes on to argue, this view is absurd as an individual cannot make themselves free simply by accommodating themselves to whatever options are actually available to them. As an example, Pettit suggests that we put ourselves in the shoes of a prisoner who, being incarcerated, lacks a choice between living in a prison and living in the outside world. The problem, here, is that if Hobbes' view of freedom, that individuals are free if their preferred option is not frustrated, is correct, then all the prisoner needs to do is to change his preference to living in prison. Doing so would apparently render him free. This counter-intuitive result, Pettit argues, provides us with a good reason to reject the Hobbesian view of freedom since adaptation to constraints cannot count as a means to liberate oneself from that constraint.<sup>53</sup>

Importantly, Pettit goes on to claim that, by parallel argument, we can see why Berlin's account of freedom as non-interference is also fundamentally flawed.<sup>54</sup> For Berlin, it is not enough to be free from frustration in your pursuit of your actually preferred option, freedom also requires that you're not interfered with in your pursuit of any of the available options. We can see why this conception of negative liberty also fails if we consider the example of a slave and his well-meaning master. Imagine that a master has an institutionally guaranteed right to treat his slave as he pleases, but he largely abstains from doing so, preferring to allow the slave to lead his life as he pleases. This would seemingly entail that, as long as the slave's options are not obstructed, and we can assume they largely won't be given the master's goodwill, the slave is free since none of his options are going to be obstructed. Nonetheless, this seems entirely counter-intuitive because the slave remains subject to his master's *capacity* to interfere in his life. That is, the master's right

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<sup>51</sup> Pettit, *On the People's Terms*, p. 64.

<sup>52</sup> *Ibid.*, p. 29.

<sup>53</sup> *Ibid.*, pp. 29-31.

<sup>54</sup> *Ibid.*, pp. 64-67.

to interfere in the slave's life, should the slave behave in unacceptable ways, renders the slave unfree.

Pettit offers an analogy to see why freedom as non-interference may not actually entail freedom in any meaningful sense. He argues that a slave who lives under the yoke of a benevolent master is in the position of a horse whose rider gives him free rein to travel where it will. The horse is seemingly free but it nonetheless remains subject to the control of the rider in its saddle: should the horse do something that the rider does not want, he will correct it. The horse and the slave are in equivalent positions: they are free to pursue whatever options they prefer but are nonetheless subject to the invigilation and virtual or reserve control of the rider or master should they pursue an option that is deemed unwanted.<sup>55</sup>

Where Berlin argued that it would be wrong to believe that an individual can free themselves by adapting their preferences to an option that will not be frustrated, Pettit argues that it would be absurd to conclude that an individual can make themselves free through always selecting an option that others are willing to permit them to pursue. Indeed, this would be similar to the retreat to the inner citadel – individuals would be able to guarantee themselves freedom through ingratiation, toadying and kowtowing which ensured that others with the power to intervene are kept at bay.<sup>56</sup> Where Berlin criticised the view that an individual can render themselves free through adapting their preferences to those that won't be frustrated, Pettit criticises the view that freedom can be achieved through adapting oneself to what others will permit.<sup>57</sup>

Pettit concludes that, 'Let the anti-adaptation assumption be granted [that a retreat to the inner citadel does not render someone free] and the non-frustration theory must fail; let the anti-ingratiation assumption be granted [that accommodating oneself to pursuing options which others will permit cannot secure freedom] and the non-interference theory must fail.'<sup>58</sup> Fundamentally, Pettit's claim is that, 'neither adaptation nor ingratiation counts intuitively as a means of liberation in a given choice and any theory that entails that it can serve such a liberating role has to be inadequate.'<sup>59</sup> Instead, he argues that freedom of choice requires that every option be open to pursuit, not just an individual's preferred option. Furthermore, he claims that an individual's capacity to pursue each option must be independent of the preferences of others as to how they should choose.<sup>60</sup> It is not enough to just be free from interference, as the perceptive slave is. Instead, individuals require systematic protection from others' capacity to invigilate their choices or interfere with them.

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<sup>55</sup> Pettit, *Just Freedom*, pp. 1-2.

<sup>56</sup> Pettit, *On the People's Terms*, pp. 64-67.

<sup>57</sup> *Ibid.*, pp. 64-67.

<sup>58</sup> *Ibid.*, 65.

<sup>59</sup> *Ibid.*, p. 65.

<sup>60</sup> *Ibid.*, p66.

Indeed, such protection is required even if those with the capacity to intervene are of a generally benevolent disposition, or generally inclined to not intervene in the lives of others. Pettit illustrates the problem of relying on the goodwill of others in a number of places, but it is useful to outline one example to show why we ought to be concerned with security against the possibility of others interfering in our lives. In Henry Ibsen's play *A Doll's House*, Torvald, a successful nineteenth century banker, enjoys an enormous degree of power over his wife Nora. As a matter of luck, Torvald dotes on his wife and does not utilise his powers to coerce or control her. On the non-interference view of freedom, Nora must be deemed free since her husband does not interfere in her choices. The problem with this case, for those who endorse non-domination as a value, is that Nora's freedom is dependent upon Torvald's beneficence but, should the circumstances of their relationship change and Torvald withdraw his goodwill, Nora will find herself in a very different position. Indeed, 'If Torvald took against her and withdrew his goodwill, then she would no longer enjoy non-interference at his hands.'<sup>61</sup> The problem for Pettit is that even though Nora might enjoy non-interference, she does not enjoy non-domination. This is because she is subject to her husband's will, she lives under Torvald's *dominium*, and it is only a matter of brute luck that he continues to dote on her and deny her nothing. Lacking security in how she will be treated, Nora may be forced to ingratiate herself with her husband, toadying and kowtowing to his every whim in order to secure her husband's ongoing generosity.<sup>62</sup>

We can see, then, that the neo-republican account of freedom, which requires that individuals not only be able to pursue whichever option they want but be able to do so without accommodating other's preferences, is more demanding than the non-interference view of freedom: not only must an individual be free from interference, they must also be free from others' capacity to interfere arbitrarily. Before we proceed to a more detailed analysis of this account of liberty, it is important to consider an objection to the ideal of freedom as non-domination. Although advanced by different theorists in different ways, the objection is that the non-interference conception of freedom can accommodate the insight that there can be a loss of freedom without interference.<sup>63</sup>

As a representative example of this objection, Matthew Kramer claims that the extent of negative freedom that we enjoy at any time is conditioned by the probability that we will be interfered with in the future.<sup>64</sup> Kramer argues that people who are subject to arbitrary power, as

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<sup>61</sup> Pettit, *Just Freedom*, p. xv.

<sup>62</sup> *Ibid.*, pp. xiv-xvii.

<sup>63</sup> Robert E. Goodin and Frank Jackson, 'Freedom from Fear', *Philosophy and Public Affairs* 35 (2007), pp. 249-265; Boudewijn de Bruin, 'Liberal and Republican Freedom', *Journal of Political Philosophy* 17 (2009), pp. 418-439; Gerald Lang, 'Invigilating Republican Liberty', *Philosophical Quarterly* 62 (2012), pp. 273-293; Ronen Shnayderman, 'Liberal vs. Republican Notions of Freedom', *Political Studies* 60 (2012), pp. 44-58.

<sup>64</sup> Matthew H. Kramer, 'Liberty and Domination', in Cecile Laborde and John Maynor (eds.), *Republicanism and Political Theory* (Oxford: Blackwells, 2008), pp. 31-57. For an alternative

Nora is, while not interfered with at a specific time, are more likely to be interfered with at some point in the future than those who are not subject to such power. Those who are subject to an increased probability of future interference are less negatively free than those with a lower probability of being interfered with. For Kramer, exposure to arbitrary power should be seen to adversely affect an agent's overall negative freedom, although it may not affect any specific negative freedom. Simply, he claims that we should understand freedom to have overall and specific components. An individual has an overall quantity of freedom which can be negatively impacted upon in relation to the probability of interference at some point in time; they can be uninterfered with at a specific time, but nonetheless be subject to an overall loss of negative freedom if the probability of being interfered with later is high.<sup>65</sup>

As an example of how Kramer's approach seemingly accommodates the neo-republican claim that individuals are unfree even when not subject to a specific instance of control, imagine that a slave has a choice between cleaning for his master and relaxing while his master is out. He is negatively free to relax, since his master isn't there to prevent him from doing so, but relaxing will likely result in some kind of punishment or sanction from his master when he returns. So, his specific negative freedom to relax remains uninterfered with but, in being able to impose a punishment for having chosen to relax, the master has made the slave's range of conjunctively exercisable negative freedoms smaller, reducing his overall quantity of negative freedom. The more sanctions and punishments that the master can impose on his slave, the smaller the range of conjunctively exercisable negative freedoms, the more there will be an overall loss of negative liberty.<sup>66</sup> In this way, negative liberty is claimed to encompass neo-republican freedom; exposure to arbitrary power, whether or not it is exercised, has an adverse effect on negative freedom through the probability of it being exercised.

So, Kramer sees negative freedom as only being affected by arbitrary power in proportion to the *probability* that it will actually manifest as interference. Nevertheless, the probabilistic approach fails on two fronts. Firstly, it must maintain that if there is an extremely low probability of interference, an individual is largely free. Secondly, it ignores the fact that individuals can be implicated in a relationship of domination and subjection, a relationship that is common knowledge between the parties, and which will ensure that the subjected party acts as required in order to stave off actual interference. It is useful to consider each of these responses in turn.

If Kramer is correct, we're forced to conclude that Nora is largely free. Indeed, doted on by a husband who has never interfered in her life before and who has denied her nothing, we seem

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defence of the non-interference theory of freedom, see: Ian Carter, 'How are Power and Unfreedom Related', in Cecile Laborde and John Maynor (eds.), *Republicanism and Political Theory* (Oxford: Blackwells, 2008), pp. 58-82.

<sup>65</sup> Kramer, 'Liberty and Domination', pp. 47-48.

<sup>66</sup> *Ibid.*, pp. 47-48.

forced to accept that the probability of Torvald interfering in Nora's life is so low as to be negligible. But, we have good reason to suppose that past performance is not necessarily a good guide to how Torvald is likely to act in the future, and is therefore a poor means for determining the extent of freedom enjoyed by Nora. This is because new circumstances may arise which Torvald may not have encountered before. Perhaps, for example, his wife might decide to join a woman's liberation group, or refuse to play the part of the doting wife. In such circumstances, Torvald may feel forced to grab the reins, to check his wife's errant behaviour, and would (because of the norms and laws which permeated society in the nineteenth century) be able to do so. The problem with the probabilistic approach advocated by Kramer is that it fails to address the issue identified by Pettit. That is, individuals can be unfree regardless of whether or not another is likely to interfere in their life, and they are unfree as long as another has the unchecked *capacity* to interfere.

The second problem for the probabilistic account of non-interference is that, as discussed above, those who are subject to domination, and who know that they're subject to another's capacity to exert arbitrary control over their lives, may ingratiate themselves with their dominator, or may act in ways which they know are going to be permissible. Indeed, we may find that Nora plays the doting wife simply to secure her husband's goodwill and forbearance on other matters, or that she always pursues options that she knows Torvald is likely to approve of. The fact that Nora has to act in this way to secure a lower probability of interference must surely evidence that she is subject to Torvald's will. It therefore seems that on the probabilistic view, ingratiation and individuals censoring their own actions are means by which an individual can reduce the probability of interference in their lives, and therefore function as a means for securing a greater degree of freedom.

We must therefore conclude that the non-interference conception of freedom and the revised probabilistic account fail to address the problem highlighted by Pettit whereby individuals are rendered unfree when others stand ready to take up the reins and exert arbitrary, unchecked control over their lives. Freedom should therefore not be understood to consist of non-frustration, since doing so entails that freedom can be increased through the unfree adapting their preferences to wanting only what they can get. Likewise, freedom should not be understood to consist solely of non-interference, since doing so entails that freedom can be increased through the unfree kowtowing, toadying, and ingratiating themselves with those who dominate them in order to secure a greater area of non-interference.<sup>67</sup> Instead, we should follow Pettit in understanding

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<sup>67</sup> Frank Lovett discusses this issue and cites the testimony of a slave, Lunsford Lane, who acted in precisely this manner as a means for securing non-interference and yet remained unfree. See: Frank Lovett, *A General Theory of Domination and Justice* (Oxford: Oxford University Press, 2010), pp. 43-47.



freedom to require that, ‘You must be able to get what you want regardless of what it is that you want. And you must be able to get what you want regardless of what others want you to get.’<sup>68</sup>

### **The Liber**

Being a free person or *liber*, Pettit argues, requires that:

1. you have the room and the resources to enact the option you prefer,
2. whatever your own preference over those options, and
3. whatever the preference of any other as to how you should choose.<sup>69</sup>

The first of these requirements has two distinct components. The first component broadly states that individuals ought to have the capacity to pursue their favoured option from a given set without being prevented from doing so. This maps onto the non-frustration view which was defended by Hobbes and simply requires that a free individual is not frustrated in their pursuit of their actually preferred option in a choice-set.<sup>70</sup> The second component of this requirement stipulates that individuals must have the personal, natural, and social resources necessary to pursue their favoured option. We will return to exactly which choices qualify for non-frustration, and the importance of guarding against the invasion and vitiation of these choices, below.<sup>71</sup>

The second requirement maps onto Berlin’s critique of Hobbes’ account of non-frustration and requires that non-frustration is secured across whichever option an individual actually decides to pursue. To use Berlin’s analogy, we can think of the options in a choice-set as representing a series of doors. Non-frustration requires that whatever door an individual actually pushes on is unlocked and therefore accessible to them. But, as discussed previously, if this were enough for freedom, then the individual could simply adapt their preferences and decide to push on whichever door is open, regardless of whether or not this was their actual preference. Instead, and what the second requirement entails is that *each* door must be unlocked so that, regardless of an individual’s preference, they are not frustrated in their attempt to open a door. This requirement therefore stipulates that freedom requires that individuals are not only free from frustration in the pursuit of their preferred option, but that they’re not interfered with in the pursuit of any option in a given choice-set.<sup>72</sup>

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<sup>68</sup> Pettit, *Just Freedom*, p. 29.

<sup>69</sup> *Ibid.*, p. 30.

<sup>70</sup> It is important to note that I am using ‘choice-set’ synonymously with Lovett’s use of ‘opportunity set’. He states that an opportunity set is, ‘the range of options practically available at a given time to a given member of some social relationship.’ Lovett, *A General Theory of Domination and Justice*, p. 41.

<sup>71</sup> Pettit, *Just Freedom*, pp. 34-38.

<sup>72</sup> *Ibid.*, pp. 39-41.

The third requirement is that not only must each door be open to an individual regardless of which they actually choose to open, but their capacity to open a door, ‘must remain in place not only if you change your mind about what to choose, but also if others change their minds as to what you should choose.’<sup>73</sup> This requirement therefore links to the example of Torvald and Nora, since it requires that Nora’s choices (perhaps to cease to be a doting wife and to instead join a woman’s liberation group) be independent of Torvald’s preferences. If she is truly to be free, Nora must be able to pursue whichever option she wants without having to consult her husband or account for his preferences; ‘freedom involves the ability to enact any of the options in a choice, regardless not only of what you prefer to choose, but also of what others prefer that you choose.’<sup>74</sup> The free person, then, enjoys a resilience in their capacity to choose how to lead their own life: they are able to look at a set of options and know that they can choose as they will free from interference, and enjoy secure knowledge that others need not be placated in order to secure their acquiescence.

At this point it is necessary to briefly pause and turn to the issue of positive liberty again. This is necessary as underlying Pettit’s account of non-domination is a foundational conception of individuals as, at least, autonomous agents and, ideally, as agents who engage in orthonomous decision-making. Since this account of individual self-rule seemingly motivates Pettit’s concern with domination, it is necessary to be clear about exactly how Pettit understands the relationship between the political and personal ideals of freedom.

Leading an orthonomous life requires that individuals form and act on their desires in accordance with the right sort of principles. Indeed, Pettit and Michael Smith argue, in *Backgrounding Desire*, that orthonomy requires, ‘that the properties which the agent countenances as valuable - the properties which he desires - figure consistently in the determination of which options he comes to desire.’<sup>75</sup> Orthonomy requires that not only must individuals govern themselves and make choices in an autonomous way, but that they must make their choices in accordance with the requirements of rationality and in accordance with the principles that they endorse: ‘It means being sensitive to the properties that count for you as values and not being disrupted by pathologies of desire.’<sup>76</sup> This view can be contrasted with heteronomy, which Pettit and Smith define as the antonym of orthonomy, wherein individuals are ruled by capricious whims and desires. To be orthonomous, then, is to form desires and make choices in accordance with the values that an individual endorses, ensuring coherence between principles

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<sup>73</sup> Ibid., p. 41.

<sup>74</sup> Ibid., pp. 41-46.

<sup>75</sup> Philip Pettit and Michael Smith, ‘Backgrounding Desire’, *Philosophical Review* 99 (1990), pp. 565-592 (p. 588).

<sup>76</sup> Ibid., p. 588.

and actions, and is more demanding than autonomy which simply requires that individuals choose as they will.

Importantly, orthonomy does not require that individuals actively ensure that they form their choices in accordance with their principles in all situations. Instead, and as is more likely in the real world, many of the actions that we perform, and choices that we make, are not the result of any explicit reflection. Instead, Pettit argues that we largely act out of habit, with our principles and reasons guiding our actions in a virtual way: we only engage in explicit reflection in situations which are out of the ordinary. In these situations, we engage in a process of internal discursive reflection, selecting how to choose or act on the basis of the principles and reasons that we endorse.<sup>77</sup> Fundamentally, orthonomy requires that individuals, ‘form and act on desires that answer to [their] evaluations, in particular to evaluations that reflect whatever count as the relevant facts.’<sup>78</sup>

It is important to be clear that Pettit does not stipulate that individuals do, or have to, lead orthonomous lives. Instead, he simply acknowledges that freedom of choice is going to require *some* form of autonomy or orthonomy. This is because freedom of choice presupposes that individuals are able to stand back from the choice-set they face and utilise some form of self-rule in selecting between options, as when an individual chooses which door to go through in Berlin’s earlier analogy. Pettit’s preference is for individuals to choose from a given set of options in an orthonomous rather than autonomous way.

Nonetheless, Pettit goes on to note that exactly how individuals choose is immaterial to his account of non-domination.<sup>79</sup> This is because non-domination is an alternative to the negative ideal of non-interference:<sup>80</sup> it is a ‘political’ ideal of freedom which is intended to regulate interpersonal relations (relations between individuals), not intrapersonal relations (individuals’ capacity to achieve self-mastery).<sup>81</sup> His account of non-domination is concerned, ‘solely with social free will or, in effect, political freedom: that is, with what is required for it to be the case that however imperfectly formed your will may be, you are in a position to make your choice, without invasion or vitiation, according to that will.’<sup>82</sup> This is because, following Berlin, he believes that it would be ‘reckless’ to entrust a state with promoting individuals’ capacity to achieve self-mastery and, if the state were entrusted with such a task, then it would likely degenerate, ‘into an intrusive and oppressive agency.’<sup>83</sup> Non-domination is therefore concerned with individuals’ ‘revealed’ will, not whether or not that will constitutes their true or real will:

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<sup>77</sup> Pettit, *A Theory of Freedom*, pp. 65-104.

<sup>78</sup> Pettit, *On the People’s Terms*, p. 48.

<sup>79</sup> *Ibid.*, pp. 47-49.

<sup>80</sup> Pettit, *Republicanism*, p. 81; Lovett, *A General Theory of Domination and Justice*, p. 155.

<sup>81</sup> See: Pettit, *A Theory of Freedom*, pp. 125-128.

<sup>82</sup> Pettit, *On the People’s Terms*, p. 49.

<sup>83</sup> Pettit, *A Theory of Freedom*, p. 127.

whether individuals' revealed will reflects their real will is an ethical or psychological issue, and not one that can be laid to the charge of a coercive state.<sup>84</sup> With that said, he does go on to note that, 'Freedom as personal self-mastery, however, is a richer ideal than that of freedom as non-domination; there can certainly be non-domination without personal self-mastery, but there can hardly be any meaningful form of self-mastery without non-domination. Moreover, freedom as personal self-mastery ought to be facilitated, if not actively promoted, under a state that assures freedom as non-domination.'<sup>85</sup> He concludes that in a society which ensures non-domination, individuals can be trusted to look after their own personal autonomy or orthonomy.<sup>86</sup>

Since Pettit is clear that securing non-domination is a distinct, and more salient, issue than securing each individual's capacity to achieve self-mastery, it would seem that his views on orthonomy are redundant to the current analysis of Pettit's political ideal of freedom. Nonetheless, I do not think that this is the case. This is because the concept of orthonomy which Pettit endorses seems to provide the prism through which he views the evils of domination: that is, subjection to arbitrary control breaks the link between an individual's capacity to choose or act in accordance with the principles that they endorse and undermines their capacity to lead orthonomous (or autonomous) lives. So, in Nora's case, we can imagine that she might endorse some principle of gender equality and, pursuant to this, aims to act in a way that ensures her choices cohere with her principles by joining a female liberation group. From the perspective of orthonomy, domination is a particular ill since it entails that Torvald's capacity to invigilate Nora's choices breaks the link between her principles and actions. She is forced to act in ways which do not cohere with any principles that she endorses.

We can therefore see that Pettit's account blends positive and negative liberty in a complex way. He is clear that his concern is with the political ideal of freedom as non-domination as an alternative to freedom as non-interference. In addition, he acknowledges that securing non-domination is going to require an underlying assumption of individual autonomy or orthonomy (since we cannot conceive of individuals as standing apart from their choices in the required way unless we embrace some form of positive liberty), but stipulates that promoting or securing individual self-rule ought not to be entrusted to a state. The evil of domination is that, when subject to domination, individuals' capacity to lead their own lives, and choose from a given choice-set (in an autonomous or orthonomous way), is undermined. Pettit's account is therefore premised upon a positive conception of individual self-rule, which would ideally take the form of individual orthonomy, and a negative conception of political liberty which requires that individuals are protected from domination: individuals must be protected from domination so that they can lead their lives in a self-ruling way.

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<sup>84</sup> Pettit, *On the People's Terms*, p. 49.

<sup>85</sup> Pettit, *A Theory of Freedom*, pp. 81-82.

<sup>86</sup> *Ibid.*, p 82.

Turning to the issue of how domination severs the link between principles and actions, Pettit argues that there are two categories of factors which undermine an individual's capacity to choose how to act (and therefore undermine individual orthonomy or autonomy). These are vitiating and invading factors. Vitiating factors are those that condition and constrain the options available to individuals and will hinder an individual's capacity to lead a free life.<sup>87</sup> Invading factors are those that directly undermine an individual's capacity to choose in a reason-sensitive, orthonomous way between the options available to them; invading factors are, in Pettit's view, worse than vitiating factors.<sup>88</sup>

Starting with vitiating factors, Pettit argues that an individual's freedom can be undermined when subject to a paucity of personal, natural, and social resources. He offers us an example of someone wanting to vote in an election in order to understand how a lack of resources may undermine an individual's freedom of opportunity. If they're physically or mentally disabled, they may be unable to pursue the option to vote without significant support. Alternatively, there may be a lack of natural or environmental resources to facilitate freedom of opportunity: in this case, there may be no election booth within reach, resulting in an individual being unable to actually vote. Finally, the social conditions in which an individual makes a choice can undermine their capacity to choose freely. If the society that they live in does not make provision for individuals to be able to vote, if there are no laws securing a suitable electoral system, an individual's capacity to choose to vote is going to be undermined. These factors can all serve to vitiate individuals' freedom of choice, constraining the range of choices available to individuals, and undermining their capacity to choose in accordance with the principles and reasons that they endorse.<sup>89</sup>

Turning to invading factors, Pettit argues that, 'To suffer invasion is to be denied the very condition by which freedom is identified: to be thwarted in making the choice according to your will.'<sup>90</sup> When an individual's choice-set is invaded by another, their capacity to act in accordance with their principles and the reasons that they endorse is severed, and another's will enjoys an invigilating or outright interfering influence in that individual's deliberations over how to act. Pettit goes on to outline four ways in which a choice-set might be invaded by another. An individual may remove an option from a choice-set, with or without notifying the chooser, such that a choice-set which previously included options X, Y, and Z may be reduced to just X and Y. Alternatively, an invader may, again without necessarily notifying the chooser, change an option in a choice-set such that options X, Y, and Z become options X, Y, and Z-. In each of these cases, option Z is no longer included within the choice-set. Importantly, we must distinguish between

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<sup>87</sup> Pettit, *On the People's Terms*, p. 45.

<sup>88</sup> *Ibid.*, p. 44.

<sup>89</sup> Pettit, *On the People's Terms*, pp. 37-43; Pettit, *Just Freedom*, pp. 36-38.

<sup>90</sup> Pettit, *On the People's Terms*, p. 43.

the problematic replacement of an option with a penalised option, and the unproblematic offer of a reward for choosing a specific option. When a penalty is imposed upon an option, that option is replaced with a less desirable option: option Z becomes Z-. This is a form of invasion since it denies the chooser the options of X, Y, and Z. When a reward is offered for choosing an option, however, the original choice-set remains intact but with the added bonus of an extra option: choice set X, Y, and Z becomes, X, Y, Z, and Z+. So, when a penalty is attached to an option, the original choice-set is changed and includes a less desirable option. When a reward is offered, the original choice-set remains intact with an additional, attractive option.

The third and fourth ways in which a choice-set might be invaded is through the misrepresentation of the options through deception or manipulation. Here, an invader might be able to deceive the chooser into believing that the options available in a given set are other than they actually are, or that choosing a given option will have unpleasant consequences. The invader thereby undermines the chooser's capacity to rationally choose between the available options by misrepresenting the content and consequences of the available set. Manipulation, like deception, affects the chooser's cognitive capacity to choose as they will. Manipulation may involve hypnotising, mesmerising the chooser through the offer of extraordinary rewards, playing on the chooser's emotions, or through excessive lies. Such invasion will, again, affect the chooser's capacity to choose in accordance with the principles and reasons that they endorse, thereby undermining their capacity to make a reason-sensitive choice.<sup>91</sup>

In summarising the role of vitiating and invading factors in undermining individual freedom, Pettit argues that the latter are considerably worse than the former as, 'it is inherently worse to be controlled by the free will of another than to be constrained by a contingent absence of resources.'<sup>92</sup> He concludes that:

There are two dimensions to freedom of choice: on the one side, the freedom that goes with the unvitiating range of choices available; and on the other the freedom that goes with not being invaded by others in the exercise of those choices. The unvitiating resources at your disposal define a range of effective opportunities, and to the extent to which that range is wider, you have greater latitude for choice, greater freedom of opportunity. Being in a position to use those resources without invasion – not being subject to the will of another, however partially, on the matter of how you exercise the capacity they give you – will enable you to exploit those opportunities more effectively. Where the unvitiating resources ensure your freedom of opportunity, the absence of subjection and invasion ensures your freedom of exercise or control.<sup>93</sup>

Securing freedom of choice therefore requires that individuals are properly resourced so that they have an adequate range of options to choose from (we will consider below exactly what

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<sup>91</sup> Ibid., pp. 45-52.

<sup>92</sup> Pettit, *Just Freedom*, p. 48.

<sup>93</sup> Pettit, *On the People's Terms*, p. 45.

choices ought to be resourced), and that they are protected against invasion so that they can choose an option from a choice-set regardless of their own preference over these options and regardless of anyone else's preferences as to how they should choose. With that said, it is necessary to add a further qualification to this account of freedom of choice, and one which more clearly distinguishes neo-republicanism from liberal theories of freedom. This is the claim that it is possible to have invasion without domination, and domination without invasion. That is, it is possible for a choice to be interfered with without this necessarily counting as domination or subjection to another's will; and it is possible for individuals to be dominated through invigilation and intimidation without direct interference taking place.

Starting with the possibility of interference without domination, it is useful to begin with Pettit's example of Ulysses' encounter with the Sirens. Having been forewarned by Circe of the dangers of the Sirens' song, Ulysses plugs the ears of his crew after instructing them to tie him to the mast so that he can hear the mantic truths of the Siren's song without being lured to his death. He informs his crew that no matter how much he begs or commands, they are not to release him. Hearing the song, Ulysses begs for release but his crew only tighten his bonds as he commanded. Ulysses is thereby interfered with by his crew, but it is his commands which guide the crew's interference. As it is Ulysses' will which guides his crew's interference, the control that they exercise is not arbitrary: the interference is determined by Ulysses' own will. Had his crew countermanded his edicts, and released him from his bonds for whatever reason, it would have been the crew's will which was decisive and therefore an arbitrary or uncontrolled form of interference.<sup>94</sup>

Pettit's argument here is that it is arbitrary or uncontrolled interference which is the problematic form of interference since it, 'is interference which is practiced in accordance with the *arbitrium*, or 'will', of another,'<sup>95</sup> rather than in accordance with the will of the one subject to interference. Since the crew's interference is not practiced in accordance with their *arbitrium*, they act as Ulysses' servants rather than his master, and they are used as a tool to give effect to Ulysses' own will. The upshot of this argument is that interference which is practiced in accordance with the will of those subject to interference, will not represent a dominating form of control providing that it materialises on terms dictated by those subject to the interference.<sup>96</sup> While we will return to this distinction between arbitrary and non-arbitrary control in the next chapter, it should be noted that paternalistic interference, which relies on the interferer's interpretation of the situation, will also represent a form of dominating interference since the interferer's will supplants that of the individual on the receiving end of such treatment. This will only be

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<sup>94</sup> See, for example: Pettit, *On the People's Terms*, pp. 152-153; Philip Pettit, 'Freedom in the Market', *Politics, Philosophy and Economics* 5 (2006), pp. 131-149 (p. 135).

<sup>95</sup> Pettit, *On the People's Terms*, p. 58.

<sup>96</sup> Pettit, *On the People's Terms*, pp. 56-59.

acceptable when the interference is in accordance with a set of interests which the individual subject to interference is disposed to avow, and this avowal can be readily tested and established.<sup>97</sup>

As it is possible to have interference without domination, so too is it possible to have domination without interference, and this can be realised through the mechanisms of invigilation and intimidation. Invigilation involves standing guard over an individual's actions, ready to interfere should the individual choose an action which the invigilator does not licence. Invigilation is the mechanism which characterises Torvald and Nora's relationship: as argued previously, Torvald does not actively intervene in Nora's life (since he has so far had no need to do so), but he stands ready to take up Nora's reins should she act in inappropriate ways. In this situation, Nora's capacity to choose as she will is dependent upon Torvald's forbearance. So, let us imagine that Nora faces a choice-set of preparing her husband's dinner or attending a woman's liberation meeting. The issue, here, is that these options are not as they first appear. Nora's choices are actually preparing her husband's dinner-*cum permissu* or attending a woman's liberation meeting-*cum permissu*. That is, the objective profile of the options that Nora faces are not X or Y, but X-if-it-please-Torvald or Y-if-it-please-Torvald, and the original options of X or Y have therefore been replaced. Assuming that Nora is aware of her dependence upon her husband's goodwill and the objective change in her choice-set, the cognitive profile of the options will also change and she will suffer intimidation. That is, Nora's awareness of being subject to her husband's will will involve her attaching different values to these options (presumably a negative value to attending the women's meeting), and thereby permitting Torvald's invigilating will to also achieve an intimidating effect over her choices. She will act as though subject to a threat (the threat of interference should she choose other than required) and will therefore be subject to both invigilation and intimidation.<sup>98</sup>

Although we have only touched briefly on a number of issues in this section, it is now possible to see how the neo-republican conception of freedom is distinct from the non-interference view, and exactly what being a free person requires. The free person, we have seen, is one who has the room and the resources required to pursue an option from a given choice-set, irrespective of which option they actually want to pursue, and regardless of the preferences of others over how they should choose. This requires that individuals are free, as far as possible, from vitiating factors such as a paucity of personal, natural, and social resources, and that they're free from invasion (which may take the form of replacing, removing, or misrepresenting an option). I have outlined that underlying this account of free choice is a conception of orthonomy (or at least minimal autonomy) which claims that individuals ought to make their decisions in a way which coheres with the principles that they avow and the correlative reasons which bear on a given decision.

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<sup>97</sup> Ibid., 58-59.

<sup>98</sup> Ibid., pp. 60-64.



Importantly, invasion and vitiating undermine individuals' capacity to lead autonomous lives through altering the options available to them and through constraining their choice-sets, thereby preventing individuals from acting in accordance with their principles and the requirements of reason. I have also outlined Pettit's further claim that it is possible for an individual's choice-set to be invaded without domination occurring, and that domination can occur without an invasion of a choice-set.

### **Freedom from *Dominium***

Having now outlined what being a free person entails, and how that freedom can be undermined, we can begin to look at how individuals might be protected from others' capacity to exert arbitrary control over their lives. There are, broadly, three possible ways in which we might ensure that individuals are protected against others' uncontrolled interference: we might rely on individuals themselves to not exert arbitrary control over others; we might empower individuals so that they're able to check others' attempts to exert arbitrary control over them; or we might develop an external authority which would aim to provide a guard against individuals' capacity to dominate others. My aim is to show that only the third of these options is able to secure individuals against domination and, as we will see in later chapters, is of central importance in determining how we might address the problem of transnational domination.

The first of these options, relying on individuals themselves not to exert arbitrary control, may secure non-interference but cannot secure non-domination. This is because, as discussed above, whether or not Torvald actually interferes in Nora's life is immaterial from the perspective of non-domination: what matters is that she is dependent upon his goodwill to lead a life of her own choosing. Indeed, as Pettit notes, individuals may not want others to be dependent upon their goodwill but, because of the legal, cultural, and political system in which individuals live, they may find that they are implicated in relationships of, 'inalienable asymmetrical power.'<sup>99</sup> That is, Torvald might wish that that Nora did not depend on his goodwill to lead her own life and wish that circumstances were otherwise, but he will subject her to his will non-intentionally simply because of the legal and cultural norms which permit him to control her life. Attempting to address domination through promoting individual virtue and forbearance is therefore doomed to failure since it will simply establish a series of asymmetrical relationships in which individuals are largely free from invasion but nonetheless subject to domination.<sup>100</sup>

The second strategy, what Pettit calls the strategy of reciprocal power, would aim to ensure that each individual has sufficient resources to be able to check or rebuff others' attempts

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<sup>99</sup> Ibid., p. 62.

<sup>100</sup> Ibid., pp. 61-62; Lovett, *A General Theory of Domination and Justice*, p. 134.

to dominate them. The problem with this approach, Pettit notes, is that it gives rise to a Hobbesian state of nature and a war of all against all. Supposing that this strategy could be successfully realised (and assuming that no individual or group was able to become dominant through the successful accumulation or pooling of resources), it would guard against invasion, invigilation and intimidation, but would severely restrict the range of unvitiated choice that individuals could enjoy. That is, individuals would need to be prepared for resistance from others whenever they attempt to carry out an action and would need to defend themselves should others take against them, rendering all choices more costly or unrealisable (for example, individuals might need to carry arms so that they can successfully see off any potential dominators).

This leaves the third strategy, what Pettit calls the strategy of constitutional provision.<sup>101</sup> Under this approach, individuals would empower an external third party to secure mutual non-domination by guarding each against invasion, intimidation, and invigilation, and securing a range of unvitiated choice.<sup>102</sup> Importantly, this approach would mirror the Ulysses example in which Ulysses authorises his crew to bind him. In doing so, they restrict his freedom of choice and simultaneously secure him against the Sirens' lure. In this case, we noted that Ulysses remains undominated as it is his will which determines the control that he is subject to. Pettit's suggestion for securing non-domination is to develop a political system which will function in the same way as Ulysses' crew by providing a series of, 'external checks that remove or replace the interference option or put it cognitively off the menu.'<sup>103</sup>

It is important to note that this strategy will reduce the range and ease with which individuals will be able to exercise their capacity for unvitiated choice. This is because just as Ulysses' crew reduce his unvitiated choice to submit to the lure in order to secure his non-domination, a political system will similarly restrict the options available to individuals in order to secure the community's non-domination. Pettit argues that this restriction of unvitiated choice does not, however, make individuals unfree, but rather makes them 'non-free.'<sup>104</sup> This follows the distinction outlined previously in which Pettit argues, following Kant and Rousseau, that invasion is qualitatively worse than vitiation because, 'the human being is dependent on many external things...But what is harder and more unnatural than this yoke of necessity is the subjection of one human being under the will of another.'<sup>105</sup>

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<sup>101</sup> It is important to note that Lovett argues for a solution akin to the strategy of constitutional provision, noting that, 'Unless a constraint on the exercise of power is somehow *externally* enforceable, it does not count.' See: Lovett, *A General Theory of Domination and Justice*, pp. 214-217.

<sup>102</sup> We will consider in the next chapter how to guard against such third parties becoming a source of domination.

<sup>103</sup> Pettit, *On the People's Terms*, p. 63.

<sup>104</sup> Pettit, *Republicanism*, pp. 92-95.

<sup>105</sup> Pettit, *On the People's Terms*, p. 44.

While we will return to exactly how such a political system might be developed in the next chapter, and consider the extent to which it would be able to secure non-domination without becoming a source of domination, it is sufficient to note, here, that Pettit's constitutional provision strategy seems to be the most plausible means for securing individuals against domination. Unlike the goodwill strategy, it ensures that individuals are not dependent on others for leading their lives as they wish and, unlike the reciprocal power strategy, it does not suggest that the best means for securing non-domination is anarchy which would, in all likelihood, result in the emergence of stronger agents who are able to pool their resources and thereby secure a degree of dominance over others.<sup>106</sup>

It is also of central importance to note, here, that these comments will be particularly important when we look at how we might secure international justice and guard against transnational domination. Indeed, as we will see in the third chapter, Pettit's insight into how domination can be prevented between individuals will be just as relevant for determining how domination can be prevented between corporate and transnational agents (which we will consider in detail below). That is, just as relying on individuals to forbear from interfering with one another may secure non-interference but not non-domination (since the option to interfere remains within individuals' choice-set), relying on corporate agents to forbear from interfering with one another will similarly only secure non-interference and not non-domination. Likewise, the strategy of reciprocal power, which Pettit has argued will entail a war of all against all at an individual level, will similarly entail an arms race between corporate agents if pursued at a transnational level. These comments therefore suggest that just as the strategy of constitutional provision is the only way to secure non-domination between individuals (since it removes the option of interference from individuals' choice-sets), it will likewise be the only strategy capable of securing non-domination between corporate agents and will need to be replicated at a transnational level in order to secure international justice.

Assuming, for now, that an appropriate political system could be developed to guard each individual against domination, the next issue that we must confront is the scope of such constitutional provision: that is, over what range of choices should individuals enjoy security against invasion and vitiating? It should be noted that there has been some equivocation on Pettit's part as his neo-republicanism has developed. Indeed, in *Republicanism: A Theory of Freedom and Government*, Pettit outlines a series of policy areas which a republican society ought to be concerned with in combatting *dominium*. These include: securing external defence; guaranteeing internal protection; securing personal independence; promoting economic prosperity; and

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<sup>106</sup> Lovett similarly argues that power is arbitrary when it is not externally constrained by rules, goals, or procedures which are common knowledge. See: Lovett, *A General Theory of Domination and Justice*, pp. 96-98.

promoting a robust public life.<sup>107</sup> His later work, however, has focused on the elucidation of a series of basic liberties which would enable individuals to satisfy the ‘eyeball test.’

The basic liberties are those choices that meet two criteria. These are that, to qualify as a basic liberty, a choice must be capable of being co-exercised and co-satisfied. The first criteria requires that each choice which is safeguarded must be capable of being exercised by all adult, able-minded citizens, at more or less the same time. This criterion therefore rules out any choices which are inaccessible to particular people, and any choices that cannot be exercised more or less simultaneously by all individuals. The second criterion requires that each choice which is protected must promote the individual enjoyment and welfare of those who satisfy them, and must be such that their exercise does not harm others or reduce their capacity to enjoy these choices.<sup>108</sup>

Pettit goes on to argue that the choices which will be co-exercisable and co-satisfying will vary across societies (an issue which we will return to in later chapters), and that the choices which qualify as basic liberties will be those that are general and distal. This means that, where possible, the choices which should qualify as basic liberties are those whose protection will secure further liberties. For example, rather than securing freedom to speak at a political meeting, we should protect the more general freedom of speech as doing so will also secure the more specific freedom to speak at a political meeting. In protecting general freedoms which pass the co-exercisability and co-satisfying constraints, we will also protect a series of related choices. Finally, Pettit goes on to list a range of general, distal choices which, though not exhaustive, will likely secure individuals against *dominium*. These include: freedom of thought; freedom of expression; freedom of religion; freedom of association; property rights and freedom to trade and exchange; employment rights, including the right to change occupation; and freedom of travel within the community.<sup>109</sup> Guarding against vitiation will also require the provision of a range of material resources which secure individuals from dependency.<sup>110</sup> It is important to note, however, that Pettit claims that, with regard to the entrenchment of the basic liberties, ‘One size may not fit all,’<sup>111</sup> and that, ‘Culturally diverse societies may call for the entrenchment of divergent sets of basic liberties.’<sup>112</sup> Pettit’s account of the basic liberties is therefore sensitive to cultural variation, acknowledging that in some societies it may not be appropriate to entrench a right to criticise or mock others’ religion due to different cultural standards, whereas in others it would be. As such, he claims that, ‘there is no reason to think that only a single candidate will be right from the point of view of freedom as non-domination.’<sup>113</sup>

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<sup>107</sup> Pettit, *Republicanism*, pp. 129-170.

<sup>108</sup> Pettit, *On the People’s Terms*, pp. 92-102; Pettit, *Just Freedom*, pp. 61-69.

<sup>109</sup> Pettit, *On the People’s Terms*, p. 103; Pettit, *Just Freedom*, p. 72.

<sup>110</sup> Pettit, *On the People’s Terms*, pp. 69-74.

<sup>111</sup> Pettit, *Just Freedom*, p. 70.

<sup>112</sup> *Ibid.*, p. 70.

<sup>113</sup> *Ibid.*, p. 70.

The basic liberties, Pettit argues, should be resourced and protected up to the point where no more needs to be done. Once this threshold has been met, individuals can be assumed to be able to satisfy the eyeball test, and are therefore secure against private domination or *dominium*. The eyeball test, which Pettit argues is grounded in the republican image of a free citizen, requires that an individual is able to walk tall and enjoy communal recognition that they're of the same status as the most powerful.<sup>114</sup> Importantly, the eyeball test permits deviations from substantive equality: as long as all individuals meet the threshold whereby they can look one another in the eye as equals, the state need not be concerned with material inequality.

We should also note two final points. The first is that although material inequalities are not necessarily a concern from a republican perspective, there may nonetheless be a need to place a limit on the extent of inequality permitted. This is because some individuals may accumulate more wealth or power and enjoy a correlative rise in the range of uninvaded and unvitiated choices available to them: this may have the effect of raising the threshold of the eyeball test since some individuals may be unable to address such people on equal terms. The second point to note is that as a society does better at realising the requirements of the eyeball test, the expectations of what that test will require will rise correlatively. Indeed, we can suppose that once the threshold is reached for everyone, that threshold will rise and the range of choices which individuals believe ought to be included as a basic liberty will similarly expand.<sup>115</sup>

It is important to end our discussion of what freedom from *dominium* requires with a brief analysis of what would be required to entrench the basic liberties, and consider Pettit's argument for why the protection and promotion of the basic liberties ought to count as a theory of social justice. In brief, Pettit outlines three policy areas which would need to address the entrenchment of the basic liberties: infrastructural programmes; insurance programmes; and insulation programmes. Infrastructural programmes would aim at establishing a suitable range of unvitiated choice for individuals and would include: educational and developmental policies which would enable individuals to exercise the basic liberties; a legal and institutional framework which specify the property conventions and other arrangements which secure the co-exercisable and co-satisfiable liberties; and the long-term maintenance of the community through ecological and sustainability policies. An insurance programme would require that there be provision for social security, medical security, and judicial security, and that this insurance be provided regardless of whether individuals require the insurance because of bad luck or bad choices. Finally, insulation programmes would be required to protect against criminal behaviour, and secure weaker partners

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<sup>114</sup> *Ibid.*, p. xxvi.

<sup>115</sup> It is important to note that Pettit's account is, 'a practice-wide form of consequentialism', such that non-domination is to be maximised where possible. See: Pettit, *Just Freedom*, pp. 100-101; Pettit, *On the People's Terms*, pp. 124-125. Lovett's account, which we will explore below, is similar in structure since it requires that domination is minimised. See Lovett, *A General Theory of Domination and Justice*, pp. 169-163.

in asymmetrical relationships (such as protecting employees against employers, and women against their husbands) as well as protecting individuals from multinationals (which we will consider in detail below).<sup>116</sup>

Finally, it is important to note that Pettit considers securing *dominium* in this way to represent a theory of social justice, and one that is superior to Rawls' *A Theory of Justice*. To that end, Pettit argues that unlike other theories of justice, his requires that the state only looks to securing the freedom of its citizens (without needing to supplement this with a principle of equality, as Rawls' theory requires) and that, in doing so, it will achieve the relevant balance between competing claims. That is, as long as the basic structure of a republican society promotes the free and undominated choice of its citizens, under the requirement that it treats them in an expressively egalitarian manner,<sup>117</sup> then it will ensure that there is a proper balance between competing claims. The republican theory of justice is therefore: minimalist, since it only requires that the state concerns itself with its citizens' freedom and treating them as equals (rather than promoting any form of substantive equality); and demanding since it requires the proper resourcing and protection of individual choice in accordance with the eyeball test which pushes for ever greater resourcing and protection across a wider range of choices.<sup>118</sup> This approach would secure the basic capacities that individuals require to lead minimally decent lives, and would enable individuals to look one another in the eye without a need for deference. Pettit concludes that, 'if we pay the price of securing freedom as non-domination in a suitable measure, we will have paid enough to secure social justice.'<sup>119</sup>

### **Structural Domination**

While Pettit's account offers us a plausible theory of freedom and social justice, it has nonetheless been subject to challenge by theorists who argue that domination is a much more pervasive phenomena than acknowledged by Pettit. These thinkers argue that domination also has a 'structural' component.<sup>120</sup> One such critique, which has been advanced by Sharon Krause, argues

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<sup>116</sup>Pettit, *On the People's Terms*, pp. 107-122.

<sup>117</sup> Pettit argues that expressive egalitarianism entails that, 'Whatever the claims of citizens, the state will establish a proper balance among those claims – and thus achieve social justice – precisely to the extent that it treats its citizens as equals in satisfying the claims.' Pettit, *Just Freedom*, pp. 80.

<sup>118</sup> Lovett defends a similar account of social justice, but one that is premised upon minimising domination rather than maximising non-domination. See: Lovett, *A General Theory of Domination and Justice*, p. 159.

<sup>119</sup> Pettit, *On the People's Terms*, pp. 122-127; Pettit, *Just Freedom*, pp. 98-108.

<sup>120</sup> See: Alan M. S. J. Coffee, 'Two Spheres of Domination: Republican Theory, Social Norms and the Insufficiency of Negative Freedom', *Contemporary Political Theory* 14 (2014) pp. 45-62; Cecile Laborde, 'Republicanism', in Michael Freedon, Lyman Tower Sargent, and Marc Stears (eds.), *The Oxford Handbook of Political Ideologies* (Oxford: Oxford University Press,

that Pettit's focus on intentional domination, that is domination in which an agent intentionally or quasi-intentionally dominates another, is too restricted to identify all of the factors which undermine individual freedom.

Krause claims that in contemporary societies, background norms such as sexism and racism are unintentionally invoked by unwitting agents, and these norms severely constrain the agency of others. Focusing on the issue of racial inequality, Krause notes that in 2009 blacks were twice as likely to be unemployed, three times as likely to live in poverty, and six times as likely to be imprisoned as white people, and this constitutes systematic inequality which thwarts the agency of marginalised individuals. As an example of such inequality, she offers us the case of a young black man going for a job. The white employer is not overtly racist, but harbours a number of racial stereotypes which question the candidate's fitness for the position. In such a situation, Krause claims that, 'To the extent that racial stigma influences this prospective employer's judgement, he obstructs the freedom of the black candidate but without ever intending to do so.'<sup>121</sup> Employing a Foucauldian analysis of power, Krause goes on to claim that the subject/object dichotomy which Pettit focuses on (whereby an agent dominates another agent intentionally, and this domination is a matter of common knowledge) misunderstands the ways in which power can be utilised. Krause claims that our biased social cognitions set up a system in which unfreedom arises without anyone necessarily intentionally controlling others. The employer doesn't seek to dominate the employee but his society's racial views lead him to act in ways which support and reinforce inequality, and this systematically undermines the agency of the young black man. This leads the young black man to second-guess how others will treat him, censor his own actions, and thereby become an unwitting participant in the system of racial inequality.

Krause's central claim, then, is that domination can be enacted in non-sovereign ways, and that, 'Unfreedom in this sense happens when one's efficacy is thwarted by misrecognition, or when the identity that one manifests in the world is fragmented or stunted by the force of unconscious bigotry, cultural devaluation, or internalised stigma – in short, by social inequality.'<sup>122</sup> She seems to suggest that inequalities and stigma create a self-perpetuating cycle of domination: dominators unconsciously reinforce and perform acts which undermine others' agency (and have their own agency undermined since they unwittingly participate in stigmatisation), and those whose agency is thwarted internalise and naturalise their subjection,

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2013), pp. 513-535; Michael J. Thompson, 'Reconstructing Republican Freedom: A Critique of the Neo-Republican Concept of Freedom as Non-Domination', *Philosophy and Social Criticism* 39 (2013), pp. 277-298; Michael J. Thompson, 'The Limits of Liberalism: A Republican Theory of Social Justice', *International Journal of Ethics* 7 (2011), pp. 1-21; Thompson, 'Two Faces of Domination in Republican Political Theory', pp. 1-20; Iris Marion Young, *Justice and the Politics of Difference* (West Sussex: Princeton University Press, 1990).

<sup>121</sup> Sharon R. Krause, 'Beyond Non-Domination: Agency, Inequality, and the Meaning of Freedom', *Philosophy and Social Criticism* 39 (2013), pp. 187-208 (p. 193).

<sup>122</sup> *Ibid.*, p. 201.

acting in ways which reinforce their condition of domination: one of the reasons that black people are less likely to be employed or live in poverty may be because they have naturalised and internalised their inferior status and act in ways which conform to the system of racial inequality. Finally, Krause acknowledges that the unfreedom that she identifies would be more rightly defined as oppression, but argues that a theory of freedom ought to be expanded to account for these non-sovereign forms of unfreedom. A theory of non-domination should therefore be supplemented by a theory of non-oppression which seeks to secure recognition and affirmation of individuals' identities, and this can be achieved through, 'deliberative and contestatory exchanges – and solidarity – that over time can dismantle the cultural background of bias that unintentionally disrupts the exercise of agency among marginalised groups and hinders freedom.'<sup>123</sup>

Assuming that Krause is arguing that structures themselves dominate or oppress individuals, her thesis ought to be rejected because it misunderstands the inter-generational nature of domination. That is, as argued by Lovett, 'domination is always a relationship between different persons or groups, never a relationship between people and structures as such.'<sup>124</sup> He argues that all instances of domination (including slavery, patriarchy, and feudalism etc.) are characterised by social relationships in which an agent, or group of agents, controls another agent or group of agents arbitrarily.<sup>125</sup> To evidence his point he offers us an example. He asks us to imagine a society in which there are property laws which permit slave-ownership but, for the time being, there are no slaves. After a period of time, slaves are imported and the masters duly exercise their property rights. Realising the error of their ways, the masters later manumit their slaves. Importantly, the laws which permit slavery remain unchanged throughout all three periods and yet it is only in the middle period, when there are slaves and masters to control them, when domination actually occurs. His central point is that it is not the laws or norms which permit slave-ownership which dominate the slaves (since the laws still exist after the slaves have been freed in the third period) but the masters who dominate the slaves, although this is clearly facilitated and enabled by the legal and cultural system which supports the institution of slave-ownership.<sup>126</sup>

Lovett is therefore clear that we must distinguish between the sensible claim that background conditions may facilitate domination, with the 'obscure and dubious' claim that these structures themselves dominate individuals in the absence of active dominating agents.<sup>127</sup> Indeed, he goes on to argue that some norms and ideas in a society's background structure might *influence* the choice-sets available to individuals and thus increase the likelihood of domination arising. For

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<sup>123</sup> Ibid., p. 203.

<sup>124</sup> Lovett, *A General Theory of Domination and Justice*, p. 25.

<sup>125</sup> Ibid., pp. 36-37.

<sup>126</sup> Ibid., pp. 46-49.

<sup>127</sup> Ibid., p. 49.



example, a widespread belief in female inferiority might close off a number of career options to women, making them more dependent upon their husbands, and therefore exposing them to a greater likelihood of domination. Lovett is clear, however, that in such a case, where there is no agent invigilating another's choices, then domination cannot occur. Indeed, this is not to deny that a belief in female inferiority may make it easier for men to dominate women, but it is to deny that the belief itself constitutes a source of domination.<sup>128</sup>

It is important to note that this account of the structure of domination, as a process which requires both agents and subjects of domination, and one which can be made easier or harder by background conditions, coheres with Pettit's arguments. Indeed, he makes clear in *Just Freedom* that we need to distinguish between domination as a 'relational' phenomenon, in which agents dominate others, and domination as a 'structural' phenomenon, where structural domination is understood to be comprised of, 'the practices and institutions of the wider society and world: the culture, economy, or constitution under which people live,'<sup>129</sup> which, 'may exercise a reciprocal influence on those agents, structuring their perceptions, motives, and opportunities.'<sup>130</sup> Pettit goes on to note that republican social justice is aimed, 'at negating the relational effects of such structural domination,'<sup>131</sup> because he is concerned with addressing the capacity of *agents* to exercise domination over other agents. To see why these structural phenomena do not count as agents, it is necessary to briefly digress and consider Pettit's account of agency.

To be capable of exercising agency, Pettit argues that an agent must be fit, 'to be held responsible for whatever one does.'<sup>132</sup> This requires that an agent is able to make a choice between options; that they're able to identify with that choice (that is, the choice ought to cohere with the principles and reasons that the agent endorses); and the agent ought to be protected from others' interference when making a choice. This is simply to restate the conditions of freedom discussed earlier with greater emphasis on individual orthonomy, but Pettit goes further. He also argues that fitness to be held responsible requires that agents have the ratiocinative and relational capacities necessary to engage in discourse with others, and that all decisions are actively or virtually controlled by the principles and reasons endorsed by the agent: an agent therefore, 'not only escapes pathologies like weakness of will and compulsion but is present in active endorsement of much of its psychology.'<sup>133</sup> An agent, then, is an entity which is capable of endorsing a set of principles and reasons which then exercise virtual or active control over the decisions that are made. Agents can be deemed to be fit to be held responsible when they're able to perform an act

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<sup>128</sup> Ibid., pp. 87-89.

<sup>129</sup> Pettit, *Just Freedom*, p. 53.

<sup>130</sup> Philip Pettit, *The Common Mind: An Essay on Psychology, Society, and Politics* (Oxford: Oxford University Press, 1993), p. 163.

<sup>131</sup> Pettit, *Just Freedom*, p. 54.

<sup>132</sup> Pettit, *A Theory of Freedom*, p. 31.

<sup>133</sup> Ibid., p. 103.

freely; and, to be able to perform an act freely, they must have been able to choose to act differently. Simply, an agent must be capable of acting in ways which cohere with the principles and reasons that they endorse. However, it is important to emphasise, intentionality doesn't require that these principles and reasons exert active control over the individual's decision-making process; often it is enough that these principles exert a virtual, passive influence over the decisions made.

This very brief sketch of Pettit's account of agency explains why structures such as racial stigma, beliefs, prejudices, and other abstract phenomenon cannot exert domination: they lack the necessary pre-requisites to count as agents capable of intentionally, or quasi-intentionally, exerting arbitrary control over others. They therefore count as unintentional constraints on action and, as noted by Pettit:

Were non-intentional forms of obstruction also to count as interference, that would be to lose the distinction between securing people against the natural effects of chance and incapacity and scarcity and securing them against the things that they may try to do to one another. This distinction is of the first importance in political philosophy, and almost all traditions have marked it by associating a person's freedom with constraints only on more or less intentional interventions by others.<sup>134</sup>

This distinction explains Pettit's decision to focus upon the relational component of 'structural' domination. Norms, traditions, customs, and ideals are components of society's background structure and, as such, do not intentionally control anyone. This is not to deny that they can shape and influence individuals' choices, but they do so through interacting with individuals' capacity to engage in self-rule. The bigger problem, for Pettit, is that such phenomena can be employed to control others, as when a racist refuses to hire a black man. We can therefore see that Pettit is aware of the problems highlighted by Krause but conceptualises 'structural' domination in a different way. Since structures are not agents, they cannot exert domination. Instead, they can undermine individual agency and vitiate against individuals' freedom of opportunity, and they can be employed by others to exert arbitrary control. Importantly, while Pettit is explicitly focused upon addressing the relational component of structural domination, his theory is also able to address the ways in which such phenomena may also undermine individual agency or self-rule.

So, when an employer actively discriminates against black people by denying them the capacity to work where they want, through raising the barriers to entry, or through subjecting them to a more demanding application process (assuming they're as qualified as the other candidates etc.), they will be invading that individuals' choice-set by removing or altering an option. This kind of invasion can be addressed through the development of a series of anti-discrimination laws and other mechanisms which make it more difficult or costly for individuals

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<sup>134</sup> Pettit, *Republicanism*, p. 53.

to discriminate in this way. In addition, to the extent that a society endorses racist norms, the range of unvitiated choice available to black people or other marginalised groups is going to be much narrower than it otherwise would be: certain options will simply be off the table or extremely costly for black people. This will represent a paucity of social resources since the social environment does not make provision to secure a range of opportunities for everyone. To the extent that racial stigma, prejudice, and bigotry give rise to an invasion or vitiation of choice, domination occurs. Since securing republican social justice requires that individuals are protected against invasion and resourced against vitiation of choice, up to the point where they can pass the eyeball test, Pettit's account can easily accommodate this concern.

With that said, Krause's argument does highlight a second issue which we must respond to, and that is the capacity of background norms, ideals, and customs to undermine individual agency. As noted above, when subject to misrecognition or stigmatisation, marginalised individuals and groups may internalise and naturalise the ways in which they're perceived by others. This may give rise to situations in which social norms influence individuals' self-perception, leading them to conform to racial or other stereotypes (making it more likely, for example, that young black men turn to crime), or otherwise adapt their aspirations and life-plans. Indeed, as noted by Cecile Laborde, this form of unfreedom, which she calls structural domination, manifests as a, 'structural power relationship which affects...[individuals'] ability to think of themselves as agents capable of choice in the first place (Young 1990, Bourdieu 1998).'<sup>135</sup> What this means is that individuals' capacity to make reason-sensitive choices can be undermined by the norms which permeate society, and which structure how individuals view themselves and their capabilities: although not directly dominated by other agents, subordinated groups internalise and naturalise their inferior status, and adapt their preferences and aspirations to the options that they (rightly or wrongly) take to be available to them.<sup>136</sup>

While Laborde is mistaken in the belief that this constitutes a form of domination (since these power relationships, assuming they lack intentional agents exerting domination, form part of the background structure of society), she is right to note that individuals may adapt their preferences to accommodate the options that they *think* are available to them in a society characterised by these norms. Indeed, when subject to misrecognition and stigmatisation in a society characterised by prejudiced norms and ideas, it seems likely that some individuals will conform to these stereotypes or otherwise curtail their aspirations to suit others' views: we may find, for example, that gay people remain in the closet or that black men are more likely to engage in crime etc. The problem, however, is not one of interpersonal freedom but, as noted above, is instead one of intrapersonal freedom: it is an issue of self-mastery.

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<sup>135</sup> Laborde, 'Republicanism', p. 521.

<sup>136</sup> *Ibid.*, p. 522.

Indeed, such cases seem to represent instances of what Joshua Cohen, drawing on Jon Elster's work, calls adaptive preferences. He argues that, 'These are preferences that shift with changes in the circumstances of the agent without any deliberate contribution by the agent to that shift.'<sup>137</sup> As noted by Ben Colburn, adaptive preferences are related to our beliefs about the unavailability of certain options rather than the intrinsic qualities of the available options.<sup>138</sup> Colburn goes on to note that the problem with adaptive preferences is that they undermine personal independence and an individual's capacity to decide, 'for herself what is valuable, and living her life in accordance with that decision.'<sup>139</sup> While Colburn's definition of autonomy is strikingly similar to Pettit's concept of orthonomy, the important point to note is that it is individual independence which is undermined through adaptive preferences. This is because when an individual adapts their preferences to what they perceive to be the available options (as when a black person lowers their aspirations), the link between individual rationality (the principles and reasons that that individual endorses) and individual action or choice is broken. It therefore seems that adaptive preferences represent a constraint on individual freedom because, when an individual adapts their preferences to fit the options that they perceive to be available to them, the individual no longer acts on the principles or in accordance with the reasons that they endorse.

While the problem of adaptive preferences is therefore not an instance of domination, properly understood, it is nonetheless a problem from the perspective of republican social justice. Indeed, as noted above, this will represent an instance in which structural phenomena, 'exercise a reciprocal influence on those agents, structuring their perceptions, motives, and opportunities.'<sup>140</sup> As such, adaptive preferences are going to count as *personal* vitiating factors which ought to be guarded against within Pettit's theory of social justice. This is because adaptive preferences undermine the requirement, discussed previously, that individuals have the room and resources necessary to make a choice between options, where the requisite resources include personal, natural, and social resources. Indeed, Pettit notes that having the personal resources necessary to make a choice requires that individuals have, 'the mental and bodily ability or knowhow needed to make the choice, and the awareness of having such a capacity.'<sup>141</sup> The problem of adaptive preferences seems to be a situation in which an individual's awareness of having the capacity to make a genuine choice between options is undermined. For example, we can imagine that a young black man may have a choice between going to college and leading a life of crime but, owing to an undercurrent of racial stigma in his society, perceives the former

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<sup>137</sup> Joshua Cohen, 'Deliberation and Democratic Legitimacy', in Alan Hamlin and Philip Pettit (eds.) *The Good Polity: Normative Analysis of the State* (Oxford: Basil Blackwell Ltd, 1989), pp. 17-34 (p. 25).

<sup>138</sup> Ben Colburn, 'Autonomy and Adaptive Preferences', *Utilitas* 23 (2011), pp.52-71 (p.53).

<sup>139</sup> *Ibid.*, p. 70.

<sup>140</sup> Pettit, *Common Mind*, p. 163.

<sup>141</sup> Pettit, *Just Freedom*, p. 37.

option to be pointless since the likelihood of him succeeding is negligible. It seems in this case that adaptive preferences constrain the individual's freedom of opportunity through making it seem that certain options are unavailable or have an altered cognitive profile. To the extent that adaptive preferences have this effect, they should be seen to be factors which vitiate against an individual's freedom of opportunity, and should be guarded against through proper resourcing. So, in addition to the protections noted above, which would guard against the more obvious forms of prejudice and stigmatisation, a theory of neo-republican social justice should aim to redress adaptive preferences through providing individuals with the personal resources that they require to make a choice between the actual options available to them.

While we will not explore exactly how we can guard against the vitiating potential of adaptive preferences here, since we will do so at length in the next chapter, it is nonetheless useful to provide a brief indication of how we might protect individuals from this problem. To that end, Cohen argues that in *an ideal deliberative process*, in which the common good is derived from a process of reason-giving, the requirement that individuals advance publicly persuasive reasons for a given proposition will have an effect on preference formation. He argues that in such a process, 'Relations of power and subordination are neutralised and...the requirement of reasonableness discourages adaptive preferences.'<sup>142</sup> This is because deliberation will affirm individuals' identity as agents with deliberative capabilities, reaffirm their status as equals in the project of forming the common good, and encourages individuals to advance their true or real interests rather than those that they take to be available to them. A society which secures meaningful avenues for deliberation is therefore likely to mitigate against the internalisation and naturalisation of inferiority, contributing to individuals' capacity to engage in self-rule.

Although necessarily brief at this stage, it should be clear that it is possible to address both the problematic norms and prejudices in a society's background structure which can facilitate domination, and the problem of adaptive preferences which can undermine individual agency and vitiate against freedom of opportunity, without giving up neo-republicanism's core commitment to the inter-agential structure of domination. With that said, there is one final issue which we must consider before we look at how a society could secure freedom from *dominium* without becoming a source of domination. This issue is that, as discussed by Pettit, some collective entities do meet the conditions for being construed as agents capable of exerting domination.

### **Corporate Agents**

As noted above, Pettit's account of agency requires that agents are able to act in accordance with the principles and reasons that they endorse (with these principles and reasons exerting active or

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<sup>142</sup> Cohen, 'Deliberation and Democratic Legitimacy', p. 25.

virtual control over an agent's actions), and that their choices are protected from others' interference or invigilation. They must also be able to engage in discursive control with others, such that they are able to hold others praise or blame worthy for their actions and in turn be held praise or blame worthy for their own actions.<sup>143</sup> We can see, then, that Pettit's account of agency utilises orthonomy in a foundational way: to be an agent requires that individuals are able to rule themselves and their actions. This, as argued in the previous section, entails that structural phenomena such as norms, traditions, and customs cannot be agents and, since they cannot be agents, cannot exert domination.

Importantly, this also means that certain kinds of collective groups, such as classes, races, and genders, are not going to count as agents either. This is because, just like the abstract phenomena that we have considered above, they lack the capabilities necessary to be considered agents. For example, white people, as a collective, cannot make decisions in accordance with a set of principles or reasons because they lack an institutionalised structure for decision-making: because they cannot make choices in the requisite way, they cannot be held responsible for the outcomes of their collective actions. Indeed, as noted by Cillian McBride, Pettit's account of collective agency is much stricter than Marx's, which construes classes as collective agents. He notes that for Pettit, 'it is not clear that [such groups] possess the necessary internal, institutional, structure necessary for forming a collective will.'<sup>144</sup>

To be considered a collective or corporate agent, Pettit argues that it is necessary that the entity in question is able to resolve the discursive dilemma by collectivising reason, and thereby acting in accordance with endorsed premises and judgements, rather than individualising reason.<sup>145</sup> The discursive dilemma is a generalised version of the doctrinal paradox which arises in jurisprudence. The doctrinal paradox highlights that a voting paradox can arise in a multi-member court where a majority supports each of the premises in a judgement, but where different majorities support different premises, and the intersection of these majorities is not itself a majority.<sup>146</sup> An example in which judges are deciding on whether there was a contract, whether there was a breach of that contract, and whether there is liability will make this point clearer:

	Contract?	Breach?	Liable?
Judge A	Yes	No	No
Judge B	No	Yes	No
Judge C	Yes	Yes	Yes <sup>147</sup>

<sup>143</sup> Pettit, *A Theory of Freedom*, pp. 65-103.

<sup>144</sup> Cillian McBride, 'Freedom as Non-Domination: Radicalisation or Retreat?', *Critical Review of International Social and Political Philosophy* 18 (2015), pp. 349-374 (p. 364).

<sup>145</sup> Pettit, *A Theory of Freedom*, pp. 109-114.

<sup>146</sup> Philip Pettit, 'Deliberative Democracy, the Discursive Dilemma and Republican Theory', in James Fishkin and Peter Laslett (eds.), *Philosophy, Politics and Society 7: Debating Deliberative Democracy* (Oxford: Blackwell Publishing Ltd, 2003), pp. 138-162 (pp. 140-142).

<sup>147</sup> Pettit, *A Theory of Freedom*, p. 107.

The problem, here, is that a majority supports each of the premises, but different majorities support different premises, and the results are inconsistent with the judgements on each of the individual premises. In other words, a majority believe that there was a contract, and a different majority believes that there was a breach of that contract, and yet there is not a majority in favour of liability. Pettit argues that this paradox arises in a more general form as the discursive dilemma, and is relevant for considering how collective entities operate, because of three generalisations that he makes. Firstly, he argues that similar issues can arise in social situations where people come together to form an opinion on an issue, and believe that this should be premised upon the resolution of other prior issues. Pettit calls this the social generalisation. The second generalisation, which Pettit calls the diachronic generalisation, outlines that voting paradoxes can arise over a prolonged period of time where individuals are consulted on distinct but interconnected issues.<sup>148</sup> Consider the following example:

	Increase welfare?	Increase other spending?	Increase taxation?
A	Yes	No	No
B	No	Yes	No
C	Yes	Yes	Yes

What we can see, here, is that over time, individuals might vote in ways which give rise to the same paradox, wherein a majority want to increase welfare expenditure, and a different majority at a later time want to increase other public spending, but at a third point in time, a majority vote against increasing taxation to fund these measures. The third generalisation that Pettit outlines, the *modus tollens* generalisation, essentially claims that it is possible to be responsive to individual judgements or collective judgements, but not both. So, this would mean, in the above example, that we can follow *modus ponens* to the conclusion that we should increase taxation, and change our latest judgement to comply with our earlier judgements, or we can follow *modus tollens* and work backwards and amend our earlier judgements to comply with our desire to not increase taxation.<sup>149</sup>

Pettit goes on to claim that the discursive dilemma leaves groups with a choice between two options. They can, ‘let collective decision-making be responsive to the votes of individuals on every issue, thereby allowing collective unreason. Or it may enforce collective reason by reducing the extent to which collective decision-making is responsive to individual voting;’<sup>150</sup> that is, the group may, ‘form a collective conclusion-judgement directly, relying on a voting

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<sup>148</sup> Pettit, ‘Deliberative Democracy, the Discursive Dilemma and Republican Theory’, pp. 142-145.

<sup>149</sup> Ibid., pp. 145-147.

<sup>150</sup> Pettit, *A Theory of Freedom*, pp. 109-110.

procedure of some kind; or to form collective premise-judgements on such a basis and let those judgements determine the conclusion to be endorsed.’<sup>151</sup> Entities which adopt the former approach, allowing members to vote on and determine the collective view on each issue, individualises reason. The problem, here, Pettit argues, is that such a procedure does not satisfy the requirements of reason because conclusions will not be premise-driven: in the earlier example, the judges will decide that despite a majority believing that there was a contract, and that this contract was breached, there was no liability. Such entities cannot be rightly cast as collective agents because they will pursue the fluctuating and contradictory interests of changing majorities, and will therefore not act in accordance with any principles or reasons endorsed by that entity. An aggregated collective which acts in this way will therefore resemble an individual who is subject to pathological weakness of will and indecision and, just like such individuals, cannot be deemed fit to be held responsible for its actions and therefore not fully an agent.<sup>152</sup>

If, however, collectives allow, ‘past judgments to serve as endorsed premises that dictate later commitments,’<sup>153</sup> then they will, ‘display mental properties in their own right, not just by projection from the mental properties displayed by their members.’<sup>154</sup> Pettit goes on to argue that entities which collectivise reason will act as agents in their own right because, in so far as past judgements motivate the collective agent’s later actions, it is likely that the collective agent will make decisions which are significantly different from those made by its members; it will act as an agent independently of the aggregated interests of its members. Collective agents, then, are radically different from aggregated collectives, and represent an agent which acts in response to principles and reason *independently of the views of its members*: they act as agents in their own right.

Such collective agents, ‘may be as small as the small number of individuals involved in a collaboration of some kind or as large as a multinational corporation. Integrations of people may endure across long periods of time, maintaining the rule of collective reason across changes of membership, or they may be more or less episodic.’<sup>155</sup> As noted by McBride, the kinds of collectives which will qualify as collective agents in the requisite sense includes multinational corporations, churches, universities, and states.<sup>156</sup> So, unlike classes, which are unable to form a cohesive will which responds to principles and reason rather than the aggregated decisions of the individuals who compose it, a multinational corporation is able to form an independent will, one which is discontinuous with the members which comprise the entity. As such, a class cannot be a subject or agent of domination (though obviously a class system can form part of the background

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<sup>151</sup> Ibid., p. 109.

<sup>152</sup> Ibid., pp. 103-113.

<sup>153</sup> Ibid., p. 113.

<sup>154</sup> Ibid., p. 114.

<sup>155</sup> Ibid., p. 113.

<sup>156</sup> McBride, ‘Freedom as Non-Domination: Radicalisation or Retreat?’, p. 364.



conditions which facilitate domination through vitiating against choice or making invasion easier), whereas a multinational corporation can be both dominated (when it is subject to another agent's uncontrolled power) and an agent of domination (when it is able to exercise uncontrolled power over other agents).

Importantly, corporate agents, particularly multinational corporations, are a significant problem for neo-republicanism for at least three reasons: they have the capacity to exercise *dominium* and thereby undermine attempts to secure republican social justice; they can undermine a legitimate democratic government, and thereby mitigate against attempts to secure a political order which does not exert *imperium*; and they can undermine attempts to secure transnational non-domination. While we will consider the latter two problems in later chapters, it is important to conclude this chapter by outlining exactly how corporate agents can undermine republican social justice and exercise *dominium* over individuals.

To that end, Pettit acknowledges that:

Examples of corporate domination are commonplace. Think of the case of someone abused by a priest in childhood who contemplates bringing a complaint against a powerful church. Think of the case of small entrepreneurs who are held to ransom by the primary or secondary picketing of a powerful trade union that can put them out of business. Or think, even more saliently, of those with a claim for damages – say, damages from an oil spillage or explosion – against a large corporation.<sup>157</sup>

The problem in each of these cases is that there is a huge asymmetry of power between the corporate and individual agents, and the corporate agents are easily able to exert domination. For example, churches may be able to shield their priests from investigation, or intimidate abuse victims into silence; trade unions may be able to dictate terms to small businesses and invigilate or intimidate owners into acting as the union would prefer (the threat of strike action or picketing may lead business owners to act as the unions would prefer without the need for outright interference); and multinational corporations may be able to act with impunity, tying up court cases for many years, making contestation exceptionally costly, and threatening to move their operations elsewhere if national governments are not prepared to make concessions for them.<sup>158</sup> Indeed, because of the immense financial, political, and social resources available to corporate agents, their capacity to exert domination is particularly salient.

Pettit acknowledges that there are no easy solutions to the problem of corporate domination, but argues that the best hope may be to establish avenues of complaint and contestation in public fora and criminal courts. He seems to believe that corporate agents will seek to avoid bad publicity as this will have a negative impact upon their functioning: church

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<sup>157</sup> Pettit, *Just Freedom*, pp. 91-92.

<sup>158</sup> *Ibid.*, pp. 91-92.

congregations may shrink; unions will lose members; and customers will avoid purchasing goods or services from corporations.<sup>159</sup> There are, however, two significant problems with this approach: firstly, it relies upon the corporate agent's self-interest to secure non-domination; and, secondly, it does nothing to address the problem of multinational corporations.

Starting with the former problem, we have already considered why non-domination cannot be secured through relying on the goodwill of agents of domination. Indeed, as discussed earlier in the case of Torvald and Nora, an agent is not free simply because another forbears to interfere in their life; the fact that others have the capacity to do so makes them unfree. Analogously, relying on corporate agents' self-interest (hoping that they will not interfere in others' lives for fear of bad publicity) does not neutralise their capacity to dominate others. Indeed, fear of bad publicity has not, as a matter of empirical fact, prevented corporate agents from acting in dominating ways. Child abuse scandals are well publicised and yet the Catholic Church has consistently covered up its priests' wrongdoings. While church attendance has declined over recent decades, it does not seem that a fear of bad publicity has led churches to act in ways which are non-dominating. Indeed, even if corporate agents did seek to avoid bad publicity, this would still fail to secure non-domination since the power of such agents to exert domination will not be subject to external constraints and, as discussed previously, 'Unless a constraint on the exercise of power is somehow *externally enforceable*, it does not count.'<sup>160</sup> The problem, here, is that just like Torvald's benevolence, a fear of bad publicity may cease to constrain the agent's actions at any time. This strategy, as argued previously, cannot secure non-domination since all agents remain dependent upon the corporate agent's forbearance.

With that said, it would nonetheless be possible to develop legislation which would be able to respond to many instances of corporate domination and which, in conjunction with Pettit's suggestion of subjecting corporations to tort and criminal law, would suitably constrain many corporate agents and neutralise their capacity to dominate others.<sup>161</sup> For example, the powers of trade unions can be constrained through legislation which outlines when strike action is permissible (thereby ensuring that business owners have secure knowledge of how unions will act), and public support can be made available to finance investigations into historic wrongdoing by church officials, enabling individuals to properly hold such agents to account.

Nonetheless, while these mechanisms may be able to constrain corporate agents which reside in one territory, they cannot ensure that multinational corporations are prevented from exerting domination. This is because, as noted by Pettit, 'Governments have competed with one another to attract multinational companies to their shores by giving them even more rights and

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<sup>159</sup> Ibid., pp. 91-92.

<sup>160</sup> Lovett, *A General Theory of Domination and Justice*, p. 214.

<sup>161</sup> Pettit, *On the People's Terms*, p. 116.

powers, apparently oblivious of the impact of corporate power on the freedom of their citizens.’<sup>162</sup> Indeed, he goes on to note that these organisations are able to, ‘warp government policies by playing countries against one another in a search for ever lower levels of taxation and ever more lenient standards of environmental and financial regulation. The most frequent threat in each country is to move offshore, beggaring the local economy or embarrassing local officials.’<sup>163</sup>

The fundamental problem with multinationals, from the perspective of securing republican social justice, is that governments cannot properly constrain these agents, making the satisfaction of the eyeball test unrealisable. Indeed, I outlined above that freedom from *dominium* and republican social justice, is secured when individuals are able, by the most demanding local standards, to look one another in the eye without fear or a need for deference, secure in the knowledge that they’re, ‘more or less proof against the interference of others; in that sense, they command the respect of all.’<sup>164</sup> The eyeball test will be unsatisfied because individuals (and governments as we will see in the next chapter) are not protected against the interference of multinationals, which can act with more or less impunity. This is because, as noted by Pettit, governments are often dependent upon the continued residence of multinationals in their territory and do not attempt to constrain them for fear that they may leave. Governments may grant multinationals special privileges or exemptions because the local economy is heavily dependent on these entities, which often employ thousands of citizens and pay significant amounts of tax, or because these entities have sufficient resources to be able to influence the formation of public policy. In addition, multinationals, when actually challenged, are able to utilise their immense resources to contest court cases or tie them up for significant amounts of time. In doing so, they may be able to beggar other agents who seek to bring cases against them or intimidate others to not even attempt to contest their actions. As multinationals are not subject to the same constraints as other agents, we must conclude that individuals do not enjoy secure knowledge that they’re protected against interference, and republican social justice will remain unrealised.

Importantly, because of their multinational status, there seems to be little that national governments can actually do to constrain these corporate agents. If they do attempt to legislate against multinationals, enforcing tax laws and environmental or employment protections, corporations will simply leave. If multinationals do move, they will also take with them much needed jobs and thereby making individuals more dependent upon public finances. With other countries, particularly those in the developing world, offering more favourable terms, national governments are forced to accommodate the whims of multinationals, becoming dependent upon their ongoing residence and making decisions with the interests of multinationals in mind (thereby allowing these agents to enjoy an invigilating and intimidating influence over national decisions).

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<sup>162</sup> Pettit, *Just Freedom*, p. 92.

<sup>163</sup> *Ibid.*, p. 164.

<sup>164</sup> *Ibid.*, p. 99.

It is important to note that while we will consider this issue in more detail in the third chapter, these comments seem to suggest that securing non-domination, and guarding against the depredations of powerful multinational corporate agents, will likely entail a significant challenge to the existing state-system. That is, as long as states are dependent upon multinationals for jobs or resources, it is unlikely that they will abide by intergovernmental agreements intended to regulate multinationals' actions. Indeed, if governments are unable to adequately secure the basic liberties for their citizens, it may be necessary for them to develop incentives to attract corporations to their shores regardless of whatever multilateral agreements are in place. This seems to suggest that intergovernmental or multilateral agreements are unlikely to properly regulate the actions of multinational corporations (since states may have an incentive to disregard such agreements), and that resolving the problem of multinational corporate domination will therefore require that we explore how a set of *external* constraints might be developed which constrain multinationals and regulate how states might compete with one another to attract these agents to their territories. These comments seem to suggest that the only way to address to the dominating capacity of multinationals is to look to replicate the strategy of constitutional provision at a transnational level with the aim of properly constraining these corporate entities and their interactions with states.

## **Conclusion**

My aim in this chapter has been to provide a thorough overview of Pettit's account of individual liberty and thereby provide the foundations for my own suggestions for securing non-domination in later chapters. To that end, the first section outlined the historical roots of the concept of non-domination and noted its gradual eclipse by the non-interference conception of liberty. The second section built upon this discussion by outlining Berlin's distinction between positive and negative liberty, arguing that his arguments against positive accounts of liberty are too broad and that embracing some form of positive liberty need not lead to authoritarian government.

The third section outlined the Hobbesian account of freedom as non-frustration and Berlin's account of freedom as non-interference, arguing that both of these accounts of individual liberty are fundamentally flawed and that freedom requires that individuals are free from frustration, interference, and domination. We then considered Kramer's claim that a concern for domination can be accommodated by the non-interference account of liberty if we reconceptualise the problem as one in which freedom is reduced in accordance with the probability of interference. I argued that this fails to address the problem of domination because it claims that if there is an extremely low probability of interference, an individual is largely free; and secondly, it ignores the fact that individuals can be implicated in a relationship of domination and subjection in which the subjected party acts as required in order to stave off actual interference.

The fourth section outlined that being a free person requires that individuals have the room and resources required to pursue their preferred option from a choice-set, regardless of their own or anyone else's preferences over how they choose. I also argued that underlying this account of political liberty is an ideal of personal liberty, which sees individuals as capable of engaging in self-rule, which seems to provide the prism through which Pettit views the evils of domination. The fifth section outlined that a theory of republican social justice requires that dominating agents are subject to *external* constraint and that the basic liberties are protected and resourced to the point where individuals can satisfy the eyeball test.

The sixth section focused upon a 'critical' challenge to Pettit's republicanism, considering Krause's arguments for expanding the concept of domination to include cases of systemic or structural domination. After outlining Krause's arguments, I have argued, following Lovett and Pettit, that domination is a phenomenon that occurs between agents, not agents and background structures (though these background structures can make domination more accessible), and that Pettit's account can accommodate Krause's concerns. Indeed, to extent that racial stigma, prejudice, and bigotry give rise to an invasion or vitiation of choice, domination occurs and would be addressed through protecting and resourcing individual choice. In addition, I have acknowledged that background structures may give rise to adaptive preferences, which can undermine freedom of opportunity, and can be addressed through deliberation.

The final section focused upon the problem of corporate agency, arguing that while structures do not dominate individuals, some corporate entities can. I then outlined Pettit's suggestions for combatting the dominating potential of such agents, arguing that relying on their fear of bad publicity is to simply rely on their forbearance and goodwill which, as discussed earlier, does not secure non-domination (since a fear of bad publicity is not an *external* constraint). Nonetheless, I argued that it is possible to develop legislation which would be able to respond to many instances of corporate domination and which, in conjunction with Pettit's suggestion of empowering a range of contestatory institutions, would suitably constrain many corporate agents and neutralise their capacity to dominate others. This does not, however, address the dominating potential of multinational corporate agents which may be able to easily evade attempts to constrain them by national governments, suggesting a need to replicate the strategy of constitutional provision at a transnational level. With these comments in mind, the task of the next section is to consider the issue of democratic legitimacy and explore what is required of a theory of neo-republican governance.

## Chapter Two – Securing Democratically Legitimate Governance

### Introduction

The previous chapter outlined that freedom requires that agents have the capacity to make their own choices, irrespective of the preferences of any other agent. This requires that individuals are free from invasion, invigilation, and intimidation; do not suffer from a paucity of personal, natural, and social resources in their exercise of the basic liberties; are protected from the relational aspects of ‘structural’ domination; have access to mechanisms which guard against adaptive preferences; and are protected against corporate agents’ dominating powers. We have also seen that ensuring that individuals are free requires that all agents, both individual and corporate, are subject to external constraints which would aim to protect them from being subject to domination; and that such external constraints are not going to constitute a form of dominating control to the extent that they materialise on terms dictated by those subject to the interference (as when Ulysses’ crew controls him). I also noted that a state will constitute an agent in its own right because it will collectivise reason, its actions will largely be discontinuous with the preferences of its members, and it is therefore capable of exerting and being subject to domination.

These comments suggest a central problem with which neo-republicanism must grapple, and one which is the focus of this chapter. This is that it is necessary to develop a political system which is able to prevent *dominium* and promote republican social justice, while also ensuring that this political entity does not become a source of *imperium*. Importantly, as Pettit’s neo-republicanism has developed, he has come to argue that addressing the problem of *imperium* requires that a political system enjoys democratic legitimacy, and that securing democratic legitimacy requires that individuals are able to influence and direct their political system. Centrally, securing influence requires that individuals have an input into democratic decision-making, and securing direction requires that democratic decision-making is constrained by the common good. Importantly, we will see in this chapter that while it is possible to secure non-arbitrary governance within democratic communities, citizens may nonetheless not enjoy non-domination. This is because *external* agents, including other states and multinational corporations, have the capacity to interfere arbitrarily in citizens’ lives. This insight is crucial to the remainder of this thesis as it suggests that individual non-domination cannot be secured without developing an overarching system of global governance which would aim to protect agents from arbitrary control.

To that end, this chapter will proceed as follows. The first section will again focus upon analysing Pettit’s paradigmatic work, outlining his account of democratic legitimacy as well as the ‘tough luck’ test which acts as a yardstick for determining whether or not a state enjoys democratic legitimacy. The second section then considers two arguments against Pettit’s account.

The first claims that Pettit's account is too constitutional. The second claims that Pettit's account is too democratic. After rebutting these objections, the third section will then look at the underlying accounts of the common good which motivate each of these objections. After outlining why the common good cannot be determined objectively or through aggregating individuals' raw preferences, the fourth section will focus on Jon Elster's arguments in favour of determining the common good deliberatively through transforming individuals' raw preferences into informed preferences. After noting some problems that we would need to address in adopting this approach to determining the common good, this chapter will discuss Pettit's approach and outline how it overcomes Elster's objections. The fifth section then builds upon one minor gap in Pettit's account, that the deliberative process he proposes does not seem to be intended as an institutionalised component of a democratic society, to argue that addressing adaptive preferences requires that we develop a more formal, long-term institution for transforming citizens' preferences. After outlining a digital deliberative assembly as a possible solution to this problem, the sixth section then outlines how multinational corporations and other transnational actors can undermine social justice and democratic legitimacy. The final section will conclude.

### **Democratic Legitimacy**

In *Republicanism: A Theory of Freedom and Government*, Pettit argues that for political control to be deemed non-arbitrary it must be forced to track individuals' welfare and worldview. Indeed, Pettit argues that an act is arbitrary when it is formulated, 'without reference to the interests, or the opinions, of those affected,'<sup>165</sup> and that, 'Under this conception of arbitrariness, then, an act of interference will be non-arbitrary to the extent that it is forced to track the interests and ideas of the person suffering the interference.'<sup>166</sup> Fundamentally, this requires that, 'power be exercised in a way that tracks, not the power-holder's personal welfare or worldview, but rather the welfare and worldview of the public.'<sup>167</sup> Indeed, as briefly noted in the first chapter, Pettit discusses the example of Ulysses and the Sirens as a paradigmatic case of non-arbitrary control. After being forewarned by Circe, Ulysses commands his crew to tie him to the ship's mast and stuff their ears with wax, so that he might listen to the Sirens' Song without being lured to his death. The Ulysses example provides the prototypical case of non-arbitrary control for Pettit as Ulysses remains free, despite being controlled, *because the control exercised by his crew tracks his welfare and worldview rather than their own.*

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<sup>165</sup> Pettit, *Republicanism*, p. 55.

<sup>166</sup> *Ibid.*, p. 55.

<sup>167</sup> *Ibid.*, p. 56.

While defining the concepts of arbitrariness and welfare and worldview have been the subject of some debate between theorists,<sup>168</sup> Pettit now explicitly equates securing freedom from *imperium* with democratic legitimacy, arguing that, ‘Democracy’s entire reason for being, under this specification, is to guard against the domination of the state.’<sup>169</sup> Indeed, he now claims that guarding against *imperium* requires that individuals enjoy equal, effective control over the state,<sup>170</sup> and that, ‘the citizens of a legitimate state have to enjoy equal access to a system of popular influence and that influence has to give the state an equally acceptable direction – that is, a direction that they are all actually disposed to accept.’<sup>171</sup> Assuming that a state or other political apparatus is going to be required to protect against domination between individuals,<sup>172</sup> Pettit argues that our focus ought to turn towards the issue of legitimacy because the state, ‘assumes and exercises a presumptively unchallenged right to coercion... People are not given an individual choice on whether or not they will have to follow the laws imposed... The problem of legitimacy is how to reconcile such political submission with personal freedom, identifying a sort of regime that can coerce citizens without depriving them of their freedom.’<sup>173</sup> The issue of political legitimacy, then, is whether a political system which secures protections in individuals’ horizontal relationships with one another is also able to secure protections for individuals in their vertical relationship with the state.

Importantly, this account of legitimacy, wherein a political system is legitimate when it is subject to citizens’ influence and direction, is distinct from the contractualist account of political legitimacy. On the contractualist view, state coercion will count as legitimate as long as it attracts the actual or hypothetical consent of citizens. This account of legitimacy, however, is flawed for two reasons. Firstly, as argued by AJ Simmons, actual consent is not forthcoming in existing societies,<sup>174</sup> and it is unlikely that any policy could genuinely attract the actual consent of all

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<sup>168</sup> See, for example: Henry Richardson, *Democratic Autonomy: Public Reasoning about the Ends of Policy* (Oxford: Oxford University Press, 2002); Frank Lovett, ‘What Counts as Arbitrary Power’, *Journal of Political Power* 5 (2012), pp. 137-152; Marilyn Friedman, ‘Pettit’s Civic Republicanism and Male Domination’, in Cecile Laborde and John Maynor (eds.) *Republicanism and Political Theory* (Oxford: Blackwell Publishing Ltd., 2008), pp. 246-268; Charles Lamore, ‘A Critique of Pettit’s Republicanism’, *Nous* 35 (2001), pp. 229-243.

<sup>169</sup> Pettit, *Just Freedom*, p. 113.

<sup>170</sup> *Ibid.*, p. 112.

<sup>171</sup> Pettit, *On the People’s Terms*, p. 170.

<sup>172</sup> Indeed, Pettit argues that the state is necessary, ‘because only an agency of that kind would be capable of discharging the many varied and demanding tasks involved... There can be no effective system of justice, so it appears, in the absence of a state.’ See: Pettit, *On the People’s Terms*, p.133.

<sup>173</sup> Pettit, *On the People’s Terms*, p. 147.

<sup>174</sup> See: A. John Simmons, ‘Civil Disobedience and the Duty to Obey the Law’, in R.G. Frey and Christopher Heath Wellman (eds.), *A Companion to Applied Ethics* (Oxford: Blackwell Publishing, 2003); A. John Simmons, *Moral Principles and Political Obligations*, (Chichester: Princeton University Press, 1979); A. John Simmons, *Justification and Legitimacy: Essays on*



individuals who will be subject to interference. If we attempt to adopt the hypothetical account of consent (wherein individuals can be deemed to consent to a given political system because it achieves a given set of acceptable ends or is constituted in an acceptable way, or where we believe that individuals would give consent if they were, for example, situated behind the Veil of Ignorance),<sup>175</sup> we face the issue of it being possible for individuals to give prior consent to certain forms of coercion, and for them to later rescind their consent when this coercion no longer controls them in ways that they assent to. Indeed, Pettit rejects the idea that individuals can give their consent, in a ‘one-off’ fashion, and remain free, since the bases of consent will change over time. For example, individuals might consent to higher taxes at one point in time, but instituting a system of higher taxation will alter individuals’ circumstances and therefore the basis of consent will change, requiring that individuals are consulted again. This leads Pettit to argue that it is not consent which makes control legitimate; instead, control is legitimate only when it remains subject to citizens’ influence and direction.

Focusing on Pettit’s recent account of political legitimacy in *Just Freedom*, he argues that ensuring that a society’s political apparatus remains subject to the equal and effective control of its citizens requires that they are able to influence the way in which they’re governed, and give a designed direction to political activity, one which answers to a preconceived or preferred pattern.<sup>176</sup> It is important to note that influence and direction can come apart, and it is possible for citizens to have influence over political processes without this influence imposing any kind of preferred direction on what this process entails. For example, in a minimally democratic society, individuals might be able to influence the policies pursued by government through partaking in periodic elections and selecting representatives to govern them, but if these representatives are not bound by any notion of what it is that the people actually want, they will be able to pursue policies which do not cohere with the interests of citizens.<sup>177</sup> It is therefore important, from the perspective of democratic legitimacy and the popular control of politics, that citizens have equal access to a system of popular influence over government, and that this influence imposes a direction on government which is equally acceptable to all citizens.<sup>178</sup> In addition, this effect must be produced, ‘independently of the willingness of any other agency to have the government go along.’<sup>179</sup>

These comments suggest that certain kinds of political system are going to be fundamentally illegitimate from a neo-republican perspective. Think of a benevolent but

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*Rights and Obligations* (Cambridge: Cambridge University Press, 2001); A. John Simmons, ‘Justification and Legitimacy’, *Ethics* 109 (1999), pp. 937-771.

<sup>175</sup> Rawls, *A Theory of Justice*, pp. 118-112.

<sup>176</sup> Pettit, *Just Freedom*, p. 121.

<sup>177</sup> *Ibid.*, pp. 122-123.

<sup>178</sup> *Ibid.*, pp. 123-124.

<sup>179</sup> Pettit, *On the People’s Terms*, p. 172.

authoritarian government which secures republican social justice through resourcing and protecting the basic liberties. Here, the government will interfere in individuals' lives for good republican reasons but its interference will still be illegitimate. This is because its interference does not materialise on terms dictated by the individuals subject to its control, and instead reflects its *imperium*; citizens' enjoyment of social justice is therefore subject to the authoritarian government's ongoing benevolence which can be withdrawn at any time. This suggests that it would be perfectly possible to have a *socially* just society, one in which individuals are able to lead their lives free from *dominium* and in which they enjoy security in their exercise of the basic liberties, but a *politically* unjust society in which they're unfree because their enjoyment of these liberties is determined at the whim of an authoritarian government or despot. This suggests that any form of governance which is not subject to citizens' influence and direction is going to be incompatible with securing individual freedom and cannot be utilised by a legitimate neo-republican polity.

With these comments in mind, it might seem that the best way to achieve a mutually-agreeable influence and direction over government (which is independent of any other agency's involvement or benevolence) would be to embrace some model of direct, participatory democracy, akin to Rousseau's General Assembly.<sup>180</sup> Indeed, the plenary assembly would seem to ensure that governance is subject to citizens' influence and direction because it removes the need for elected officials who might be able to seize control of the polity's political apparatus, and would therefore ensure that popular governance is not dependent upon officials' goodwill: on this model, citizens would be able to influence and direct governance without intermediaries. Setting aside the feasibility issues associated with a plenary assembly model for now, Pettit argues that, 'such a forum would preclude the discussion and deliberation required for coherent, collective decision-making.'<sup>181</sup> This is because such a decision-making body would fail to resolve the discursive dilemma, outlined in the previous chapter, in a way which collectivises reason. Indeed, there would be no constraints on the policies it might pursue, permitting the assembly to enact incompatible and inconsistent policies: to the extent that it does so, it will individualise reason and fail to act as an agent in any meaningful sense. Problematically, Pettit also argues that such an assembly would be, 'liable to be the most arbitrary of powers. It will relate to individuals and smaller groups in the role of an arbitrary despot...it would represent, not a corrupt form of government, but an utterly capricious one...not only would the people as a whole represent an arbitrary, capricious government of this kind...[but] empowering the people in referendums would introduce the worst of all imaginable despotisms: a regime under which the most capricious of powers remains morally as well as legally uncontestable.'<sup>182</sup>

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<sup>180</sup> Pettit, *On the People's Terms*, pp. 12-16.

<sup>181</sup> Pettit, *Just Freedom*, p. 124.

<sup>182</sup> *Ibid.*, p. 154.

We can therefore see that although such a model would ensure that influence and direction are imposed upon governance independently of the willingness of any officials to go along with this control, the plenary assembly would fail to secure non-domination in other ways. This is because the incontestable, capricious assembly would not be constrained to protect and resource the basic liberties and it would therefore be likely to fail to protect citizens in their horizontal relationships with one another and fail to secure republican social justice. In addition, an assembly of individuals which vacillates with the electorate's inconstant whims will not represent an agent at all, since it will fail to act in accordance with endorsed premises and judgements, and will therefore not be fit to be held responsible for its actions. This will have an effect on the collectives' interactions with other corporate agents, such as multinationals or other political systems which do collectivise reason.

Since a plenary assembly will fail to secure social justice and political legitimacy, Pettit argues that the only feasible way to achieve popular influence is to develop and refine the familiar system of electoral representation. Indeed, it is through, 'open, periodic, and competitive election to the legislature and perhaps also to other offices,'<sup>183</sup> that a government enjoys popular support, and the people will enjoy influence over their political system. Importantly, Pettit goes on to argue that we should develop mechanisms for, 'dividing, constraining, regulating, and sometimes even sidestepping elected representatives.'<sup>184</sup> Indeed, Pettit argues that ensuring that governance is subject to citizens' influence requires that an electoral system is complemented by a constitutional system which allows for independent checks on an elected government, and which would enable citizens to contest and question government proposals and decisions. These constitutional or quasi-constitutional mechanisms might take the form of ombudsmen, statisticians, auditors, central bankers, pressure groups, interest groups and judges and perhaps a written constitution.<sup>185</sup>

Pettit does, however, acknowledge that constitutional mechanisms have often been viewed as restrictions on democracy because they 'thwart' the will of the people and prevent representatives from being able to enact whatever the public momentarily believes is in their interest.<sup>186</sup> Pettit disagrees with this characterisation of constitutionalism, and instead argues that his constitutional proposals are intended to give effect to the people's power rather than thwarting it,<sup>187</sup> and should be viewed as an account of, 'democratically shaped constitutionalism, not [...] a constitutional restricted democracy.'<sup>188</sup> This is because, in Pettit's 'richer' account of representation, judges and other constitutional actors are seen as indicative representatives of the people. On the assumption their powers and remits are well defined, these authorities will be able

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<sup>183</sup> *Ibid.*, p. 124.

<sup>184</sup> *Ibid.*, p. 125.

<sup>185</sup> *Ibid.*, pp. 124-129.

<sup>186</sup> *Ibid.*, p. 128.

<sup>187</sup> *Ibid.*, p. 128.

<sup>188</sup> *Ibid.*, p. 128.

to use their specialised knowledge and skills to interrogate government policies and pursue causes which are widely endorsed. In doing so, they will act as unelected representatives of the people, utilising their specialist skills and privileged position to represent citizens' interests. As an example of how a quasi-constitutional mechanism can be used to channel the will of the people, rather than thwart it, Pettit notes that small deliberative bodies, such as the British Columbia Citizens' Assembly on Electoral Reform, can be set up to model the wider community and make decisions in a way which would be indicative of the wider population (although in this case the wider public did not endorse the Assembly's recommendations).<sup>189</sup> Although not democratically elected, such bodies and authorities can ensure that the people's will is able to exert a significant influence over their government. Pettit believes that this system of governance, which combines electoral representation and constitutional mechanisms, would secure the required degree of popular influence since the people would elect their representatives to make decisions on their behalf, and be able to contest and regulate their representatives through other constitutional actors and civil society movements.<sup>190</sup> With that said, these mechanisms alone are not sufficient to ensure that all individuals are able to exert an equally acceptable *direction* on government.

In Pettit's original formulation, securing an equally acceptable direction over government required that the government be forced to track a subset of the interests that individuals' avow. Indeed, Pettit argued that it is not necessary that governance tracks every possible claim that individuals might make (as noted above, Pettit specifically argues against tracking individuals' subjective preferences on the basis that doing so will give rise to capricious governance and fail to adequately resolve the discursive dilemma), but that politics must instead track citizens', 'common recognisable interests.'<sup>191</sup> These are those interests which are supported by cooperatively-admissible considerations. The cooperatively-admissible considerations are those considerations which all individuals countenance as relevant arguments and claims within a deliberative process. To see how we might derive these shared common interests, Pettit argues that we should look at the way in which deliberative groups operate. He claims that when discussing projects or group activities, reasons and justifications are given by the members for their own preferred plans. Some reasons would be rejected as being irrelevant for the project, while others would be acknowledged as appropriate considerations. Over the course of deliberations a set of norms and rules will develop, providing a framework for identifying the *relevant considerations for the group* and its activities; these form the admissible criteria of argumentation.<sup>192</sup> In a political community, Pettit believes that a framework will emerge from

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<sup>189</sup> Ibid., pp. 127-131.

<sup>190</sup> Ibid., pp. 131-133.

<sup>191</sup> Pettit, *Republicanism*, p. 56.

<sup>192</sup> Philip Pettit, 'The Common Good', in In Keith M. Dowding, Robert E. Goodin, Carole Pateman & Brian Barry (eds.), *Justice and Democracy: Essays for Brian Barry* (Cambridge: Cambridge University Press, 2004), pp. 150-169 (pp. 161-165).

deliberation and contestation between competing conceptions of the good. For example, regardless of the views that they advance, shared interests in treating one another as equals, in not ignoring public opinion, and in guaranteeing a private sphere free from government intervention, will all emerge as aspects of the public good.<sup>193</sup> Over time, the members will develop a shared conception of what is in the group's interests, what proposals each can advance, and in what terms the proposals must be couched (for example, proposals should be formulated in terms that others can accept as relevant for the group).<sup>194</sup> Pettit then argues that a neo-republican society should track the common interests which are supported by the cooperatively-admissible considerations. A government which pursued policies in accordance with the common interest could reasonably claim to be non-arbitrary since the common interest would be those policies which cannot be reasonably rejected by any citizen.

In his later work, Pettit has simplified this account of cooperatively-admissible considerations into the 'norm of norms' of democratic engagement. This norm requires that all citizens accept that no-one enjoys any special privileges, and that the arguments made in favour of any policy or process should be relevant from each individual's perspective: it must be a consideration that each can endorse as relevant for the matter at hand. This norm requires that, 'the partisans of different viewpoints have to recognise that they must find non-partisan considerations – considerations that all can see as relevant – to support their proposals.'<sup>195</sup> Pettit argues that if a democracy acts in fidelity with the norm of norms, then over time a set of more specific norms or standards will emerge which will establish what is and isn't a relevant consideration when considering public policies. These considerations would be those which enjoy public acceptability, and can be deployed in political debate to support or oppose decisions without embarrassment. In fulfilling this role, they will enjoy a 'trump' status over decision-making and will act as the accepted standards of political debate. Importantly, these norms will act as a filtering mechanism, barring the pursuit of objectionable policies and, over time, their effect, 'will be to make an infinite number of policies or processes unthinkable. The *demos* that keeps tabs and checks on government will mainly exercise *kratos*, not in causing this or that to be decided on...but in ensuring that a myriad of other policies and processes are never considered.'<sup>196</sup> This is to emphasise a recurrent feature of Pettit's work whereby citizens do not directly author

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<sup>193</sup> Philip Pettit, 'Joining the Dots', in Geoffrey Brennan, Robert Goodin, Frank Jackson, and Michael Smith (eds.) *Common Minds: Themes from the Philosophy of Philip Pettit* (Oxford: Oxford University Press, 2007), pp. 215–344 (p. 326).

<sup>194</sup> Philip Pettit, 'Three Conceptions of Democratic Control', *Constellations* 15 (2008), pp. 46-55 (pp. 51-54).

<sup>195</sup> Pettit, *Just Freedom*, p. 135.

<sup>196</sup> *Ibid.*, p. 139.

laws, this being the province of elected officials, but instead exercise an editorial, contestatory role over how they're governed.<sup>197</sup>

An electoral system, supported by constitutional or quasi-constitutional mechanisms and actors, and underpinned by the norm of norms, will ensure that citizens enjoy a significant degree of influence and direction over the ways in which they're governed. Citizens would be able to select representatives to govern them and ensure that the basic liberties are properly protected and resourced. The representatives would be subject to their electorate's influence and direction because the norm of norms would serve to put a number of policies and decisions off the table, and other political agents, acting as indicative representatives, would regulate and invigilate political activity. In this way, a political system would enjoy legitimacy and citizens would be secure in the knowledge that they're not going to be dominated by their government.

Finally, just as the eyeball test serves as a yardstick for measuring the extent to which social justice has been secured, Pettit has outlined what he calls the 'tough luck' test to assess the extent to which a political system enjoys legitimacy and does not exert arbitrary, dominating control over its citizens. He claims that we will be able to tell if the democratically-shaped constitutional system that he has outlined is able to guard against *imperium*, 'if it enables people to think that when public structures and policies and decisions frustrate their personal preferences, that is just tough luck.'<sup>198</sup> That is, people should be able to see that policies which are to their disadvantage are not the work of a malign will, but are instead simply a by-product of a policy which had inescapable negative outcomes. For example, if a decision goes against a specific minority, that minority ought to be able to contest this decision in a public institution, perhaps through the judiciary or through an ombudsman, who will then test to make sure that the particular decision, and the process for making that decision, did not transgress accepted local norms and that the decision is therefore compatible with the community's accepted standards. Indeed, if the decision does not transgress accepted norms, and was made by an elected legislature, enacted by an elected executive, overseen by a non-partisan judiciary, and regulated by a range of quasi-constitutional actors and civil society groups, then those who disagree with the outcome should be able to see that the outcome was a matter of bad fortune. As Pettit concludes, 'What democracy would ideally ensure for the subjects of a government is that when things go against them, this is not a sign of subjection to a malign will. It is a product of tough luck,' and, 'A society will pass the tough luck test only if people truly enjoy an equally accessible form of influence that channels government...in an equally acceptable direction.'<sup>199</sup>

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<sup>197</sup> Pettit, *Republicanism*, pp. 184-185.

<sup>198</sup> Pettit, *Just Freedom*, p. 143.

<sup>199</sup> *Ibid.*, pp. 142-144.

## Against Constitutionalism – Against Democracy

While Pettit offers a plausible account of political legitimacy, which would largely ensure that political control is non-arbitrary and not dominating, it is nonetheless subject to objections from two directions. As noted above, Pettit acknowledges that many theorists will object to the constitutional component of his theory of political legitimacy, and will argue that constitutionalism is incompatible with securing non-domination because it thwarts the people's capacity to exert influence and direction over government. On the other side, we find that some self-styled republicans argue that Pettit's theory is too responsive to the will of the people and, on the assumption that individuals are subject to norms which shape their agency in problematic ways, the democratic component of Pettit's theory permits domination to become entrenched and routinised within the political process. It is useful to consider and rebut each of these objections.

In response to Pettit's earlier account, Richard Bellamy has argued that substantive legal constitutionalism, wherein a legal constitution is enforced and protected by judges, is incompatible with the aims of neo-republicanism, and that we therefore ought to abandon substantive legal constitutionalism in favour of democratic constitutionalism. Since Bellamy's arguments are directed against Pettit's earlier theory, it is useful to briefly outline Pettit's discussion of constitutionalism in *Republicanism: A Theory of Freedom and Government* before we consider Bellamy's criticism of this approach in detail. To that end, Pettit's earlier work outlines three broad requirements for a non-dominating society which would ensure that democratic mechanisms cannot be manipulated.

The first condition is what Pettit calls the empire-of-law condition, and requires that all laws are general and applicable to everyone, including legislators; be public and made known in advance to those subject to them; be intelligible, consistent, and not subject to continuous change; and that these laws guide political decision-making, superseding any particularist policies.<sup>200</sup> Broadly, the aim of this condition is to ensure that government is not capricious, and is instead subject to known legal constraints. The second condition, the dispersion-of-power condition, requires that the power to make laws, the execution and administration of laws, and the adjudication on the applicability of the law, is dispersed across different agents. The rationale for this condition is straightforward: if one body were to exercise each of these functions, it would be able to act with impunity, making and amending laws to suit its whims. This condition would therefore require that powers be separated across executive, legislative, and judicial bodies; likely entail bicameralism and federalism or devolved governance; and necessitate the creation of supranational bodies which would exercise defined powers which are derived from inter-

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<sup>200</sup> Pettit, *Republicanism*, pp. 174-177.

governmental agreements.<sup>201</sup> The third condition, the counter-majoritarian condition, requires that majorities are not easily able to enact significant constitutional amendments (although this should not mean that laws cannot be changed). Indeed, because majorities are apt to vacillate and act capriciously, this condition would likely require super-majorities for significant constitutional amendments, and would likely necessitate the creation of a bill of rights subject to judicial review and enforcement.<sup>202</sup> Importantly, this argument for individual rights reappears in Pettit's later work, although Pettit stresses that constitutionally protected rights, while removing issues from the popular agenda, should be seen as a component of a well-functioning democracy rather than a constraint on it; this is because constitutionally protected rights secure individuals' equal access to influence.<sup>203</sup>

It is this process of constitutional entrenchment, whereby specific policies and processes are removed from the purview of elected representatives and entrusted to unelected judges, which motivates Bellamy's objection to Pettit's theory. Bellamy argues that the circumstances of politics (that there is a need for collective decisions on a range of issues but where there is reasonable disagreement over how to resolve these issues), combined with a need to secure non-domination requires that a political system meets two criteria. Firstly, citizens must feel that there is no difference in status between themselves and any other citizen, including those entrusted with political power. Secondly, the outcomes of decision-making must not be premised upon the idea that some views are right whereas others are wrong, and therefore all views must be treated as equally valid inputs to decision-making.<sup>204</sup> That is, a neo-republican society must therefore treat all citizens as equals and not pre-determine the outcome of any decision because doing so will treat some individuals' views as right and others' as wrong.

Bellamy goes on to argue that an electoral democracy meets these two criteria. Straightforwardly, citizens' equal status is secured through each individual's vote only counting for one and, as long as each decision is subject to the proper democratic process, individuals can be assured that their views are not treated as right or wrong: they're simply on a winning majority or losing minority on a given issue or in the selection of representatives. Importantly, Bellamy argues that the democratic process is inherently non-dominating since it involves citizens accepting that their view is just one among many, and that equal concern and respect are owed to their fellows' views: in simply aggregating individuals' views, all are treated with equal consideration and respect, and outcomes are not moralised. Democracy therefore addresses the circumstances of politics through developing a fair mechanism to determine how to proceed when

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<sup>201</sup> Ibid., pp. 177-180.

<sup>202</sup> Ibid., pp. 180-183.

<sup>203</sup> Pettit, *On the People's Terms*, p. 217.

<sup>204</sup> Richard Bellamy, 'Republicanism, Democracy, and Constitutionalism', in Cecile Laborde and John Maynor (eds), *Republicanism and Political Theory* (Oxford: Blackwells Publishing Ltd, 2008), pp. 159-189 (p. 167).



there is reasonable disagreement, and secures non-domination because it secures each individual's equal political status.<sup>205</sup>

Bellamy's concern with Pettit's constitutionalism, particularly the entrenchment of individual rights and the process of judicial review, is that it does not secure each individual's equal status and it does not ensure that citizens' views are treated as equally valid inputs to decision-making. This is because unless the entrenched rights correspond to views that each individual avows, they're going to represent an instance of treating some views as right and others as wrong, thereby failing to treat all views as equally valid inputs to decision-making. Bellamy acknowledges that Pettit's theory attempts to surmount this problem by developing an account of the common interest (those items which find support in the cooperatively-admissible considerations and which cannot be reasonably rejected by anyone, and which we'll consider in more detail below) which, if correct, would seemingly permit these views to enjoy constitutional protection. That is, if every individual did avow the interests which comprise the common interest, then there would be no problem in guaranteeing them constitutional protection since everyone's views would enjoy the same treatment.

Though sceptical towards the possibility of deriving a set of interests avowed by all, Bellamy goes on to argue that even if it were possible to do so through a deliberative process, we face the problem that granting such shared interests constitutional protection and entrenchment undermines citizens' equal status. This is because the process of judicial review, which 'is often justified in terms of their being a check on irrational, self-interested or plain myopic populist sentiments,'<sup>206</sup> entails that the judiciary is empowered to strike down or amend popular decision-making when it is deemed incompatible with a constitution. So, while judges do not claim a superior status to their fellows, their legal expertise and capacity to apply, amend, and interpret constitutional requirements effectively grants them a superior status. This is because they're able to supplant the common interest with their judgements.

Bellamy's concern with constitutional judges is that, 'Given their freedom to interpret the law in diverse and inconsistent ways, according to the moral, ideological and legal positions they hold...their rule cannot be other than arbitrary and hence dominating.'<sup>207</sup> The problem with substantive legal constitutionalism, Bellamy argues, is that citizens are not treated as equals since judges have the capacity to override popular decision-making (and do not have to answer to the electorate as representatives do), and their status, and the views that they advance, are treated as more important than those of other citizens. This undermines the requirement that all views are treated as equally valid inputs into decision-making and the requirement that all citizens enjoy the same status. As a solution to this problem, Bellamy suggests that we embrace 'actually existing

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<sup>205</sup> Ibid., pp. 167-168.

<sup>206</sup> Ibid., p. 170.

<sup>207</sup> Ibid., p. 171.

democracy' as an effective constitutive and constitutional mechanism. That is, through prescribing fair procedures, primarily built around the ideal of one person one vote, we can be assured that all citizens are treated equally, and that all views are treated as a valid input to decision-making. Indeed, he claims that a democracy characterised by elections and majoritarian parliamentary decision-making will be constitutional in the sense that it secures a political arrangement which avoids arbitrariness and domination, and one in which citizens can engage in collective self-rule.<sup>208</sup>

While Bellamy's account seemingly provides a more democratic alternative to Pettit's theory and avoids granting extensive powers to unelected officials, it is nonetheless unable to adequately respond to three problems with unqualified democracy which Pettit outlines. Indeed, Pettit acknowledges that even if an electoral system could be designed so as to give equal weight to each vote (perhaps through redrawing electoral boundaries so that all votes are equally weighted rather than, as occurs in the UK, votes carrying more weight in swing seats), it can still fail to secure equal influence and direction for all individuals and will thereby fail to ensure that political control is non-arbitrary.

The first reason why this may be so is that unqualified democracy cannot surmount the sticky minority problem. The sticky minority problem highlights that it is possible for some groups to be persistent minorities on many issues; such groups will consistently lose out in electoral representation and fail to enjoy equal influence over government direction. For example, religious minorities such as the Amish or ethnic minorities such as First Peoples may find that, although they have equal voting rights with other citizens, their views are not sufficiently represented in government because their cultural values are so distinct from those in the larger society. If these groups are granted equal voting rights they will enjoy formal participatory equality but, substantively, they will not enjoy the same degree of influence over political decision-making. As a result, they will not enjoy equal influence over the way in which they're governed and therefore be subject to *imperium*.<sup>209</sup>

The second problem with unqualified democracy, the party interest problem, highlights that representatives may act so as to ensure that they or their party enjoy continuous access to government, and thereby secure a great deal of power over how their society is governed. Indeed, as noted by Pettit, parties and representatives may exploit their political power to redraw electoral boundaries (thereby ensuring that they have a majority in enough districts to take control of the legislature), or manipulate economic and other data so as to make their achievements seem more impressive, their failures less significant, and convince the electorate that they're securing the public interest and thereby increase the likelihood of re-election.<sup>210</sup>

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<sup>208</sup> Ibid., p. 161.

<sup>209</sup> Pettit, *Just Freedom*, pp. 124-125.

<sup>210</sup> Ibid., pp. 124-125.

The third issue, the influential lobby problem, highlights that securing citizens' influence over government can be undermined by representatives being pressured and motivated into advancing the interests of those who finance their campaigns or who control the media.<sup>211</sup> Indeed, in electoral systems where campaigns are not publicly funded, we will find that political parties become dependent on donors and seek to advance their interests over the electorate. Similarly, we know that media moguls, such as Rupert Murdoch, have close links with many senior politicians, and exercise an unduly large influence over democratic governance, sometimes in direct opposition to the needs and views of the electorate.

Each of these problems therefore highlights that it is possible, if not extremely likely, that unqualified democratic governance will fail to secure equal influence over government. The constitutional and quasi-constitutional mechanisms that Pettit has outlined as necessary components of securing influence and direction over government therefore appear to be integral to the aim of securing non-domination. This is because they are able to ensure that minority's views enjoy an equal influence on governance (perhaps through setting aside seats in the legislature for minorities, or through granting exemptions from majority decisions, as when the Amish were exempted from sending their children to school beyond 8<sup>th</sup> grade in the case of *Yoder vs. Wisconsin*); remove issues from popular decision-making (as when commissions are set up to redraw electoral boundaries, or when ombudsmen and regulatory bodies audit government figures); and through setting up independent watchdogs and regulators who ensure that governments act in accordance with the public's interest, and hold them to account when they fail to do so. Without such mechanisms, it is likely that individuals will only have a very loose form of influence over government and will be subject to domination.

Assuming that the above comments are correct, we have to consider another objection, one which would dispute the necessity of including democratic mechanisms in our attempts to secure non-domination. Indeed, Thompson, who I briefly noted in the first chapter as advancing an account of perfectionist positive liberty, appears to argue that non-domination cannot be secured through democratic mechanisms because individuals are subject to a dominating false consciousness. To that end, Thompson argues that there are some cases which, 'Although they minimally meet the requirement of being arbitrary in some basic sense, they do not meet Pettit's other criteria for domination.'<sup>212</sup> These cases are those in which social power is deployed to shape an individual's consciousness and values, normalising and legitimising forms of authority and obligation, such that individuals come to see social structures as neutral and fail to identify them as mechanisms employed by elites to subjugate and control society for their own benefit.<sup>213</sup>

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<sup>211</sup> *Ibid.*, pp. 124-125.

<sup>212</sup> Thompson, 'Two Faces of Domination in Republican Political Theory', p. 3.

<sup>213</sup> *Ibid.*, pp. 3-8.

Thompson refers to these processes as ones of ‘constitutive domination.’<sup>214</sup> Thompson goes on to argue that, ‘For Pettit, a key element of his theory of freedom is that I possess the capacity to act on the choices that I make and which I desire. But the deeper problem of domination is one where the webs of norms and values that pervade my society and which are internalised by my consciousness affect my desires and my interests.’<sup>215</sup> Therefore, Thompson claims, as a social system comes to enjoy a greater degree of legitimacy, through the more successful socialisation of citizens, less constraint on free choice will be necessary as individuals come to act as elites would prefer through habit and (manipulated) personal choice. This means that people could be entirely dominated and yet still appear to have the capacity to exercise free choice as the overarching system in which individuals make their choices actually constrains the options which are available to them and determines which choices individuals are permitted to make.

Importantly, Thompson believes that because individuals are subject to processes and structures which systematically constitute their agency without them ever realising it, they cannot see what is in their ‘real’ interest. As a result, individuals’ subjective preferences and shared ideals will be the product of manipulation and dominating socialisation, and individuals will be led to believe that what is actually in their objective interest, is not. Politics, therefore, cannot be required to track individuals’ views through democratic mechanisms because this will merely facilitate domination by tracking manipulated considerations which support capitalist domination. Instead, for Thompson, it is necessary for politics to fulfil a ‘positive’ function in creating the institutional and social conditions in which people can develop as free community-oriented individuals, and where everyone is prevented from subverting common resources to private ends. This would require, for example, that the state takes control of all economic, cultural, material, moral, and educational resources, ensuring that this common fund of resources is used to enhance the lives of the community as a whole; and that the state prevents capitalist enterprises from emerging, and instead encourages the creation of cooperative, self-governing firms, which the state is to steer towards the enhancement of the common good.<sup>216</sup>

Before responding to Thompson’s concern with tracking manipulated interests, it is important to note that Thompson follows Krause in construing domination to be a process which undermines individuals’ ability to choose freely between options, affecting how they view the world and the social relationships in which they’re situated. As such, it is subject to the same objection to Krause that I outlined in the previous chapter. Contrary to Thompson, we have seen that the structures themselves do not dominate individuals, though it is possible that capitalism may constitute a component of a society’s background structure which makes domination more easily exercised. For example, in staunchly capitalist societies industries may not be properly

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<sup>214</sup> *Ibid.*, pp. 7-13.

<sup>215</sup> *Ibid.*, p. 10.

<sup>216</sup> *Ibid.*, pp. 13-15.

regulated or there may be a lack of employee protections, increasing the likelihood that employers can dominate their employees (a problem that Pettit is aware of).<sup>217</sup>

If Thompson is correct that tracking manipulated interests (or, more accurately, adaptive preferences) will reinforce a background structure which makes domination more easily exercised, we are seemingly forced to conclude that democracy will simply buttress domination. This is because if all individuals believe that their only option is to support a capitalist society, then they're likely to elect representatives who are staunchly pro-capitalism; this will lead to more deregulation and fewer employee protections, and thereby make it easier for employers to arbitrarily control employees. If true, this would seem to suggest that the only way to address domination would be to jettison the democratic component of Pettit's account and develop a fully constitutional solution to the problem of domination. This approach, however, suffers from two distinct problems.

The first is that it is based on the demonstrably false premise that all, or even a majority of, individuals are subject to the kind of false consciousness which, if tracked by democratic means, would simply reinforce domination. Indeed, even if it were true that capitalists were manipulating everyone's preferences, undermining individual agency and giving rise to adaptive preferences, it is a matter of fact that a great many people who are supposedly socialised into upholding capitalism actually do oppose this system. Thompson therefore requires us to believe that capitalism's opponents have surmounted these complex processes of indoctrination and manipulation, and can see the world for what it really is, whereas those who support capitalism must have been manipulated into doing so. It surely seems just as plausible, if not more so, to suggest that the fact that so many people do oppose capitalism evidences that the problem of manipulation is nowhere near as widespread as Thompson suggests, and it is more likely that some individuals do have an interest in capitalism, whereas others do not. This is not to deny that some individuals may suffer from adaptive preferences (whereby they wrongly assume that their only option is to live in a capitalist society, or avow pro-capitalist preferences), but it is to deny that false consciousness is such a pervasive phenomenon that no-one is able to exercise meaningful agency.

The second issue with this approach is that such a system of governance, though intended to address domination, is wholly paternalistic, and therefore dominating. Indeed, as noted in the first chapter, paternalism occurs when an interferer's interpretation of a situation supplants the interpretation of those subject to paternalistic invigilation. In this case, if the state were to stipulate that domination is facilitated by capitalism, and can only be addressed by the state taking control of all economic, cultural, material, moral, and educational resources, the state would be acting paternalistically. This is because the state would supplant individuals' wills by stipulating that

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<sup>217</sup> Pettit, *Just Freedom*, pp. 89-90.

they're dominated, whether or not they know this, and will therefore subject them to arbitrary control. Indeed, even if, for the sake of argument, we were to concede the previous point, and grant that individuals are subject to a false consciousness which undermines individual agency, Thompson's solution does not remedy this problem: it simply substitutes one interfering will for another. So, Thompson is concerned that capitalism and its attendant processes constitute individuals' agency to such a significant degree that individuals make decisions which are not in their own best interest. Assuming that he is correct, replacing the agency-constituting effect of capitalism with the agency-constituting effect of the state does not resolve the problem as it will not be the individual who exercises agency in deciding how to lead their life. Thompson's solution, then, in which the state takes charge of securing citizens' objective good, supplants individual agency in exactly the same way that he believes capitalism does. Such an approach would give rise to a paternalistic, perfectionist theory of governance, one which undermines individual agency and entirely dominates individuals because the state's will supplants the will of the individual: it is unlikely that individuals will be disposed to avow the interests that the state imputes to them.

Having said all that, Thompson's concerns do evidence a further issue which neo-republicanism must grapple with and one which has been briefly touched upon. This issue is determining exactly what it is that political institutions must be responsive to in order for political control to be legitimate.

### **The Common Good – Two False Starts**

The notion of the common good, Pettit argues, is central to the republican tradition because, if the state were forced to track the common good, the control it exerted would be non-arbitrary.<sup>218</sup> As noted above, Pettit has variously suggested that political control is non-arbitrary when it tracks the welfare and worldview of citizens (understood as those preferences and ideals which are supported by cooperatively-admissible considerations) and, more recently, when the norm of norms and its attendant considerations filter out problematic arguments and policies and shape political debate and decision-making. This stands in stark contrast with Thompson's claim that political institutions should aim to secure citizens' objective good, and with Bellamy's account in which democratic institutions are simply required to respond to citizens' aggregated raw preferences. Each of these accounts therefore posits a distinct conception of the common or public good which political control is required to track. Although we've already seen why Thompson and Bellamy's criticisms of Pettit's democratically shaped constitutionalism fail, it is also

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<sup>218</sup> Pettit, 'The Common Good', p. 150.

necessary to consider why their underlying accounts of the common good are incompatible with the aims of neo-republicanism.

For Thompson, the common good must be determined objectively: that is, citizens themselves cannot be consulted on what they think is in their shared interest. This is because, owing to his underlying commitment to the false consciousness thesis, Thompson believes that individuals are subject to processes and structures which systematically facilitate their domination and manipulate them into misunderstanding what the common good ought to consist of. On this view, the common good cannot be conceptualised in terms of citizens' shared interests or individual's preferences because this will merely facilitate domination by tracking manipulated considerations which support capitalist domination. Instead, Thompson believes that the common good would need to be specified objectively; that is, it would have to be defined with reference to what individuals *would* want were they not subject to false consciousness.

Such an approach, indeed any approach which defines the common good objectively, is going to be incompatible with neo-republicanism for two distinct reasons. Firstly, and as noted above, it will entail paternalism and perfectionist governance, giving rise to domination. This is because stipulating an objective account of the common good supplants the will of those subject to interference with the will of the stipulator. For example, claiming that the state ought to take charge of all common resources and enforce an economic system characterised by workers' cooperatives, without any scope for individuals to pursue their own private enterprises, ignores the will of those who would not like to live in such a society, and replaces it with the will of a paternalistic interferer who knows what is best for everyone. This, as noted in the first chapter, will entail perfectionist governance, and will represent an instance of exactly the kind of positive liberty which Berlin argues against. Indeed, in Thompson's theory, the state is, 'in a position to ignore the actual wishes of men,'<sup>219</sup> in its efforts to secure the common good.

The second reason why the common good cannot be defined objectively is because such an approach would also undermine the requirement that citizens are able to exert direction over governance. Indeed, as noted above, having influence over governance is insufficient for securing freedom from *imperium* and democratic legitimacy, and it is therefore necessary that citizens are able to enforce an equally acceptable direction over their government. Pursuing an objective account of the common good, however, will fail to secure this aim because it will not be citizens who actually determine the direction of governance; instead, the direction of government will be determined at the behest of the paternalistic interferer. Determining the common good objectively, then, will entail domination because it gives rise to paternalistic, perfectionist governance, which fails to secure citizens' direction over governance.

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<sup>219</sup> Berlin, 'Two Concepts of Liberty', p. 133.

Bellamy's account avoids these two problems. In defending democracy, unfettered by constitutionalism, as a means for securing non-domination, he ensures that governance is not paternalistic, and that citizens enjoy a directive influence over governance (although, as we will see below, this direction is not equally acceptable to all citizens). Importantly, it seems that Bellamy defends a social choice theory of the common good because he sees politics as a means for determining an, 'optimal compromise between given, and irreducibly opposed, private interests.'<sup>220</sup> That is, the common good for Bellamy seems to be the outcome of a fair procedure which aims to aggregate individuals' disparate preferences and views. Whatever policy or party enjoys the most support can be deemed to be in the public's good. It is useful to briefly outline exactly what social choice theories entail because, as we will see below, any theory which determines the common good through aggregating citizens' raw preferences is going to be fundamentally incompatible with the aims of neo-republicanism.

Jon Elster argues that social choice theories are structured as follows. Firstly, it is assumed that there is a given set of individuals (ignoring the issue of political boundaries and fluctuations in the set of individuals) faced with a choice between a given set of alternatives, in which they select between these options based on a given set of preferences that each holds and which are assumed not to change through the political process. Importantly, these preferences are assumed to be ordinal (such that individuals cannot express how intense their preferences are and outside observers cannot compare the intensity of individuals' preferences), and individuals' preferences are assumed to have the formal property of transitivity such that if an individual prefers option A over option B, and prefers option C to option A, then they also prefer option C to option B. Building upon these assumptions, social choice theories are focused upon arriving at a social preference ordering of the alternatives where the ordering must satisfy the following criteria. Firstly, the social group's ranked preferences must also be complete, transitive, and Pareto-optimal, such that there is never a socially preferred option when another is individually preferred by everyone. Additionally, a social choice between two options should only depend upon how individuals rank these options relative to one another, and should therefore be insensitive to changes in citizens' preferences over other options. Finally, all individuals should count equally in the aggregation of preferences; no individual should be able to dictate the outcome of the social choice; all individuals should have some private domain in which their preferences are decisive (i.e. not every decision should be subject to social decision-making); and it should not pay for individuals to express false preferences.<sup>221</sup>

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<sup>220</sup> Jon Elster, 'The Market and the Forum: Three Varieties of Political Theory', in Derek Matravers and Jon Pike (eds.), *Debates in Contemporary Political Philosophy: An Anthology* (London: Routledge, 2003), pp. 325-341 (p. 325).

<sup>221</sup> *Ibid.*, pp. 325-327.



The problem with attempting to derive the common good through social choice theories such as Bellamy's, Elster argues, is that the preferences which individuals express may not be a good guide to what they actually prefer, and what individuals actually prefer may not be the best foundation for determining the outcomes of social choices. Indeed, Elster argues that preferences are never given in the sense of being observable; instead, they must be expressed by individuals. Importantly, there are many situations in which it may not be rational for an individual to express their preferences as they are, and instead may express false preferences which will get them a preferred result.<sup>222</sup> For example, a racist may not actually express a preference for racist policies since to do so would likely affect their standing in others' eyes, result in some kind of punishment, or have counter-productive consequences. Indeed, we can imagine a situation in which a state attempts to redefine its immigration policy. If the racist were to express his real preference for ending immigration, that he doesn't like foreigners, he would likely harm his cause since many other individuals will not harbour such overtly racist prejudices. It would be more rational, then, for the racist to express false preferences, perhaps arguing that the community's resources are insufficient to support immigration, in order to achieve his real aim of preventing foreigners from entering his nation.

In addition to expressing false preferences, there is the further issue that individuals' real preferences are dependent upon the causally feasible set of options. The problem, here, is that tracking preferences which are shaped by an individual's perception of what is feasible, may simply result in tracking second-best preferences, or those that the individual doesn't really hold. As an example, Elster invokes Aesop's fable of the fox and the grapes. In the fable, the hungry fox tried to jump and obtain some grapes hanging high on a vine. Unable to reach them, the fox left, declaring that he didn't want to eat the sour grapes anyway. The problem, here, is that the fox seems to be subject to the phenomenon of adaptive preferences which we considered briefly in the first chapter. That is, because the fox believes that eating the grapes is an unrealisable preference, he decides that he would actually prefer not to eat the grapes: his preferences are formed by what he takes to be his feasible option-set. To reduce cognitive dissonance, he then forms the belief that the grapes were sour and therefore shouldn't have been eaten even if he had wanted to. The problem here is that the expressed preference of the fox, to not eat the grapes because they're sour, does not actually represent his real preference which was to eat the grapes.

If these comments are correct, it would suggest that if expressed preferences are tracked as components of the common good, we may simply be responding to preferences that individuals don't really have, and instead we may be tracking the preferences that they think they have, or that they think are realisable, or those which they falsely express. If this is indeed a possibility, and there seems no way to guarantee that individuals will always express their real preferences,

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<sup>222</sup> *Ibid.*, p. 327.

it, 'becomes very difficult to defend the idea that the outcome of the social choice mechanism represents the common good, since there is a chance that everybody might prefer some other outcome.'<sup>223</sup>

This would seem to suggest that aggregating individuals' raw preferences and premising political activity upon individuals' unfiltered adaptive or false preferences, is going to be incompatible with neo-republicanism for two reasons. Most obviously, it will fail to address the problem of adaptive preferences which, as discussed in the previous chapter, will represent a constraint on individuals' capacity to lead lives of their own choosing and which a legitimate state ought to take steps to guard against. Indeed, rather than responding to the problem of adaptive preferences, such an approach guarantees them a privileged role in determining how citizens are controlled. Secondly, it will fail to secure an equally acceptable direction on governance. This is because, as just noted, the preferences which determine government direction may well not represent anyone's real preferences (since everyone might express adaptive or false preferences) and the direction that they impose upon government will therefore be unacceptable to most citizens. This will undermine democratic legitimacy and entail *imperium*.<sup>224</sup>

This brief discussion of defining the common good objectively or through the aggregation of raw preferences has highlighted two key issues which a neo-republican account of the common good must address. Firstly, the common good cannot be objectively defined without input from citizens: to do so would give rise to paternalistic, perfectionist governance and thereby entail domination. Secondly, the common good must cohere with citizens' 'real' preferences rather than false or adaptive preferences, such that the direction exerted over governance is a direction that all citizens are disposed to avow, where this avowal can be readily tested and established. While the first issue can be readily avoided, the second issue, ensuring that the common good coheres with citizens' 'real' interests rather than their expressed preferences, is more difficult. Elster does, however, suggest that it is possible to surmount the problem of false or adaptive preferences through the transformative power of deliberation.

### **The Deliberative Good**

Since the common good cannot be determined objectively without collapsing into paternalism, or through aggregating individuals' raw preferences without giving rise to the possibility of false or

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<sup>223</sup> Ibid., p. 328.

<sup>224</sup> It is also important to note that these comments suggest that plebiscitary democracy and any kind of non-deliberative plenary assembly model of governance are going to be rendered incompatible with the aims of neo-republicanism. This is because in each of these models of governance, citizens' raw preferences will be taken as the inputs into the determination of the common good and, as we've seen above, such an approach will fail to secure an equally acceptable direction on governance.

adaptive preferences, Elster suggests that we look at how we might *transform* individuals' preferences through public, reasoned deliberation. On this view, the preferences which would form the common good would be, 'informed and other-regarding preferences.'<sup>225</sup> Indeed, building upon Jürgen Habermas' ideal speech situation, he argues that the aim of deliberation would be to screen out selfish, false, adaptive, and private interests in order to derive a set of shared, rational preferences which each individual can avow as being in their shared interest.

Elster notes that underlying the ideal speech situation are two interlinked premises. The first is that in public deliberation there are some arguments or claims which simply cannot be advanced in public, and that, 'In a political debate it is pragmatically impossible to argue that a given argument should be chosen just because it is good for oneself. By the very act of engaging in a public debate – by arguing rather than bargaining – one has ruled out the possibility of invoking such reasons.'<sup>226</sup> Indeed, in engaging in public deliberation, individuals are committed to a form of self-censorship in which they screen out their own preferences in order to meet a pre-commitment to the idea of rational decision-making and, at the very least, pay lip-service to the common good. We might find, for example, that a racist cannot publicly avow an interest in racial segregation because they cannot give sufficient public reasons for this preference: such a preference will therefore be screened out of the deliberative process by the requirement that individuals only give publicly-acceptable reasons for their preferences. The second premise underlying this account of ideal deliberation is the assumption that, over time, individuals will, 'come to be swayed by considerations about the common good.'<sup>227</sup> This premise is therefore a psychological one in that it assumes that, in order to reduce cognitive dissonance, individuals will bring what they think in line with that they say. Now, this can be problematic, as when the fox brings his desires in line with his circumstances, but Elster argues that in the process of deliberation dissonance-reduction need not take on this problematic cast. This is because individuals' preferences are being adapted in accordance with the requirements of rationality and reason rather than what they take to be their feasible options. So, unlike the fox who has a reasonable preference for eating the grapes, and which is adapted because of his perceived circumstances, an individual in the ideal speech situation is assumed to start with less than fully-informed preferences which are transformed through reasoned deliberation. Adaption, here, is seen as a positive outcome of deliberation and one which facilitates the transformation of private, raw preferences into informed preferences. Elster goes on to argue that:

The conceptual impossibility of expressing selfish arguments in a debate about the public good, and the psychological difficulty of expressing other-regarding preferences without ultimately coming to acquire them, jointly bring it about that public discussion tends to

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<sup>225</sup> Elster, 'The Market and the Forum', p. 330.

<sup>226</sup> Ibid., pp. 330-331

<sup>227</sup> Ibid., p. 331

promote the common good. The *volonte generale*, then, will not simply be the Pareto-optimal realisation of given (or expressed) preferences, but the outcome of preferences that are themselves shaped by a concern for the common good.<sup>228</sup>

If realisable, such an approach for determining the common good would: avoid the paternalism objection (since citizens themselves would be deciding together what constitutes their shared interests); secure an equally acceptable direction over governance (since, assuming a consideration survives the deliberative process, it can be assumed to be a shared, public interest); and address the problem of false or adaptive preferences (because citizens' preferences will have been transformed through the deliberative process). Elster does, however, outline seven potential objections to determining the common good deliberatively, each of which warrants further examination.

The first of Elster's concerns is that the requirement that individuals participate in political deliberation may represent an instance of paternalism: that is, insisting on rational, public debate may be experienced as an unwarranted and unwanted interference in the lives of individuals who have no interest in determining the common good. In outlining this problem, Elster acknowledges that those who are interested in public deliberation are likely to be the wealthy or well-educated, creating a self-selecting elite whose motivation for participation is the acquisition of power rather than discerning and advancing the common good. There may, therefore, be a need to strike a balance between mandatory participation, to avoid the emergence of self-selecting elites, and 'low-profile participation' in order to avoid the paternalism objection.<sup>229</sup>

The second and third objections that Elster outlines are as follows: even assuming that there is unlimited time for discussion, unanimous and rational agreement may not result; and, assuming this is true, then there will need to be some kind of aggregation method to resolve the deadlock. The problem, here, is that even if individuals do participate with the intention of resolving problems rationally, unanimity is unlikely to arise, necessitating the inclusion of an aggregative mechanism to resolve the deadlock. These objections therefore seem to show that deliberation can only ever supplement the aggregation process, not replace it entirely.<sup>230</sup>

Elster then acknowledges that it is possible to grant the validity of this concern but nonetheless maintain that deliberation will improve the outcome of the political process. The fourth objection would challenge this view, arguing that it is possible for social outcomes to be worse than if participants advanced selfish preferences. As an example of this kind of problem, Elster outlines a situation in which two boys find a cake. The first boy declares that he'd like to eat the whole cake whereas the second boy protests that they should share it equally. An adult

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<sup>228</sup> Ibid., p. 331.

<sup>229</sup> Ibid., pp. 331-332.

<sup>230</sup> Ibid., p. 332.

arrives and determines that they compromise: he awards three quarters of the cake to the first boy and one quarter to the second boy (since this outcome is halfway between their preferences of a whole cake vs half a cake). The problem with this kind of situation is that the outcome of the deliberation between the boys is that neither is satisfied, and the first boy's preferences are counted twice in determining the outcome (his expressed preference for the whole cake, and in the second boy's suggestion that they share the cake equally). It would have been better, therefore, for the second boy not to have deliberated and instead asserted his initial preference without a view to compromise.

The fifth objection to the ideal speech situation is that it may be the case that increased deliberative participation may make individuals more selfish or irrational than they otherwise would be if their expressed preferences were simply aggregated. Indeed, Elster notes that, 'The mere decision to engage in rational discussion does not ensure that the transactions will in fact be conducted rationally, since much depends on the structure and framework of the proceedings.'<sup>231</sup> The concern, here, is that the design of a deliberative process must take into account the need to counteract phenomena such as 'group-think' (the phenomenon whereby participants marginalise or exclude dissenting views in order to attain unanimity or compromise), and points us towards the need to take the issues of institutional and constitutional design seriously.

The sixth concern, and one that focuses more explicitly on the problem of group-think, is that if the deliberative process does yield unanimity, this may be due to conformity rather than rational agreement. Indeed, Elster notes that if there is no opposition to an outcome, this may be because some people are simply following the majority on an issue, thereby evidencing what social psychology has called the bandwagon effect. For Elster, unanimous agreement may therefore evidence adaptive preferences rather than the outcome being the most rational one.<sup>232</sup>

Elster's final concern is that forcing individuals to couch their preferences in terms of the common good is unlikely to purge these desires of all selfish content because the distinction between general and special interests is not well defined. Indeed, Elster notes that it is possible that, 'private benefits may causally determine the way in which one conceives of the common good.'<sup>233</sup> That is, because individuals may benefit from a specific policy, they may argue for it in terms of the common good. For example, individuals who benefit from capitalism may argue that it promotes the common good through increasing society's overall welfare, including the welfare of those at the bottom, and rewarding good choices. But, if these individuals did not benefit from capitalism themselves, they may not defend capitalism as being a general interest.

In concluding his discussion of the possible objections to determining the common good deliberatively, Elster notes two final points. The first is that we cannot assume that we will reach

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<sup>231</sup> Ibid., p. 333.

<sup>232</sup> Ibid., pp. 333-334.

<sup>233</sup> Ibid., p. 334.

a good society by acting as though we have already arrived. That is, the deliberative ideal is premised upon the assumption that we have already eliminated political and economic domination, enabling individuals to freely and equally deliberate over the common good. But, in the real world, we have yet to eliminate these sources of inequity, and it seems unlikely that free and rational discussion will converge on the elimination of all political and economic domination. Elster therefore notes that it might be necessary to employ propaganda to push individuals towards the elimination of these sources of inequity so that individuals can then engage in proper deliberation. Secondly, and as noted above, the deliberative process is imperfect, being vulnerable to adaptive preferences, conformity and group think. While Elster therefore believes that the best alternative to social choice theories is to develop some kind of ideal speech situation in which the common good is determined deliberatively, he is nonetheless concerned that such an approach may be overly idealistic and fail to adequately address the problems of adaptive preferences and group think.

With these comments in mind, we can turn to Pettit's account of determining the common good deliberatively. In order to develop his argument, Pettit starts from the assumption that the common good might be understood as the people's *ex ante* net common avowable interests (that is, those interests which everyone actually avows *before* the formation of a decision or policy), but goes on to argue that this conception of the common good is flawed. Indeed, he argues that, 'it is extremely unlikely that among the different sets of practices and policies available to a state, there is one that will be in the avowable net interest of each... The fact that people differ in their capacities and circumstances, their tastes and commitments, means that there is little or no chance that among feasible alternatives one and the same set of practices and policies will be in the avowable net interest of each.'<sup>234</sup> As an example, he suggests that it is unlikely that someone talented, adventurous, confident, and in favour of a *laissez-faire* economy will share the same interests as someone with modest capacities and an interest in a robust welfare state.<sup>235</sup>

With a seemingly justified pessimism towards ever deriving a set of common *ex ante* interests, Pettit turns to a second conception of the common good. On this second reading, it is not the common good itself which is said to be in the avowable interest of each individual, but instead citizens are deemed to have an avowed common interest in the creation of a political system which is forced to track the common good. Pettit goes on to cite Brian Barry's argument to the effect that even though three different policies, A, B, and C, may not be in everyone's avowed interest, individuals will nonetheless share a higher-order common interest in the development of processes which are able to resolve such issues of disagreement. On this view of the common good, it is the process by which political decisions are made which is deemed to be

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<sup>234</sup> Pettit, 'The Common Good', pp. 153-154.

<sup>235</sup> *Ibid.*, p. 154.

in citizens' net interests, not necessarily the actual policies being pursued.<sup>236</sup> Pettit goes on to argue that, 'Assuming that 'the common good' refers to matters of common interest, the obvious suggestion is that the phrase refers to the interests that people share in their role as citizens...it is in the avowable net interest of each that there should be a state that is forced to track people's common interests as citizens.'<sup>237</sup>

On this reading of the common good, then, citizens are deemed to have an *ex ante* interest in a political system which is forced to track their shared interests, but only the interests they share in their role as citizens. Indeed, it is important to note that Pettit, following Barry, distinguishes between individuals as citizens of society, with community-oriented 'political' interests, and as occupants of particular roles, with private, self-serving interests. Each individual therefore has a set of private interests and a set of public interests. An individual's private interests arise from their particular circumstances, needs, and role in society, whereas their public interests are those that arise from membership in a community which they want to see progress and flourish.<sup>238</sup>

It is also important to note that Pettit argues against Habermas' ideal speech situation as a means to determine the common good. The reason for this, he argues, is that the common good which would emerge from an ideal discussion is unlikely to be the same as that which would emerge from a discussion in the non-ideal world.<sup>239</sup> Instead, what is required is that we attempt to replicate real-world deliberative practices in which individuals are committed to a shared enterprise but disagree over how to proceed with their project. The key to understanding such deliberative processes, Pettit argues, is to look at the considerations which all members' countenance as relevant for the matter at hand. As an example, he suggests that we consider the ways in which a condominium managing committee would deliberate. Each member of the committee would have their own private interests in, for example, the management of their own apartment, but each would also have shared interests in the ways in which the condominium is managed and maintained. As they discuss the property's management, certain reasons will be deemed to be relevant for discussion, whereas other, self-serving, interests will not. It would be unlikely, for example, that the committee would accept a member's proposal that they use shared resources for a member to redesign their own kitchen. This would represent the insertion of a private interest into a discussion about the committee's shared interests. But the committee would, for example, accept the proposal that the funds be used to paint the building's exterior since all will benefit from the work. Over time, the members will develop a shared conception of what is in the group's interests, what proposals each can advance, and in what terms the proposals must

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<sup>236</sup> Ibid., pp. 155-157.

<sup>237</sup> Ibid., p. 156.

<sup>238</sup> Ibid., pp. 155-159.

<sup>239</sup> Ibid., p. 160.

be couched (for example, proposals should be formulated in terms that others can accept as relevant for the group).<sup>240</sup>

Pettit then argues that we can identify the shared considerations of a political community in the same way. Much as the members of the condominium management committee will have different ideas that they wish to advance, citizens have different ideas, perspectives and values which they will believe should inform political activity. In the committee example, a framework would emerge through deliberation, enabling participants to identify which ideas are relevant for the group. In the political community, Pettit believes that a similar framework will emerge from deliberation and contestation between competing conceptions of the good.<sup>241</sup>

Importantly, the deliberative process in Pettit's theory does not operate in the form of a deliberative assembly: citizens do not come together to deliberatively determine the common good or decide on political policies. Instead, deliberation is decentralised, with deliberation occurring across many political and civic sites (including in the media, in the courts, in civil society, in political decision-making etc.), and gradually producing regulatory norms (which are in accordance with the norm of norms) which would then serve to constrain political decision-making.<sup>242</sup> These norms would exert a filtering effect over political decision-making, putting certain policies off the table and ensuring that governance occurs in accordance with a set of considerations which are publicly avowed by all citizens.<sup>243</sup> Pettit is also clear that over time episodic deliberation will become less necessary, and the deliberative norms generated will become embedded within institutional processes.<sup>244</sup> We can therefore see that the cooperatively-admissible considerations and norm of norms are devices for securing something like a real-world ideal speech situation: they serve to filter out private preferences and ensure that the direction exercised over governance is equally acceptable to all citizens. Significantly, because Pettit eschews utilising a deliberative assembly to derive the common good his account is also able to surmount each of Elster's objections.

In response to Elster's first objection, that requiring individuals to participate in public deliberation may represent an instance of paternalism, it is important to reiterate that Pettit's account of public deliberation is different to the one envisioned by Elster. That is, whereas Elster sees the deliberative ideal as a process for determining outcomes in specific decision-making scenarios, for Pettit the deliberative ideal is a community-wide, iterative process which produces norms and ideals which regulate public business. In Pettit's account it is not necessary that citizens come together in some form of deliberative assembly to determine a rational, collective response

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<sup>240</sup> Pettit, 'Three Conceptions of Democratic Control', pp. 51-54.

<sup>241</sup> Ibid., pp. 51-54.

<sup>242</sup> Pettit, *On the People's Terms*, pp. 261.

<sup>243</sup> As we will see in the next section, this should be seen as an account of deliberatively-informed preferences.

<sup>244</sup> Pettit, *On the People's Terms*, pp. 259-269.



to every policy disagreement since democratic mechanisms are utilised to select politicians to resolve such issues. Instead, public deliberation will occur, ‘on a number of occasions at a number of sites,’<sup>245</sup> and will gradually produce regulatory social norms which each is disposed to avow, and which will then regulate the decisions made by elected representatives. They will do so by putting policies off the table which are not supported by citizens’ shared values, and by enabling citizens to contest their representatives if they fail to act in accordance with the common good. Individuals are therefore not forced to deliberate unendingly, as they would be in certain varieties of neo-Athenian republicanism, thereby avoiding the paternalism objection, and the process will preclude the emergence of deliberative elites. There will still be political elites tasked with decision-making, but they will be democratically elected and bound to act in accordance with the public’s shared interests.

Elster’s second and third objections, that unanimous agreement may not arise and an aggregation process will be necessary to resolve deadlocks, do not apply to Pettit’s account. As the deliberative ideal in Pettit’s account is used to generate regulatory norms, it is unlikely that there will be a lack of unanimous agreement. Indeed, as noted by Pettit, regardless of the particular worldviews that individuals avow, they’re all likely to endorse a set of core norms which are necessary for them to pursue their own good. This overlapping consensus is likely to include, for example, the requirement that all individuals are treated equally and that the government takes steps to secure a private sphere.<sup>246</sup> These norms are therefore broad enough to be able to attract unanimous support and thereby avoid the need for aggregative mechanisms to supplement the deliberative ideal (although, as noted above, there will still be aggregative mechanisms in a republican society in the selection of legislators etc.).

The fourth objection that Elster levels against the deliberative ideal, that it is possible for social outcomes to be worse if citizens deliberate rather than if participants advance selfish preferences, does not undermine Pettit’s account. The concern here is that some people’s preferences will count for more than others if individuals are forced to compromise in order to reach a unanimous decision. We can see something like this happening in a political scenario if we imagine citizens deliberating over whether or not to adopt a welfare system. We can suppose that roughly half of the citizens advocate a full welfare system with a universal basic income and other redistributive mechanisms, whereas the other half prefer a society with no safety net. In attempting to reach a compromise, it is determined that there will be a welfare state, but the universal income will not be included. In this case, those advocating the welfare state have their preferences count for more in the determination of a compromise since their original preference was more demanding than their opponents’. This kind of problem is unlikely to arise in Pettit’s

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<sup>245</sup> Ibid., p. 267.

<sup>246</sup> Ibid., p. 263.

account because of the inclusion of the norm of norms as a regulatory ideal. That is, because individuals can only advance arguments which can be endorsed from all standpoints, the actual considerations which will emerge from the process are likely to be few in number, loosely specified, and relatively uncontroversial (such as the requirement that all individuals are treated equally) so as to command common assent. This means that it is unlikely that individuals will be able to advance the kind of selfish preferences that Elster is concerned with without them falling afoul of the norm of norms or other considerations derived from that norm.

The fifth objection, that deliberation may make individuals behave irrationally or selfishly, is not a significant concern for Pettit's account of the deliberative good. Indeed, irrationality and selfish behaviour are, again, precluded by the requirement that deliberation be premised upon the underlying norm of norms. Importantly, Pettit believes that compliance with the norm of norms would be achieved in a society in which patriotism is sufficiently embedded: indeed, he claims that, 'Let patriotism prevail and there are unlikely to be divisions of the kind that would undermine the emergence of society-wide norms.'<sup>247</sup> The suggestion, here, seems to be that the process is self-perpetuating: that is, as long as sufficient numbers of individuals do embrace the norm of norms, and deliberate in the requisite manner, it will force others to do so too, leading them to couch their arguments in terms that others can accept. Indeed, the condominium committee provides an example of this. Once the initial premises of deliberation are endorsed by all (i.e. that no-one is entitled to preferential treatment, that private interests are not admissible considerations etc.) others are forced to abide them such that should an individual move to the condominium, they will be required to deliberate in the requisite fashion. A similar approach would support norm-producing deliberation within a republican society. As long as individuals are able to abstract from their private interests, and see themselves as community-oriented, patriotic individuals with public interests which arise from membership in a community which they want to see progress and flourish,<sup>248</sup> the norm of norms will be able to shape individuals' deliberations and, over time, this process will become self-perpetuating. As a result of this process (and the requirements that all individuals accept that their views are entitled to no preferential treatment and that they can only advance preferences and viewpoints which are couched in terms that others can accept), the only norms which will emerge from the process will be broad-based regulatory norms that each individual can endorse from their particular perspective. The norm of norms would therefore filter out the kind of irrational and self-regarding preferences that Elster is concerned with.

The sixth objection, that unanimity is likely to evidence that some individuals have advanced adaptive preferences or engaged in group think is not, in this instance, a problem for

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<sup>247</sup> *Ibid.*, p. 262.

<sup>248</sup> Pettit, 'The Common Good', pp. 158-159.

Pettit's theory. This is because the process is specifically designed so as to transform individuals' raw preferences: that is, through the deliberative process and requirement that norms cohere with the norm of norms, individuals' selfish, irrational or otherwise inappropriate preferences will be screened out or transformed so that the outcomes, which will exert a direction on governance, can be deemed to be shared norms which each can avow from their particular perspective. In this way, we might say individuals are subject to the phenomenon of adaptive preferences but, importantly, the preferences are adapting in accordance with the requirements of rationality and the need to develop an equally acceptable direction on governance rather than in accordance with the options that they take to be available to them. That some people's preference for, for example, some kind of segregated society will be forced to adapt (because such a preference will be incompatible with the norm of norms) or be concealed is not an issue from this perspective since the aim is to transform citizens' raw, selfish preferences into a set of shared, rational norms.

Elster's seventh objection, that requiring individuals to advance their preferences in terms that others can accept from their particular perspective is unlikely to purge such preferences of selfish content, is inapplicable to Pettit's deliberative ideal. This is because, unlike in the process envisioned by Elster, in which individuals deliberate over specific outcomes which will confer a range of benefits and burdens on themselves and others, Pettit's citizens are simply deliberating over a set of regulatory norms which will then constrain governance in ways that will be difficult to anticipate. Indeed, as discussed above, the norms derived from the deliberative process will not directly determine political decisions but will instead exert a filtering effect upon government decisions. Individuals therefore cannot know exactly what kind of benefits will accrue to them from advocating specific norms since they are loosely specified and will constrain different governments in different ways. For example, if citizens do avow a norm which requires that the government secures a private sphere, they cannot know exactly how this norm will shape government policy. Indeed, depending on the specific government, this norm might entail that the government maintains a rigorous distinction between the public and private spheres with all issues relating to child-rearing, employment, welfare etc., being deemed to be beyond the purview of the government, or the government might be considerably more interventionist, leaving only a few core issues within the private sphere itself (for example, whether families choose to have children). As the norms will need to be loosely-specified and relatively broad in scope in order to command common avowal, they will leave a lot of room for governmental interpretation. This will make it difficult for citizens to advocate selfish preferences disguised as the common good since they cannot know exactly how specific norms will be interpreted and affect their lives. Individuals therefore cannot stand to profit from the deliberative process in the way envisioned by Elster.

While Pettit's account is therefore able to address each of Elster's concerns, there does seem to be one further issue which we need to respond to. This is that, as noted above, Pettit sees

the deliberative process as becoming more sporadic as the regulatory norms become routinised and embedded within a political system. Now, while he does note in his earlier work that a neo-republican society should implement democratic institutions which act to search out and remain responsive to changes in citizens' common good,<sup>249</sup> it seems that the deliberative process is not envisioned as a long-term component of Pettit's theory: its sole purpose is to derive the common good through transforming citizens' raw preferences into a loosely-specified set of shared norms which will then exert an equally acceptable direction on governance. Laudable though this process is, it seems unlikely to be able to address the problem of adaptive preferences over a prolonged period of time because, as citizens' shared interests become embedded within the political system, the deliberative process which transforms citizens' preferences will become less necessary and, presumably, eventually abandoned. It is important to stress that this is not to suggest that Pettit's account does not have other deliberative components: indeed, as noted above, he advocates a range of other deliberative mechanisms, including the use of deliberative assemblies such as the British Columbia Citizens' Assembly on Electoral Reform, to model the wider society's views on an issue, as well as creating other deliberative bodies which hold the government to account. Nonetheless, Pettit's account does lack a formal, long-term institutional process for ensuring that individuals do not suffer from adaptive preferences. It therefore seems that the problem of adaptive preferences, which neo-republicanism must grapple with since it undermines individuals' personal resources, will be addressed in the short-term through deliberation but may later reappear as the deliberative process becomes more sporadic or is abandoned. There seems to be a need, then, to supplement Pettit's decentralised, informal deliberative ideal with a more formal, long-term, institutionalised deliberative process which would be expressly intended to address the problem of adaptive preferences and transform raw preferences into informed preferences. Doing so would enable us to make sure that the common good remains free of adaptive preferences, and would therefore ensure that the shared interests which direct governance, and thereby secure democratic legitimacy, are those that represent the public interests of citizens.

### **The Deliberative Assembly**

Assuming that the above comments are convincing, it seems to be necessary to supplement Pettit's account of democratic legitimacy with an institutionalised deliberative process in order to guard against adaptive preferences and ensure that informed preferences determine the common good. As such, the first point to note is that in order to ensure that the deliberative process is able to mitigate against adaptive preferences, it will be necessary to ensure that the norm of norms is

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<sup>249</sup> The Common Good, pp 165-169.

upheld within deliberations, such that, irrespective of the issue at hand, all individuals are required to couch their arguments in terms that others can accept, and acknowledge that they and their views enjoy no privileged status. The norm of norms would therefore fulfil a similar role in this deliberative process to the one that it fulfils in Pettit's account: it would aim to screen out selfish, adaptive, and irrational preferences and facilitate the transformation of individuals' preferences into informed preferences.

The second point to note is that a deliberative process intended to address adaptive preferences should not be constituted as a decision-making plenary assembly. In addition to the likelihood of such a body coming into competition with the other democratic and constitutional mechanisms that Pettit has outlined as components of securing democratic legitimacy, a deliberative assembly empowered to make political decisions would be, 'liable to be the most arbitrary of powers. It will relate to individuals and smaller groups in the role of an arbitrary despot...a regime under which the most capricious of powers remains morally as well as legally uncontestable.'<sup>250</sup> This is because, as we saw in the preceding chapter, a collective group which individualises reason will not act in accordance with endorsed premises or the requirements of reason, and it would therefore be apt to act capriciously and arbitrarily. The aim of this process, then, is not to enable citizens to engage in direct self-governance: instead, this deliberative process would be focused on creating the framework in which citizens can deliberate over political and social issues, thereby creating the conditions in which adaptive preferences can be transformed and in which civic-mindedness and patriotism can be encouraged amongst individuals. While specifying exactly how this institution might be designed, how discussions might be moderated, and who might set the agenda for deliberation, are all issues which are beyond the scope of this thesis, it is sufficient to note that there are a number of different models for deliberation which such an institution might aim to replicate. For example, it might be possible to create online deliberative polls, develop a digitised version of town hall meetings, or simply create a moderated discussion board which allows individuals to raise and discuss any issue that they think is relevant.

Thirdly, it is important to acknowledge that the size of modern states precludes the creation of any kind of deliberative forum or assembly that requires citizens to convene in specific places. Indeed, requiring physical attendance would render the deliberative process inaccessible for huge numbers of people, particularly those who have to work long hours, those with children, the elderly, and the disabled. The problem, here, is that requiring physical attendance may result in only the affluent being able to participate in the process. It is therefore imperative that the deliberative process is designed in such a way that participation is open to all citizens irrespective of their particular commitments and circumstances.

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<sup>250</sup> Ibid., p. 154.

The fourth point to note is that citizens may lack the motivation to actually want to participate in deliberating over political issues, and we must therefore account for the possibility of individual apathy. Citizens may be apathetic towards deliberation for a variety of reasons: the process would require a significant time commitment; they're disengaged or disenchanting with politics; this commitment will not confer any material benefits on those participating since the process does not include any decision-making responsibilities; it prevents citizens from having an immediate effect upon their society; and because the process may make political participation too demanding in Pettit's society because of the need for deliberation over regulatory norms, democratic participation, civil society participation, and this suggested additional need for deliberative participation to guard against adaptive preferences.

With these preliminary comments in mind, my suggestion for how we might address the problem of adaptive preferences would be to utilise emerging technology to develop a digitised assembly that would provide the space in which citizens could deliberate over political and social issues, with the aim of facilitating the transformation of adaptive preferences into informed preferences. This would involve, 'the use of information and communication technology (ICT) and computer mediated communication (CMC) ... for purposes of enhancing political democracy,'<sup>251</sup> in order to transcend the traditional limits of time, space, and other physical conditions on democratic participation.<sup>252</sup> Indeed, academics have looked at a variety of ways to incorporate the use of ICT and CMC into existing democratic practices, suggesting a range of proposals from online political discussion groups, to online petitions, to clicktivism, to internet voting, to conducting election campaigns online.<sup>253</sup> Examples of the development of digital democratic processes include: the U.K. government's launch of an online e-petition website in 2011, which aimed to bridge the gap between individuals and parliament; and Minnesota E-Democracy, which enables citizens to debate local and national issues via digital forums.<sup>254</sup>

Importantly, a digitised deliberative assembly would surmount the accessibility and motivational issues noted above. Indeed, a neo-republican society concerned with addressing adaptive preferences would be able to provide the infrastructure (including internet connection and devices to participate) to its citizens, ensuring that individuals need not be physically present at any location to be able to participate in online discussions. The ease of participation should largely mitigate against political apathy, making it easy for citizens to engage with one another.

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<sup>251</sup> Kenneth L. Hacker and Jan van Dijk, 'What is Digital Democracy?', in Kenneth L. Hacker and Jan A. G. M. van Dijk (eds.), *Digital Democracy: Issues and Theory of Practice* (London: Sage Publications, 2000), pp. 1-9 (p.1).

<sup>252</sup> *Ibid.*, p. 1.

<sup>253</sup> For a typology of digital democratic processes, see: Panayiota Tsatsou, *Internet Studies: Past, Present, and Future* (Surrey: Ashgate Publishing Limited, 2014), pp. 91-92.

<sup>254</sup> Graham Smith, 'Beyond the Ballot: 57 Democratic Innovations from around the World', *The Power Inquiry* (2005), p. 95.

In addition, participating in deliberative discussion would not be compulsory, mitigating against the concern that the ideal is overly demanding, but would confer a range of tangible and intangible personal benefits upon citizens, encouraging them to participate. For example, we might find that citizens enjoy becoming better informed about political issues, or perceive that deliberation actively helps them by transforming irrational or selfish preferences. We can also anticipate an increase in individual self-respect, a greater appreciation for their fellow citizens' views, and greater individual empowerment, perhaps leading citizens who deliberate to engage more actively with other democratic mechanisms. This may lead them to participate in electoral politics, stand for office, join pressure or special interest groups, or volunteer to join citizen advisory boards.

A deliberative assembly would also support Pettit's account in three key ways. Firstly, it would make it easier for democratic institutions to track any changes in citizens' shared norms. Through simple observation it would be possible to determine whether any new shared norms have emerged from public debate, or if existing norms are no longer supported by citizens, and take steps to accommodate such changes. Secondly, it will enhance citizens' contestatory role in their democracy: through individual empowerment and participation, citizens will be better placed to keep tabs on their government and contest any decisions that they believe are incompatible with the common good. This leads into the third benefit to Pettit's theory, and that is that ongoing, institutional deliberation will encourage greater vigilance amongst citizens. Indeed, Pettit approvingly cites Machiavelli's arguments in the *Discourses on Livy* to the effect that citizens can only ever be truly free from government tyranny when they exercise, 'eternal democratic vigilance.'<sup>255</sup> Ensuring that citizens have access to a community-wide, and easily accessible forum will ensure that citizens are able to alert one another to any governmental depredations, and enable them to mobilise quickly in the event that the government fails to be directed by the common good.

Turning to the specific benefits of such a forum for addressing adaptive preferences, it is important to acknowledge that theorists such as Elster, and Amy Gutmann and Dennis Thompson, have outlined a range of benefits associated with deliberation. The first of these is that outcomes can be deemed to be more legitimate since they will have survived the demanding deliberative process. While I have argued above that the deliberative assembly would lack decision-making powers, this benefit is nonetheless relevant for our purposes. Indeed, it suggests that the preferences that survive the deliberative process will similarly be more legitimate, or at least suggests that citizens will be more justified in holding their preferences since they will have been defended deliberatively with others and will, presumably, cohere with the norm of norms.<sup>256</sup> To

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<sup>255</sup> Pettit, *Just Freedom*, p. 139.

<sup>256</sup> It is important to note, here, that if Pettit is correct that individuals do have community-oriented interests, are sufficiently patriotic, and are able to abstract from their private interests in deliberation, then it seems that we will not require guardians or moderators to oversee the

that extent, we can assume that surviving preferences will be better ‘informed’ than those that will have been discarded. The second benefit of deliberation is that it has been shown to improve the moral and intellectual capacities of deliberators. This would seem to suggest that the educative powers of deliberation may further encourage the transformation of adaptive preferences. The third way in which deliberation may address adaptive preferences is through encouraging the development of civic virtues and inculcating an attitude of civic-mindedness. Indeed, a culture in which deliberation forms a significant component of social interaction, particularly one which encourages individuals to act in accordance with the norm of norms, will likely lead to citizens taking a greater interest in political and social activity, and encourage a greater sense of social awareness.<sup>257</sup> This, we can hope, will have the effect of transforming selfish preferences into more other-regarding preferences and will contribute to the advancement of the common good.

Importantly, the capacity of deliberation to transform adaptive preferences also finds support in empirical research. Indeed, James Fishkin’s and Robert Luskin’s work on deliberative polling has shown the following results: that a statistically significant number of participants’ opinions change through deliberation; that individuals’ voting intentions also change; that participants experience significant information gains in both the issues under consideration and about politics more generally; that preference-changes are information driven; that policy attitudes and voting intentions tend to hinge more on normatively desirable criteria after deliberation; and that preferences do not necessarily polarise into homogenous groups.<sup>258</sup> They go on to argue that while, ‘People may ordinarily not know or think much about politics, and have poorly developed political views as a result,’ their deliberative polls have shown that for many participants it is, ‘clearly possible for them to learn and thus change their views as appropriate.’<sup>259</sup>

Importantly, changes in views and knowledge gains arise even in situations in which individuals are deeply divided in outlook and beliefs, providing us with further evidence that institutionalised deliberation may go a long way towards addressing adaptive preferences. A deliberative forum undertaken in Omagh, Northern Ireland, a region recently characterised by sectarianism and violence, found that, ‘some of the participants’ perceptions of the other community became still more positive, as did some of their beliefs regarding inter-community relations. Protestants came to see Catholics as more trustworthy than they had previously, while Catholics came to see Protestants as both more trustworthy and more open to reason than they

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deliberative process and enforce compliance: the norm of norms, if properly embedded, would be sufficiently self-perpetuating to ensure that individuals deliberate in the requisite way.

<sup>257</sup> Jon Elster, ‘Introduction’, in Jon Elster (ed.), *Deliberative Democracy* (Cambridge: Cambridge University Press, 1998), pp. 1-18 (p. 11); Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Oxford: Princeton University Press, 2004), pp. 10-13.

<sup>258</sup> James S. Fishkin and Robert C. Luskin, ‘Experimenting with a Democratic Ideal: Deliberative Polling and Public Opinion’, *Acta Politica* 40 (2005), pp. 284-298 (p. 290-292).

<sup>259</sup> *Ibid.*, p. 293.



had previously.<sup>260</sup> While the authors of this study acknowledge that the individuals who participated were more favourably disposed towards one another than might have been expected,<sup>261</sup> they nonetheless claim that their forum showed that deeply divided groups:

Can be assembled to discuss policy issues; that, once assembled, they have enough in common to permit meaningful and constructive deliberation; that they tend to emerge better informed about the policies under discussion; that their policy attitudes often change as they learn, think and talk about the issues; that at least some of those changes tend to be in the direction of policies involving greater religious mixing and otherwise plausibly serving the interests of the society as a whole; and that the opposing sides tend to grow more respectful and trusting of each other.<sup>262</sup>

The evidence of deliberative polling therefore seems to show that deliberation has a significant transformative effect upon individuals' preferences, leading many to discard what might be their raw or uninformed preferences in favour of better supported, informed preferences. Indeed, in the case of Catholics and Protestants in Northern Ireland, we can see that attitudes have changed precisely because deliberation has encouraged participants to learn about one another's viewpoints, increasing civility between opposing groups, and giving rise to informed preferences which aim at the common good rather than narrow sectarian interests. It is also important to note that Fishkin has conducted a series of internet-based deliberative polling projects. He found in one poll that the results online were broadly similar to the face-to-face results,<sup>263</sup> and that participants', 'responses were plausibly connected to large increases in information (as measured by separate information questions).<sup>264</sup> These comments all suggest that a formal, institutionalised deliberative institution, digitised to surmount accessibility and motivational issues, can facilitate the transformation of individuals' raw preferences into informed preferences, and thereby mitigate against the problem of adaptive preferences. With that said, there are some objections to this model of digitised deliberation which we must consider.

The first objection to utilising a digitised deliberative assembly to transform individuals' preferences would be that such an approach may make politics increasingly divisive. Indeed, as noted by Benjamin Barber, a problem with digital democracy, 'is the proclivity toward atomism.'<sup>265</sup> He argues that the internet has made it possible for special interest groups, political

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<sup>260</sup> Robert C. Luskin, Ian O'Flynn, James S. Fishkin, and David Russell, 'Deliberating Across Deep Divides', *Political Studies* 62 (2014), pp. 116-135 (132).

<sup>261</sup> *Ibid.*, pp. 131-132.

<sup>262</sup> *Ibid.*, p. 117.

<sup>263</sup> James Fishkin, 'Virtual Public Consultation: Prospects for Internet Deliberative Democracy', in Todd Davies and Seeta Pena Gangadharan (eds.) *Online Deliberation: Design, Research, and Practice* (CSLI Publications, 2009), pp. 23-36 (p. 29).

<sup>264</sup> *Ibid.*, p. 29.

<sup>265</sup> Benjamin Barber, 'The Uncertainty of Digital Politics: Democracy's Uneasy Relationship with Information Technology', *Harvard International Review* 23 (2001), pp. 42-47 (p. 46).

parties, and like-minded individuals to congregate and interact with one another, isolated and insulated from others, thereby reducing the need for inter-group deliberation and dialogue. Importantly Barber goes on to argue that this, ‘Segmentation only undermines community...by dividing us into groups and special interests without common ground, it may foreclose the globalisation of our local communities.’<sup>266</sup> Indeed, Fishkin similarly notes the possibility of internet ‘echo chambers’ in which deliberation produces more extreme views by enabling individuals to deliberate solely with like-minded individuals. The problem, here, is that a digital assembly may make politics more divisive by enabling individuals to eschew compromise and negotiation with others who hold different views, and encourage individuals to simply engage with other likeminded individuals.

While this is indeed a significant concern for this account of deliberation, I want to suggest three reasons why the proclivity towards atomism might not be as straightforward or probable as Barber seems to indicate. The first point to note is that, as argued by Fishkin, group-based deliberation does not necessarily polarise discussion, nor do ‘preferences homogenize within groups.’<sup>267</sup> Indeed, Fishkin notes that polarisation occurs in around half of the small groups involved in deliberative polling,<sup>268</sup> suggesting that polarisation is not as common as it may be thought to be. The second reason why such polarisation is unlikely to completely undermine the model being developed is that norm of norms will exert a filtering effect over the deliberative process by preventing individuals from advancing excessively polarising, selfish, or irrational preferences. Indeed, if this process is self-sustaining and self-perpetuating, as suggested above, we can hope that individuals will voluntarily comply with the requirements of the norm of norms and couch their arguments and interests in terms that others can accept as admissible criteria for argumentation: this should filter out excessively polarising, selfish, and irrational preferences. This will hopefully have the effect of encouraging citizens to seek common ground in their deliberations, and thereby actively reduce the number of cases in which polarisation occurs. The third point to note, in anticipation of later chapters, is that a civic education will also go some way towards mitigating against polarisation and political divisiveness. Indeed, we can hope that a well-designed education may also have a transformative effect upon the democratic process by creating a more politically aware and engaged citizenry who, rather than seeking to avoid engaging with other viewpoints, would be empowered to deliberate with others in pursuit of their common good. Although these comments do not decisively refute Barber’s concerns, they do suggest that a digital assembly which ensures that citizens are able to engage in reasoned deliberation, and in which the stakes are ‘low’ (i.e. there are no winners or losers since political decisions will be

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<sup>266</sup> *Ibid.*, p. 47.

<sup>267</sup> Fishkin and Luskin, ‘Experimenting with a Deliberative Ideal’, p. 292.

<sup>268</sup> *Ibid.*, p. 292.

taken elsewhere in the democratic system), may be able to avoid a problematic degree of polarisation.

The second issue with digitised deliberation is that it seems unlikely to be realised in the short-term. Indeed, it might be argued that relying on individuals to actively participate in online deliberation is excessively utopian in light of well-documented voter apathy. In response to this concern it is important to note that although digital democracy is largely in its infancy, digitised deliberation is being developed in various guises across the world, and is being used successfully to supplement existing democratic procedures. Indeed, in addition to the rise of e-petitions in the UK, Minnesota has developed its own E-Democracy system, providing an online forum which aims to facilitate internet-based dialogue and deliberation between citizens, enabling citizens to discuss local and national issues.<sup>269</sup> Estonia provides another example of a successful digital democratic revolution. With its 'e-Estonia' system, the country offers its citizens access to internet voting, an online document sharing platform (DigiDoc), an e-Court system, an e-Prescription system, and a huge other range of services, many of which can be accessed via free Wi-Fi access throughout the nation. We can see, then, that digital processes have the capacity to significantly alter the ways in which democratic procedures are conducted and suggests that a deliberative assembly, along the lines suggested here, could be realised in the near future.

Finally, it is important to note that a digital deliberative assembly would surmount each of the concerns that Elster levels at deliberative democracy. In eschewing compulsory participation, we ensure that deliberation does not become a paternalistic constraint on individuals' lives, and in withholding decision-making powers from the assembly, we make it less likely that a deliberative elite will emerge to acquire important powers. In addition, since the assembly is simply a process for transforming citizens' preferences, we will not need to enforce unanimity or develop mechanisms for resolving deadlocks. Indeed, because the assembly would lack decision-making powers, social outcomes cannot be made worse by deliberation: social outcomes would be determined elsewhere in the political system, primarily through the determination of regulatory norms, the selection of representatives, the actions of the indicative representatives, and the decisions made by representatives in accordance with the common good. We have also already seen above that group polarisation and atomisation can be mitigated against within this model, and so Elster's concern that deliberation may make individuals more selfish or irrational need not overly concern us. Indeed, the empirical research shows that the proclivity towards atomisation only occurs in around half of deliberative groups, and when combined with the norm of norms and a civic education, we have reason to hope that citizens' preferences will become less irrational or selfish and will not polarise around extremes. This also suggests that Elster's sixth objection, that unanimity may be the result of group think rather than rational

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<sup>269</sup> Smith, 'Beyond the Ballot, p. 95.

agreement, is not a concern for this model because we are not seeking unanimity and participants are not required to reach a consensus: it is simply a process for transforming individuals' preferences and reasonable disagreement is still likely to exist after deliberation. Finally Elster's seventh concern, that requiring citizens to couch their preferences in terms of the common good may enable them to pursue selfish interests, is not a significant concern for a non-decision-making assembly. Indeed, while it would be possible for individuals to attempt to persuade others to support their selfish preferences, there will be no immediate gains for individuals who do so: decision-making powers are reserved for representatives who are constrained by the common good. Attempting to derive benefits from the political process through manipulating others deliberatively will therefore take a considerable amount of time and will most probably be unsuccessful. This is because doing so will require that manipulators convince others to support their aims; and then attempt to convince them to elect representatives to pursue these aims; in a way which will not be contested by other constitutional actors within the political system; and in a way which does not transgress society's regulatory norms. It therefore seems unlikely that individuals could successfully pursue selfish preferences through the deliberative assembly since Pettit's account of the state, in which this assembly would be situated, disperses power across a range of actors and institutions, ensuring that the system remains subject to the influence and direction of its citizens.

Although my suggestion of creating a digitised deliberative assembly has only been outlined in broad strokes, it does seem that an institution of this kind would be able to go a long way towards addressing the problem of adaptive preferences if adopted as a supplement to Pettit's account of the state. It would also be able to support Pettit's account of democratic legitimacy by making it easier to track changes in the common good, by empowering citizens to fully participate in their society and contest their government if it fails to act in accordance with the common good, and helps to secure citizens' capacity to exercise eternal vigilance over their government and thereby safeguard their liberty.

### **Undermining Democratic Legitimacy**

We can now see that Pettit's account provides a robust theory of democratic legitimacy which ensures that citizens are able to exert influence and direction over governance, thereby guarding against *imperium*, and which, if supported by a deliberative institution such as the assembly outlined in the previous section, would also be able to go some way towards mitigating against the problem of adaptive preferences and thereby support the aim of securing social justice. Assuming that such an institutional system could be realised, and that republican social justice were secured within this system, we would seemingly have cause to proclaim that the citizens of such a state are free from domination. This would, however, be premature for two interlinked

reasons. Firstly, multinational corporations have the power to undermine republican social justice (as noted in the previous chapter) and democratic legitimacy. Secondly, other states and transnational actors have the power to undermine social justice and democratic legitimacy. It is therefore useful to end this chapter by briefly considering each of these problems.

The first way in which multinational corporations might undermine democratic legitimacy is through utilising their wealth and power to fund the campaigns of representatives who will help them to pursue their aims. Pettit is aware of this problem, what he calls the ‘influential lobby problem’ and suggests that constitutional mechanisms, including independent watchdogs, will guard against any undue corporate influence. Nonetheless, we may have reason to be concerned that particularly powerful agents may be able to circumvent these mechanisms by also influencing the workings of watchdogs, judges, and the media. Indeed, owing to the resources and power that multinationals can utilise, it would be possible for them to obtain an inordinate amount of influence over many democratic and constitutional actors, undermining the requirement that citizens, and citizens alone, are able to influence and direct their government. In doing so, they would undermine democratic legitimacy, rendering governance arbitrary and dominating.

Even if multinationals did not engage in outright corruption by buying influence, their capacity to relocate their operations to other, more amenable, states enables them to exert an excessive degree of control over the workings of an otherwise democratically legitimate state. It would be perfectly plausible for a situation to arise in which virtuous representatives and other political actors are forced, in the interest of securing social justice, to grant the preferences of multinationals an undue level of consideration in the formulation of policies so that the corporations do not leave. Indeed, if a state were unduly dependent upon corporations for jobs or taxes, this may lead political actors to deregulate industry, to suspend or more heavily regulate union activities, or permit multinationals to pollute more intensely. The need to secure social justice and resource the basic liberties may, for example, require that governments provide social welfare or free healthcare in order to secure individuals against dependency, and may lead governments to grant exemptions or privileges to multinationals in order to secure an increased revenue to fund these measures. This, again, will undermine the requirement that citizens exert influence and direction over governance, since multinationals’ interests will actively mitigate government’s pursuit of the common good, and would lead to domination.

Indeed, multinationals’ capacity to undermine democratic legitimacy consists of two distinct powers: the threat to leave; and actually leaving. Governments who are financially dependent upon multinationals, or countries in which significant numbers of citizens are employed by multinationals, will be acutely aware of a need to placate these agents and will seek to please them of their own volition. As noted above, this may involve pursuing policies which directly advantage multinationals, or it may involve including them in some way in the decision-

making process. This will undermine democratic legitimacy because governments will be forced to pursue corporations' good in order to secure their citizens' good. If governments do refuse to kowtow or bow to multinationals, the implicit threat to leave may become a reality. In such a case, the jobs, resources, and prosperity secured by the corporations' presence will be lost and governments will be less able to secure individuals' basic liberties because there are fewer jobs and public funds available. The problem, then, is that we find that states may become dependent upon multinationals in a way which mirrors Nora's dependence upon her husband, with multinationals exercising invigilation and intimidation over governments. Should governments attempt to increase corporation taxes, regulate industry, or increase worker protections, multinationals can simply announce their intention to leave. This will have the effect of correcting dependent governments' actions, thereby evidencing that whatever policies are pursued by governments are done only with the permission of these corporations. If governments are aware of this relationship, and they most likely will be, it is probable that they will be intimidated into not even attempting to pursue such policies, leading them to act as though subject to a threat. In either case, multinationals will successfully dominate states, undermining both the people's freedom (when conceptualised as a corporate agent), and individuals' freedom (since they will no longer be influencing and directing their government).

While we will consider Pettit's account of international politics and sovereignty in more detail in the next chapter, it is useful to briefly note, here, that absent an international system of regulation, it is also possible for nations to undermine the democratic legitimacy of other nations, and similarly undermine their capacity to secure social justice. The most obvious way in which nations may dominate one another is through invasion and colonialism. In this case, the democratically legitimate government of a state is supplanted by another, and the new government is unlikely to be one which is constrained to further the common good of citizens. Examples of this would include the various puppet governments set up by the Soviet Union, which governed other nations through local communist parties. As noted in the first chapter, the republican concern with Britain's colonial governance was that the colonists were entirely dependent upon the goodwill of the British Parliament which was not subject to the laws that it passed. In addition to these more obvious forms of international domination, there is the possibility of powerful states imposing economic or other sanctions on legitimate governments (undermining their capacity to secure the basic liberties for their citizens), enforcing coercive trading agreements, luring away talented individuals or those with skills required in weaker states (the brain drain effect), and undertaking action to destabilise legitimate governments.

Importantly, in addition to actually intervening in the governance of other states in these ways, it is possible for invasion, sanctions, coercive agreements, and destabilising action to be threatened or implied. Indeed, many smaller or weaker states may act as their oppressors want without any need for action or a threat: in the same way that Nora acts *cum-permissu*, weaker

states may find that their decisions are subject to invigilation and intimidation by their more powerful neighbours. In this way, democratically legitimate states may be unable to secure the basic liberties for their citizens, thereby failing to secure social justice, and be forced to act contrary to their citizens' will, thereby failing to secure democratic legitimacy.<sup>270</sup>

Although brief, these comments highlight a significant concern for neo-republicanism: it is impossible for states to secure freedom for their citizens without an overarching framework designed to protect states and their citizens from other external dominators. Indeed, because other nations and international actors are able to undermine democratic legitimacy, forcing governments to act contrary to the will of their citizens, we must surely conclude that the tough-luck test will remain unsatisfied. Citizens cannot accept, as a matter of tough luck, that their society is heavily polluted if a corporation has been granted special exemptions by a corrupt government. Citizens cannot regard it as tough luck that their government pursues a policy of deregulation if the government must do so for fear that huge corporations will move elsewhere. Citizens of weaker, developing nations, which invest their resources in training key workers, cannot regard it as a matter of mere tough luck that their doctors and nurses are lured to wealthier countries which are able to drain them of the resources that they need. What each of these examples shows is that no state can secure non-domination for its citizens if its capacity to protect and promote the basic liberties and ensure that citizens enjoy influence and direction over governance is dependent upon the forbearance or goodwill of transnational, international, and multinational agents. Of equal importance, and as we will see in the next chapter, it may be possible for transnational agents to control individuals within just states without necessarily controlling the state itself. These issues, which we can broadly call instances of transnational domination, are the focus of the next chapter.

## **Conclusion**

My aim in this chapter has been to outline Pettit's account of democratic legitimacy in detail in order to show that it is possible to secure political control without giving rise to *imperium*, while also arguing that Pettit's account requires a minor amendment to address the problem of adaptive preferences. Centrally, I have indicated that individuals may not be free from domination even if their government secures social justice and is subject to their influence and direction. This is because external agents, including multinational corporations and other states, have the capacity to exert arbitrary control over democratically legitimate governments, and suggests that individual

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<sup>270</sup> Philip Pettit, 'A Republican Law of Peoples', *European Journal of Political Theory* 9 (2010), pp. 70-94 (pp. 77-79).

freedom can only be secured in an overarching political system which acts as an appropriate constraint on all agents.

To that end, the first section outlined Pettit's account of democratic legitimacy, in which legitimacy is secured when citizens' exercise influence and direction over governance, and Pettit's argument that citizens' influence over government is secured through an electoral democracy supplemented by constitutional and quasi-constitutional mechanisms. I then outlined Pettit's accounts of the cooperatively-admissible considerations and norm of norms as mechanisms for deriving the common good which would act as a constraint on government action and secure an equally acceptable direction on governance. The first section ended with a brief discussion of the 'tough luck' test which acts as a yardstick for measuring the extent to which a government is democratically legitimate.

The second section then outlined two counterarguments to Pettit's account of democratic legitimacy. The first, advanced by Bellamy against Pettit's earlier work, argues that constitutional and quasi-constitutional mechanisms, particularly a bill of rights and the process of judicial review, are incompatible with securing individual non-domination. I responded to Bellamy's concerns by outlining three problems that Pettit argues should lead us to combine democracy with constitutionalism. These are the sticky minority, party interest, and influential lobby problems, and show that democracy on its own cannot secure non-domination. I then outlined Thompson's claim that it would be inappropriate to track citizens' interests through democratic processes because individuals are subject to manipulation and adaptive preferences and tracking these warped interests will simply entrench domination. I responded to this objection by arguing that it is unlikely that all individuals are subject to manipulation, and that Thompson's preferred solution to the problem of domination is wholly paternalistic and perfectionist and, as argued in the first chapter, therefore dominating.

The third section then turned to a more foundational issue for an account of democratic legitimacy, and that is exactly how we should determine the common good which exerts direction over a legitimate government. After outlining and critiquing Thompson's objective account of the common good, I argued that Bellamy's aggregative approach should be understood to be a version of social choice theory. As such, it is subject to a series of objections which Elster outlines, primarily that if expressed preferences are tracked as components of the common good, we may simply be responding to preferences that individuals think they have, or that they think are realisable, or those which they falsely express. This is problematic for two reasons: it will fail to address the problem of adaptive preferences, and will instead grant them a privileged role in determining how citizens are controlled; and it will fail to secure an equally acceptable direction on governance because the common good may be comprised by a set of norms that no-one actually prefers.



The fourth section examined Elster's suggestion that we determine the common good deliberatively and then analysed Pettit's account of the common good which aims to derive a set of regulatory norms (which cohere with the norm of norms) from dispersed deliberative interactions between citizens at a range of political and civil sites. After outlining Pettit's deliberative ideal, I then argued that his account of the common good is able to surmount each of Elster's concerns, while also arguing that it requires amendment to address the problem of adaptive preferences.

The fifth section argued that Pettit's account of the state and democratic legitimacy should be supplemented by a formal institution tasked with enabling citizens to transform their raw preferences into informed preferences. As a suggestion for how we might design such an institution, I outlined a digital deliberative assembly, as well as discussing how it would support Pettit's theory and mitigate against the problem of adaptive preferences.

The final section briefly outlined that even if a society secured the basic liberties and met the requirements for democratic legitimacy, it would be premature to believe that its citizens are free from domination. This is because a state's capacity to secure the basic liberties and enjoy democratic legitimacy is dependent upon the ongoing goodwill of external agents such as multinational corporations, other nations, and supranational institutions. I have concluded that no society will enjoy non-domination if its capacity to protect and promote the basic liberties and ensure that citizens enjoy influence and direction over governance is dependent upon the forbearance or goodwill of transnational, international, and multinational agents, and indicated that individuals may also be subject to control by transnational agents which bypasses the state.

## Chapter Three – The Problem of Transnational Domination

### Introduction

Chapter Two argued that while it is possible for states to secure social and political justice, as well as address the problem of adaptive preferences, citizens may still nonetheless be subject to domination. This is because internally just states may be subject to arbitrary control from external agents such as other states, international institutions, and private transnational agents such as multinational corporations. While Pettit is correct to identify this problem, there is an additional way in which transnational domination might occur. This is that transnational agents may exert control which affects spatially dispersed individuals who reside in socially and politically just states without dominating these states themselves, giving rise to the problem of ‘individualised’ transnational domination.

My aims in this chapter are threefold. Firstly, I aim to show that there are two distinct forms of transnational domination which neo-republicanism ought to be concerned with. The first is the form of domination which Pettit identifies, wherein transnational agents interfere or threaten to interfere with states. The second form, ‘individualised’ transnational domination, occurs when transnational control bypasses the state and interferes in the lives of individuals. Secondly, I aim to show that Pettit and James Bohman’s theories of transnational governance are unable to address both forms of transnational domination and suffer from a number of other problems. Finally, I aim to show that securing global non-domination requires that we acknowledge both of the ways in which transnational domination might occur, and that we develop a transnational political system which would prevent transnational agents from dominating one another, while also responding to the ways in which control is exerted across borders. This chapter is therefore central to the aim of developing an account of neo-republican freedom as it will outline the central issues which we will need to consider in developing an alternative account of global non-domination in the next chapter.

To that end, this chapter will proceed as follows. The first section will outline Pettit’s conception of transnational domination, which sees transnational domination as a problem in which states are subject to interference (or the threat of interference) by other transnational agents. It will then discuss the problem of individualised transnational domination and the possibility of control bypassing the state and interfering in the lives of individuals. The second and third sections will then outline and critique Pettit’s accounts of transnational non-domination as presented in *A Republican Law of People’s* and *Just Freedom* respectively, arguing that both accounts are subject to critiques that Pettit himself has offered in his previous work. The fourth section will then consider Bohman’s *Democracy across Borders* in detail, arguing that while his

suggestions may address individualised transnational domination, they will fail to protect states' capacity to secure social and political justice. The fifth section will then draw together the insights of the preceding discussion in order to argue that addressing the problem of transnational domination should lead us to pursue a strategy of constitutional provision at a global level, as endorsed in Pettit's earlier work. This would entail the creation of a multi-level system of governance in which states' abilities to secure social and political justice are protected from external interference, and would require a transference of powers from the states to transnational and sub-state levels of decision-making so that we can develop a means for ensuring that control which differentially affects spatially-dispersed individuals can be rendered non-dominating. The final section will conclude.

### **The Two Faces of Transnational Domination**

We have seen in the previous chapters that even if a state secures social justice and democratic legitimacy, the citizens of that community may still be unfree because external agents can dominate them. Indeed, Pettit concisely outlines that, 'If such a state were dominated by an outside agency, then its citizens would also be dominated by that agency, since any restrictions at the level of the state would inevitably involve restrictions on their democratic lives. And so we see that the ideal of the free person or citizen requires that the state that protects people against private domination ought to be, not only internally undominating, but externally undominated as well.'<sup>271</sup>

Such external agents, Pettit argues, will include other states, non-domestic, private associations with power and resources comparable to states (including multinational corporations, churches, terrorist organisations, and powerful individuals), and non-domestic, public bodies created through international agreements (including the United Nations, the World Bank, the International Monetary Fund, the European Union, and the North Atlantic Treaty Organisation).<sup>272</sup> Before we consider Pettit's evolving account of how we might secure states against external domination, it is useful to outline exactly how each of these external agents can exert domination over states and their citizens.

Starting with inter-state domination, Pettit argues that there are a variety of ways in which states may exert arbitrary control over other weaker nations. They might, for example, undertake the following activities: engage in military intervention; infiltrate a society with secret agents; bribe or blackmail officials; exert economic pressure (perhaps through dumping goods on the world market to undercut another nation's competitiveness, selling another nation's currency and

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<sup>271</sup> Pettit, *Just Freedom*, p. 151.

<sup>272</sup> Pettit, 'A Republican Law of Peoples', p. 77.

thereby deprecating it, or freezing other nations' holdings in banks); exploit other nations' dependence on resources such as water or energy in order to extract concessions; or through utilising democratic pressure to create bad publicity, triggering problems with allies and trading partners, and working to undermine nations' influence in transnational decision-making. Importantly, and as noted in the previous chapter, states may not actually need to resort to these measures in order to be dominating. It would be possible for states to invigilate the actions of weaker communities, standing ready to intervene in any of these ways should the weaker state act in any way which stronger states do not approve of. Even more problematic is the fact that weaker states may be aware of this relationship of dependency and will act accordingly: in being subject to invigilation and intimidation in this way, they will act as the stronger states prefer of their own volition. Pettit concludes that, 'This is the most powerful form of alien control, requiring nothing of A and allowing B to pretend to its independence, as it may wish to do for a variety of reasons.'<sup>273</sup> This will ensure that the dominating state gets its own way without having to stoop to actual interference and permitting it to avoid condemnation.

Pettit goes on to argue that multinational corporations and other non-domestic private associations can primarily utilise their non-domiciled status and resources to exercise arbitrary control. They can do this, as noted in the previous chapters, through establishing themselves as sources of employment or as a significant tax contributor, and then moving offshore. This can have the effect of causing serious economic problems for states, and can create problems for local communities who are heavily dependent upon these sources of employment. In addition, they may be able to utilise their immense resources to fund political campaigns of supportive representatives or fund opposition candidates if representatives are uncooperative. Similarly, they can use their resources and political power to lobby governments for special exemptions or privileges (this might include, for example, securing favourable tax rates, an easing of environmental regulations, or securing a church's charitable status), finance negative publicity campaigns, and challenge legislation in courts, using their immense resources to tie up the enactment of legislation for years. As with states, it is possible for multinational corporations and other private associations to exercise their power without direct interference. They would be able to invigilate government decisions, standing ready to intervene should governments pursue unwanted policies, and intimidate governments into pursuing their ends without actively interfering if governments are aware of their dependence upon these organisations for jobs, taxes, or political support. Indeed, 'The powerful corporation may never need to make a threat of moving elsewhere or of financing an opposition or of supporting negative publicity in order to control the government of a representative state. It will already enjoy control just insofar as the state is

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<sup>273</sup> Ibid., pp. 77-78.

disposed to go along with its wishes, say because of wanting to court the corporation's goodwill.<sup>274</sup>

Finally, it is also possible for states and their citizens to be dominated by international organisations such as the World Bank or the International Monetary Fund. Such institutions can do so in the following ways: denying specific states benefits that they make available to comparable states, undermining that state's capacity to compete on equal terms with others; deny states credit; increase interest rates on loans; denying them access to sources of funding; or downgrading a state's credit rating. As with the other agents, it is possible for international bodies to exercise domination without actually engaging in intervention. Indeed, rather than denying states credit, such institutions can make clear that states will need to make certain changes or concessions in order to access funds, leading states to pursue the aims of international bodies without these institutions having to directly interfere. This has the advantage of concealing the control being exercised, and thereby enables international institutions to avoid outright challenge.<sup>275</sup> Importantly, such institutions might also be controlled by powerful states or individuals, enabling these agents to control other states without this control being evident to the subjects of domination.

We can see, then, that Pettit is primarily concerned with the ways in which *states* might be subject to domination by other transnational agents. Nonetheless, I think it is important to enlarge our focus and look at the ways in which control can bypass the state and interfere with individuals. For example, if a state were to decide to close its borders against all Muslims, this policy would not directly coerce a specific state but would control many spatially dispersed individuals. Similarly, if a multinational corporation decided to flood the world's markets with a specific good (which, for the purposes of this example, we can assume is not an integral component of any state's economic policies), then this decision will again interfere with many individuals whose livelihoods depend on selling this good, and yet the multinational corporation will not be interfering with any specific state. That is, in flooding the market and ruining their competitors, the corporation will have interfered with other individuals' lives and yet the state may remain unaffected by this action: indeed, if the multinational pays the appropriate amount of tax, the state may actually benefit overall from this action. It seems that in both of these examples, it is possible for transnational agents to interfere in individuals' lives without interfering with a state.

What these examples show is that interference does not occur solely between transnational agents (i.e. between states, international organisations, transnational private institutions, and multinational corporations) but can be exercised by a transnational agent over

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<sup>274</sup> Ibid., pp. 78-79.

<sup>275</sup> Ibid., p. 79.

spatially dispersed individuals. That is, control can cut across national borders, exerting a significant degree of coercion over individuals in states which might enjoy external protections against domination. This form of domination, what we might call individualised transnational domination, is therefore distinct from the form of transnational domination identified by Pettit because *control is exercised over individuals rather than states*.

Indeed, this problem has been explored at length by James Bohman, who argues that, ‘increased global interconnectedness [has] differential impacts that increase the potential for domination and impose a scheme of cooperation on those affected by increasingly indefinite social activity.’<sup>276</sup> These social activities are indefinite in that they affect an indeterminate number of spatially and temporally dispersed groups, who we can identify but not individuate. For example, he argues that the actions of huge corporations and institutions, such as the World Trade Organisation (WTO) or International Monetary Fund (IMF) which regulate global markets, exert a great deal of influence over the choices of many individuals across the globe. We cannot easily specify which individuals are affected, or the specific ways that their life-choices are constrained or impacted upon, but we know that this process happens.<sup>277</sup> This leads Bohman to argue that:

If social actions are indefinite in this way, then we cannot choose those with whom we must cooperate, and in the absence of such a choice the existing scheme of cooperation must be open for negotiation and deliberation. Interdependence via indefinite activity thus establishes the scope of political obligation, precisely because the circumstance of global politics emerges through nonvoluntary inclusion in indefinite cooperative schemes. Inclusion in such schemes is a form of domination.<sup>278</sup>

An additional problem, Bohman argues, is that states’ attempts to respond to globalisation, through the creation of transnational institutions and authorities, has resulted in authority becoming deterritorialised and denationalised.<sup>279</sup> Problematically, ‘While delegated authority need not be tyrannical or coercive, it easily becomes a form of domination when it fails to offer opportunities for ex ante influence and post hoc accountability.’<sup>280</sup> There is a concern that with the delegation of authority to supra-national institutions, such as the WTO or European Union, that individuals, ‘are now included in various schemes without being individuated, [and] globalization has certainly broadened the scope of potentially arbitrary authority... It has also been destructive for many political communities and thus undermined the capacity of those who are nonvoluntarily included in such plans to contest the authority that others exercise at a distance.’<sup>281</sup>

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<sup>276</sup> Bohman, ‘Republican Cosmopolitanism’, pp. 336-337.

<sup>277</sup> *Ibid.*, p. 339.

<sup>278</sup> *Ibid.*, p. 340.

<sup>279</sup> *Ibid.*, p. 346.

<sup>280</sup> *Ibid.*, p. 346.

<sup>281</sup> *Ibid.*, p. 342.

Bohman claims that, ‘to have robust nondomination is to have a particular kind of normative status, a status allowing one to create and regulate obligations with others. This is the status of being a citizen.’<sup>282</sup> Securing such a status is necessary in an increasing globalised world in which there has been an, ‘emergence of incompletely defined forms of international political authority that are no longer contained within a political community,’<sup>283</sup> giving rise to the new circumstances of politics. These new circumstances are that global activities now affect an indefinite number of individuals, who we cannot individuate but can specify, and who find themselves involuntarily co-opted into schemes which they have no control over. As an example, Bohman notes that, ‘The actions of a large multinational corporation or of institutions that regulate financial markets influence the life possibilities of indefinite others – as when, for example, decisions in China affect workers in many, but not all, locations.’<sup>284</sup>

As a result of this extension of control across borders, Bohman claims that the old republican claim that to be free is to be a citizen of a free state is no longer sufficient. That is, being a citizen of a state which is internally just and which enjoys protections against external interference is insufficient for securing non-domination because transnational institutions and corporations have the capacity to control individuals within free states, suggesting a need to rethink how we conceptualise the concepts of membership and citizenship in order to respond to the problem of transnational domination.<sup>285</sup> In addition, because control is dispersed and impacts upon different people in different ways, the ideal of a self-legislating demos, in which citizens engage in self-rule (as in Pettit’s democratically legitimate state), is becoming increasingly redundant as it relies on a clearly delineated political community, ‘consisting of all those and only those who are full citizens.’<sup>286</sup> While such communities are failing to secure their citizens’ non-domination, they can also come to occupy the role of dominators by controlling other agents and denying them influence and direction over the ways in which they’re controlled.<sup>287</sup>

It is important to be clear, here, that the various transnational agents capable of interfering with states which Pettit discusses are also capable of exerting individualised transnational domination. For example, a state which unilaterally closes its borders to another state as a punishment for not doing what it wants will be exerting transnational domination but if the same state decides instead to close its borders to a specific group of spatially dispersed individuals it will be exerting individualised transnational domination. The distinction, here, is between the United States refusing to allow the citizens of specified countries to enter its borders, exerting

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<sup>282</sup> James Bohman, *Democracy across Borders: From Demos to Demoi* (London: The MIT Press, 2007), p. 9.

<sup>283</sup> *Ibid.*, p. 22.

<sup>284</sup> *Ibid.*, p. 25.

<sup>285</sup> *Ibid.*, pp. 24-26.

<sup>286</sup> *Ibid.*, p. 29.

<sup>287</sup> *Ibid.*, pp. 30-45.

control over these *peoples*, and the United States implementing a blanket ban on Muslims entering the country. In the latter case, Muslims are a dispersed group of individuals whose co-nationals might not be subject to similar control: a British Muslim would be denied entry whereas another British citizen would not be.

Importantly, we find a similar distinction between the kinds of control which might be exerted by private transnational corporations and international organisations. Indeed, if a multinational corporation extracts favourable terms from a state for not moving elsewhere, it will be dominating that people. But it may also be able to dominate individuals rather than a people by, for example, undercutting competitors and using its immense resources to sell services and goods at a loss in order to ruin other corporations and individuals' livelihoods. These actions will interfere with the lives of individuals without necessarily impacting upon the people or state. Alternatively, imagine that a multinational is operating in a deprived area in a given state, providing local inhabitants with numerous jobs and providing the state with the taxes that it needs to pursue social justice. We can further imagine that the underpaid local citizens decide to unionise in order to improve their bargaining power with the corporation. The corporation, however, does not want to concede anything to the workers and so moves to another deprived area *within* the state. In this case, the corporation deprives specific citizens of employment but does not dominate the state since it remains within the state's borders, paying the same taxes. In this case, the multinational is surely not dominating the people or state but it is dominating individuals within that state.

Finally, it is also possible to imagine a situation in which an international organisation might dominate individuals rather than peoples or states. For example, suppose that an organisation such as the EU were to begin to legislate against the rights of the Roma or the Jewish diaspora living within EU Member States. In this case, the legislation would not control a specific state but would instead impact upon the lives of spatially dispersed individuals living within states.

There are, then, two forms of transnational domination with which neo-republicanism ought to be concerned. The first form of transnational domination, identified by Pettit, occurs when control is exercised over states by other states, transnational institutions, and private transnational associations (including churches and multinational corporations). Individualised transnational domination, however, is concerned with the ways in which control can bypass the state and be exerted over individuals. With these comments in mind, we can now turn to an examination of Pettit and Bohman's suggestions for securing global non-domination. Since Pettit addresses these issues at length in *A Republican Law of Peoples* and *Just Freedom*,<sup>288</sup> my focus

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<sup>288</sup> Indeed, I will not consider his comments in *On the People's Terms* since Pettit explicitly states he has little to say about transnational domination or sovereignty in this book. See: Pettit, *On the People's Terms*, p. 19, and pp. 161-162.



will be on outlining and analysing these accounts of international justice, showing that they are unable to secure non-domination and are inadequate according to Pettit's own arguments in *Republicanism: A Theory of Freedom and Government*.

### **Global Reciprocal Power**

In *A Republican Law of Peoples* Pettit defends a global version of the strategy of reciprocal power, a strategy which we saw in the first chapter is rejected by Pettit at the domestic level. Indeed, after outlining that it would be foolish to allow a single state to assume the role of a world police force (since this state would become an unconstrained source of domination), he goes on to argue against the creation of an international regime, modelled upon the domestic state, charged with constraining states and other international agents. He does so because he believes that a world state, (even if subject to the usual republican mechanisms of electoral representation, a separation of powers, the rule of law, and subjection to sanction by constitutional and quasi-constitutional agents), would be inefficacious. This is because he argues that a world state would lack the requisite resources for policing the entire globe, and it would be utopian to expect more powerful states to agree to a power-sharing arrangement with weaker states in which each has an equal say in the governance of the world. He goes on to argue that while a regional body such as the E.U. might be able to achieve a high degree of discipline over its member states (although this is less pronounced with stronger members), it is unlikely to occur on a global scale. Indeed, as an example he notes that in 1986 the International Court of Justice ruled that the United States had broken international agreements in supporting guerrilla warfare in Nicaragua and mining in Nicaraguan ports. The United States responded by rejecting the idea that the Court had jurisdiction in this case and withdrew temporarily from the jurisdiction of the Court.<sup>289</sup> This example, Pettit argues, shows that attempts to create an overarching system of governance to constrain states and other international agents would ultimately fail because powerful states would simply refuse to be bound by its rulings.

Pettit goes on to argue that while international bodies would therefore be ineffective in policing the world, they could be instrumental in the emergence of a set of international cooperatively admissible considerations: that is, they could facilitate the emergence of a set of norms which all agents recognise as valid considerations, and lead to the emergence of something like a global common good which mirrors the domestic common good. This would be conducive to securing global non-domination, Pettit argues, because a system of international regulatory norms would exert some constraint on the actions of states who would be concerned with avoiding ostracism and ignominy for failing to adhere to globally accepted norms. Importantly, this will

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<sup>289</sup> Pettit, 'A Republican Law of Peoples', pp. 80-82.

not preclude all forms of domination, such as the exertion of economic or diplomatic power, and Pettit suggests that it may be necessary for weaker states to combine into groups which would allow their collective power to weigh against the power of stronger states. These blocs would provide a check on powerful states, and would force states to engage in deliberation (in accordance with globally accepted norms) to resolve their problems. Pettit concludes that, ‘Each aspect of the package recommended involves multilateral action: on the one side, the ‘totilateral’ organization of all states behind international agencies and, on the other, the ‘plurilateral’ organization of different subgroups of states into blocs that can effectively compete with their stronger rivals.’<sup>290</sup> Finally, Pettit also argues that if states fail to be representative or secure non-domination, there may be a need for multilateral intervention because, ‘representative states will have commitments that give them normative reason for a concern with rectifying the problems of those who live under ineffective and non-representative states.’<sup>291</sup> This intervention might entail, ‘ineffective and non-representative regimes being replaced by states that are representative in the requisite sense,’<sup>292</sup> because such states:

May provide a home ground for terrorist organizations that threaten the best-ordered states; they may contribute massively to problems of world health, incubating diseases that threaten global epidemics; they may be sources of environmental damage, even global climate change, due to projects of deforestation or the lack of pollution controls; they may become the main providers of dangerous drugs, to be exported illegally to first-world markets; and they may generate waves of illegal immigration into richer countries, threatening the political cultures of those regimes.<sup>293</sup>

While the suggestions in *A Republican Law of Peoples* seem to offer an initially plausible account of transnational non-domination, it is important to note that they run counter to arguments that Pettit himself has made in *Republicanism: A Theory of Freedom and Government*. Indeed, if we adopt the proposed measures then we will be committed to something like the strategy of reciprocal power, a strategy for securing non-domination which we discarded in the first chapter. This is because, as we’ve seen above, Pettit argues that it will be necessary for weaker states to organise into blocs which would be able to check stronger states’ capacity to exert domination over them (in addition to developing a set of global cooperatively-admissible considerations). We can see that this directly mirrors the strategy of reciprocal power because, ‘each achieves non-domination through having resources sufficient to ensure that every act of interference by another can be effectively resisted.’<sup>294</sup> combining into blocs is a means for resisting the depredations of powerful states.

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<sup>290</sup> Ibid., pp. 82-85.

<sup>291</sup> Ibid., p. 89.

<sup>292</sup> Ibid., p. 90.

<sup>293</sup> Ibid., pp. 89-90.

<sup>294</sup> Pettit, *Republicanism*, pp. 93-94.

There are, however, two significant problems with this approach, both of which Pettit has outlined. The first is that following this strategy will create something like a global arms race. Indeed, we can imagine a situation in which one state enjoys a degree of dominance over other states, and smaller states respond by combining into a bloc with the aim of securing a balance of power (assuming that these states are reasonably altruistic and only want to check others' power). The powerful state will then find itself opposed by an alliance of states: in such a situation this state would rightly fear that it may become subject to the alliance's power since it is dependent upon the alliance only seeking to maintain the balance of power rather than exerting arbitrary control. Since the powerful state cannot enjoy non-domination as long as it is dependent upon the alliance's forbearance and goodwill in only aiming to secure a balance of power, it would be rational for the powerful state to seek to secure itself against others through creating its own alliances or through developing its technological or military capacities. We can further imagine that each state would act similarly: since all are concerned about others' capacity to dominate them, each would seek to secure itself through alliances or increasing its power. Problematically, 'if everyone seeks to protect themselves against interference from others... then the result is bound to be a war of all against all.'<sup>295</sup> This is because, 'Each will naturally prefer a strategy of self-protection, including pre-emptive self-protection, to a strategy of involving unilateral disarmament... People will dig themselves into a hole; they will individually act in a way that is collectively self-defeating.'<sup>296</sup>

Something like this imagined situation occurred before the outbreak of World War I. Late in the 19<sup>th</sup> century the new German state bound itself to Austria-Hungary and Italy in order to counter-balance the power of the Tsars, with France later allying with Russia to combat the threat of German dominance in central Europe. Britain, finding itself isolated, signed an agreement with France, and later with Russia. Thus emerged two blocs, the Triple Alliance and Triple Entente, the members of which sought to protect themselves against the power of others by coalescing into blocs. Sadly this did not have the effect of containing powerful agents and instead precipitated a war because combining into blocs to combat the power of others simply resulted in the encirclement of Germany and heightened tensions. Indeed, had war not broken out in 1914 over the assassination of the Austrian Heir, the strategy may have proceeded to its logical conclusion with more states being drawn into the conflict to bolster the strength of whichever side was momentarily weaker. It would be bizarre to conclude that states acting in this manner enjoyed anything approaching non-domination: instead, and as noted by Pettit in the context of a domestic state, a political system in which agents sought to maintain a balance of power would give rise to a war of all against all and no one would enjoy non-domination or security.<sup>297</sup>

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<sup>295</sup> Ibid., pp. 94-95.

<sup>296</sup> Ibid., p. 95.

<sup>297</sup> Ibid., pp. 94-95.

Even supposing that this first issue could be surmounted through the creation and maintenance of a global balance of power, the second problem that we face is that, ‘While people might enjoy non-domination under such a scenario – assuming that no one person or group becomes dominant – the range and ease of undominated choice would be savagely reduced.’<sup>298</sup> Indeed, Pettit notes that, ‘When war becomes a sustained prospect, and when states defend themselves against one another by threat and counter-threat, then the cause of non-domination is compromised.’<sup>299</sup> The reason for this is that, ‘the logic of threat and counter-threat means that the different sides have to spend more and more on military defence, that the citizens of the countries in question have to bear those costs, and that the extent of undominated choice that they can then enjoy is severely reduced.’<sup>300</sup> The problem that we can see here is that securing a global balance of power may require that states restrict the resourcing and protection of the basic liberties, undermining their capacity to secure social justice, and force them to act in unconstitutional or undemocratic ways, undermining political justice. Indeed, combining into blocs, or ensuring that a state remains as powerful as others, may require states to take an active role in, for example, increasing their military capacity, increasing technological innovation, or restricting citizens’ capacity to criticise the government’s actions. In an international system in which each state attempts to secure their own non-domination through checking others’ attempts to dominate them, we will surely find that citizens will be forced to make concessions: they may have to pay increased taxes or be forced into national service in order to ensure that their state can compete economically or militarily with others in the international arena. In any of these or similar ways, we will find that states will fail in their primary role of securing social and political justice in order to secure the external non-domination of their peoples.

There is likely, then, to be a trade-off between securing internal and external non-domination in this system of governance: if each state is to combat external threats by securing themselves against others’ power, and thereby avoid dependence upon other states’ goodwill and forbearance, they will have to restrict their citizens’ liberty. Indeed, in such a system all states would be continually seeking to bolster their position relative to other states so as to secure themselves against domination, and each would be forced into endless vigilance. Such a system could not be maintained by states which remain subject to their citizens’ influence and direction (since they would likely revolt against living on a permanent war-footing), and states would be unable to resource and protect the basic liberties for all of their citizens (since, for example, taxes would need to be used for external defence and alliance-making, popular dissent would have to be quelled, freedom of speech and association may need to be curtailed, and citizens may be

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<sup>298</sup> *Ibid.*, p. 94.

<sup>299</sup> *Ibid.*, p. 151.

<sup>300</sup> *Ibid.*, p. 151.

directed towards certain forms of employment or into conscription). The strategy that Pettit outlines in *A Republican Law of Peoples* is therefore unlikely to secure global non-domination.

### **Self-Regulating Multilateral Governance**

Pettit's most recent account of global governance, outlined in *Just Freedom*, seemingly avoids the problems associated with the strategy of reciprocal power since it proposes a more fully entrenched international framework for securing global non-domination. Indeed, on this approach, states would be required to agree to a series of multilateral arrangements which would create a global framework in which each state can exercise their sovereign liberties. International institutions would be created and would act as forums in which states could come together to discuss issues (in accordance with the norm of norms), and would regulate the activities of states (through, for example, setting limits on pollution and providing medical support). Such institutions would be populated by states' representatives and would be subject to oversight by NGOs. States would also freely agree to a set of regulatory laws which would tackle the problem of multinationals and would be permitted to intervene in failing or oppressive states if other states agree to multilateral action. While this system of governance avoids requiring states to combine into blocs to secure a balance of power, we will see below that it nonetheless fails to secure non-domination for reasons that Pettit himself has outlined in *Republicanism: A Theory of Freedom and Government*. That is, it relies on states themselves forbearing from exerting domination over one another and, as we saw in the first chapter, such forbearance can, at best, secure non-interference but will not secure non-domination since the option to interfere remains within transnational agents' choice-sets.

In *Just Freedom* Pettit claims that states must be internally undominating (through securing social justice and democratic legitimacy), and they must be externally undominated. Indeed, 'If such a state were dominated by an outside agency, then its citizens would also be dominated by that agency, since any restrictions at the level of the state would inevitably involve restrictions on their democratic lives.'<sup>301</sup> Pettit goes on to qualify this claim, noting that securing external non-domination for each *state*, as occurred with the Westphalian settlement, would be problematic because it would permit ineffective and oppressive states to fail to secure non-domination within their borders, while enjoying non-domination without. As a result, he suggests that we look to the external non-domination of *peoples* and their representative states,<sup>302</sup> since doing so would enable us to keep sight of the fact that peoples can be dominated by their

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<sup>301</sup> Pettit, *Just Freedom*, p. 151.

<sup>302</sup> In what follows, I will use state to refer to representative states, i.e. those that represent peoples.

government's lack of democratic legitimacy or failure to secure social justice, and can be dominated when multinationals, international institutions, and other states exert arbitrary control over them.<sup>303</sup>

He goes on to argue that, 'the ideal of republican liberty, transported to the international arena, can be seen as an ideal of externally undominated peoples; in that respect, it is akin to the ideal pursued by John Rawls (1999) under the title *The Law of Peoples*.'<sup>304</sup> Following Rawls' approach, Pettit's discussion of international justice is split into two parts. He firstly considers what international justice would require if all states secured social and political justice, and then considers what international justice would require in the real world where many states fail in this regard.<sup>305</sup> Indeed, Pettit acknowledges that many states may fail, to a lesser or greater degree, in either of their two roles but argues that, for the purposes of developing a theory of global sovereignty, it is useful to simply assume that all states are effective and representative in the first half of the analysis, and then acknowledge that some are not in the second part.<sup>306</sup> He therefore seemingly follows Rawls in assuming that once a state is internally just, we need only look to securing such states against external coercion at the transnational level.<sup>307</sup>

He starts his analysis by reiterating that the existence of states should be taken for granted. Indeed, whereas Pettit had previously argued that there is nothing especially sacred about states and that they're simply a product of historical chance,<sup>308</sup> from the publication of *On the People's Terms* onwards he argues that living in a state is a historical necessity on a par with living under the laws of physics, and that states have arisen because of the, 'mutual adjustments of different populations.'<sup>309</sup> Indeed, he now claims that states are locked into a state of ongoing necessity: should a state resign its obligations, it would create a vacuum in which other states would seek to extend their governance. As a result, he claims that citizens are not dominated by the requirement that they live in a specific state because states are a feature of the world, as immutable as the law of gravity.<sup>310</sup> This claim is refined and developed in *Just Freedom*, wherein he argues that there is no point in considering the possibility of a stateless world because a coercive state is necessary for securing social justice.

He then argues against the possibility of a world state because global pluralism would make it unlikely that we could develop processes for governing everyone in accordance with standards that each avows. Indeed, he argues that trust is in short supply and it is therefore unlikely

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<sup>303</sup> Pettit, *Just Freedom*, pp. 152-153.

<sup>304</sup> *Ibid.*, p. 153.

<sup>305</sup> *Ibid.*, pp. 155-156.

<sup>306</sup> *Ibid.*, pp. 156-157.

<sup>307</sup> See: John Rawls, 'The Law of Peoples', *Critical Inquiry* 20 (1993), pp. 36-68.

<sup>308</sup> Pettit, *Republicanism*, p. 152.

<sup>309</sup> Pettit, *On the People's Terms*, p. 161.

<sup>310</sup> *Ibid.*, pp. 161-162.

that we would be able to establish a democratic system, complemented by a range of constitutional and quasi-constitutional indicative representatives, ‘who could credibly claim to make decisions in line with shared standards.’<sup>311</sup> Pettit therefore believes that we are unlikely to see a world state in the feasible or foreseeable future.<sup>312</sup> He concludes that we therefore have no reason to prefer a stateless or one-state world, and proceeds on the assumption that there are many states and each of these states has special obligations towards its own citizens that it does not have towards citizens of other states (an obligation to secure social justice and democratic legitimacy). Pettit acknowledges that this view is in direct opposition to theories of cosmopolitan justice, according to which there are no important differences in the obligations that states have to their own citizens and to human beings more generally, but argues that his view does not entail that there are no obligations to non-citizens: instead, and as we will see below, these obligations are simply of a different kind.<sup>313</sup>

With these comments in mind, Pettit argues that securing the external non-domination of peoples would require, ‘a global framework in which each people is entrenched against domination from other states and from the various non-state actors – agencies, churches, corporations – that have international dimensions.’<sup>314</sup> This, he argues, amounts to an ideal of globalised sovereignty, in which, ‘sovereignty [is] extended to every people on earth.’<sup>315</sup> Pettit goes on to argue that just as protecting the basic liberties secures social justice, and ensuring democratic legitimacy secures political justice, securing global sovereignty will give us an account of international justice, and claims that, ‘As the free citizens of a just and democratic state will be each entrenched on a public basis in the enjoyment of certain basic liberties, so in this ideal the free peoples of the world would be each entrenched on a public, international basis in the enjoyment of a corresponding set of internationally recognised sovereign liberties.’<sup>316</sup>

In an analogous move to his development of a theory of social justice, in which the aim is to protect and resource individuals’ basic liberties, Pettit argues that the sovereignty ideal requires that a people should similarly be free from domination in the exercise of a range of specific choices.<sup>317</sup> Aside from the requirement that states do not have any freedom of choice that would undermine citizens’ enjoyment of social justice, Pettit argues that states and peoples, ‘should enjoy all and only those sovereign liberties that are consistent with the enjoyment of similar liberties on the part of other representative states and peoples.’<sup>318</sup> The sovereign liberties

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<sup>311</sup> Pettit, *Just Freedom*, p. 158.

<sup>312</sup> *Ibid.*, pp. 157-158.

<sup>313</sup> *Ibid.*, pp. 158-159.

<sup>314</sup> *Ibid.*, p. 153.

<sup>315</sup> *Ibid.*, p. 153.

<sup>316</sup> *Ibid.*, p. 155.

<sup>317</sup> *Ibid.*, pp. 160-162.

<sup>318</sup> *Ibid.*, p. 163.

that each people would be deemed to have are those that are co-enjoyable and co-exercisable. This would include, for example, liberties of speech, expression, and association, and, with suitable rules in place, peoples would be permitted to exploit national and common resources, and organise trading arrangements. These sovereign liberties would need to be protected but, unlike with individuals, they will not require resourcing since states, ‘will generally have all the resources they need.’<sup>319</sup>

Pettit goes on to argue that representative states would need to create a series of binding multilateral arrangements which would create a framework for securing global infrastructure, insurance, and insulation (mirroring the infrastructure, insurance, and insulation enjoyed by the citizens of domestic states). This global framework would enable cooperation in creating global public goods through international trade and research, and would enable the global community to combat global ills such as atmospheric pollution and climate change. Pettit also suggests that states, acting together, may be able to negotiate terms for the proper regulation of multinational corporations. Although he does not develop this idea, he seems to suggest that the problem of multinationals could be addressed if all states freely agreed in international forums to develop rules which would regulate, ‘what each country may and may not be able to do in such respects.’<sup>320</sup> The suggestion here, though not made explicit, seems to be that states might agree to not compete with one another to attract such organisations through lowering taxation or making other concessions, and thereby make it less lucrative for multinationals to move from uncooperative states. Indeed, Pettit concludes that, ‘States can hope to enjoy freedom and sovereignty in relation to other states and other international bodies only under an internationally agreed, and internationally institutionalised, set of rules and conventions.’<sup>321</sup> This seems to suggest that while Pettit believes that multilateralism is the best *means* for securing global non-domination, he nonetheless acknowledges that it is actually the system of rules and conventions which emerge from multilateral decision-making which secure states against domination.

Pettit further argues that the norm of norms, outlined in detail in the previous chapter, must also operate at an international level. Indeed, since states have different populations and resources and unequal bargaining power, it is necessary that they all, ‘argue for any policies they support, any procedures they recommend, on the basis of considerations that can pass muster on all sides – considerations that all states, large and small, can acknowledge as relevant.’<sup>322</sup> This is necessary as otherwise powerful states would be able to utilise their advantages to extract concessions from weaker or smaller states, and dictate terms to them in a dominating way. With that said, Pettit is clear that while international rules will be needed to regulate states’ interactions,

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<sup>319</sup> Ibid., p. 162.

<sup>320</sup> Ibid., pp. 164-165.

<sup>321</sup> Ibid., p. 165.

<sup>322</sup> Ibid., p. 171.



there must be flexibility within these rules to account for differences between states: this might permit larger states to emit more greenhouse gases or demand more attention from the World Health Organisation. Despite this need for flexibility, Pettit argues that it is important that states co-determine the laws and regulations which will govern them from a position of relative equality: to do otherwise would enable stronger states to dictate terms to smaller states.<sup>323</sup>

Turning to the prospects of implementing and upholding such an ideal, Pettit claims that states, much like individuals, seek approval and want to avoid disapproval. As such, he believes that states will be pressured and policed into upholding this international order of their own volition because they may fear to lose esteem or international influence: that is, states will be ruled by a system of global norms of behaviour which will regulate their actions because they will want to avoid ignominy, ostracism, and a loss of prestige. Indeed, he goes on to argue that it will be in each state's self-interest to uphold and conform to global norms of behaviour to avoid condemnation, and argues that free-riding will not be a problem since there are not that many states and free-riding can be readily identified and corrected. This process would also be facilitated by international agencies created by multilateral treaties such as the United Nations.<sup>324</sup>

Pettit then acknowledges that the creation of international, public agencies raises the further issue that such institutions, which are intended to support the entrenchment of the sovereign liberties, may become sources of domination. In response to this concern, Pettit argues that international agencies will not dominate peoples as long as they are contestable and controllable by the peoples subject to their dictates. Indeed, Pettit argues that, in direct parallel with the domestic process for securing non-domination, it would be necessary to give member states a vote in the governance of these institutions, and empower international non-governmental bodies and review forums to oversee, contest, and regulate the activities of such institutions. This, Pettit argues, would make international agencies accountable to the peoples of the world and non-dominating.<sup>325</sup>

Turning to the issue of how non-domination might be secured in a world where some states are unable or disinclined to secure social justice or democratic legitimacy, Pettit argues that those who should address failing or oppressive states are other representative states who, 'should establish an international order in which such problems of poverty and oppression are effectively addressed.'<sup>326</sup> Indeed, his argument for such intervention seems to be that addressing failing states inability to secure non-domination would be beneficial to the citizens of representative states, since doing so will increase the opportunities for commerce, increase general prosperity, reduce the likelihood of terrorism, and address the spread of global diseases. Acknowledging that this

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<sup>323</sup> *Ibid.*, pp. 171-172.

<sup>324</sup> *Ibid.*, pp. 165-167.

<sup>325</sup> *Ibid.*, pp. 168-170.

<sup>326</sup> *Ibid.*, p. 175.

argument seems somewhat self-serving, he goes on to claim that the fact that citizens of representative states do demand that their governments respond to violence, famine, and natural disasters elsewhere suggests that humanitarian considerations are a component of states' common good (supported by the norm of norms and other considerations) and states should therefore act as their peoples' require.<sup>327</sup>

Assuming, then, that such intervention is justified, Pettit proceeds to outline a series of constraints which would govern intervention in failing or oppressive states. These are that no state may intervene elsewhere if doing so would undermine democracy at home, and that no state should intervene in a way which undermines the ideal of globalised sovereignty. This, Pettit argues, would likely only permit intervention in response to impoverishment and oppression, and only on the basis of multilateral action (so that the citizens of the intervening state do not feel that they're engaged in one-sided philanthropy).<sup>328</sup> Importantly, this also creates a right for individuals living in impoverished and oppressive states to claim assistance from other states to remedy their situation.<sup>329</sup> Pettit goes on to argue that it would be necessary to ensure that addressing poverty does not create a relationship of dependency since this will likely degenerate into a relationship of domination wherein one state becomes entirely dependent upon another. In addition, Pettit argues that intervention in oppressive states must be justifiable, with the costs of intervening not outweighing the benefits. With that said, Pettit is optimistic about the prospects of addressing oppressive states without outright intervention. This is because such states will forgo the protections and support afforded to representative states (as well as the global standing that representative states will enjoy) and a combination of penalties and self-interest will compel states to act as required.<sup>330</sup>

Finally, just as he has developed the eyeball and tough luck tests for measuring the extent to which individuals are protected against private and political domination, Pettit has developed a 'straight talk' test for measuring the extent to which the ideal of global sovereignty is entrenched. This test requires that, 'peoples - via suitably representative states - to relate to one another in a manner that parallels the way free citizens under a just regime would relate to one another.'<sup>331</sup> Peoples and their representatives in government ought to be able to engage with others in the manner of equals, without resorting to subservience, and be able to negotiate in a straight-talking, open manner. If states were able to engage with one another in this way, we could be assured that no state is dependent upon others and that no state is subject to domination by another.<sup>332</sup>

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<sup>327</sup> *Ibid.*, pp. 175-177.

<sup>328</sup> *Ibid.*, pp. 177-178.

<sup>329</sup> *Ibid.*, p. 183.

<sup>330</sup> *Ibid.*, pp. 177-181.

<sup>331</sup> *Ibid.*, p. 181.

<sup>332</sup> *Ibid.*, pp. 181-182.

Nonetheless, we have good reasons to suppose that states may fail in this regard. Indeed, as noted in our analysis of *A Republican Law of Peoples*, Pettit cites the actions of the United States in 1986 as an example of powerful states refusing to follow the dictates of international agencies. As we've seen, this example shows that it is impossible for international agencies, which rely on states for the enforcement of their decisions, to enforce their rulings against powerful states if those states do not wish to comply. Indeed, we can see that the legitimacy and power of the international regime is only as effective as states allow it to be: if strong states refuse to respect the decisions handed down by the international agencies which they create, there is very little that can be done about it. Furthermore, if powerful states refuse to comply with or recognise the jurisdiction of international agencies, it seems unlikely that other states would be inclined to do so either. The fundamental issue, here, is that in the absence of an overarching authority empowered to enforce compliance, i.e. an authority more powerful than the strongest states, we face the reality of powerful states acting with impunity and undermining the legitimacy of the entire system.

Importantly, while powerful states such as the United States might decline to be bound by transnational decisions, and be able to extricate themselves from inconvenient commitments (since other states and the agencies themselves will be too weak to enforce compliance, as in the case of the American withdrawal from the ICC's jurisdiction), they are much more likely to force compliance upon weaker states. Indeed, had it been a smaller state which supported guerrilla warfare abroad, it seems likely that a coalition of powerful states, including the United States, would have sought to punish the offending state. This suggests that it may be in powerful states' interests to set up a multilateral system of governance and then utilise such institutions and arrangements to constrain weaker states while evading their own responsibilities. This would render the international regime subservient to powerful states' interests, and would result in weaker states being dominated by more powerful states via international institutions.<sup>333</sup>

Even assuming that powerful states might be induced to act in accordance with the requirements of the sovereignty ideal, it seems unlikely that weaker or poorer states would have good reasons to comply; indeed, there is good reason to believe that they would need to be coerced into agreeing to the regulations that Pettit outlines. On this point, it is important to recall that Pettit argues that it is necessary that states' sovereign liberties are protected but not resourced since states, 'will generally have all the resources they need,'<sup>334</sup> and that states would develop a set of rules to regulate, 'what each country may and may not be able to do,'<sup>335</sup> with regard to multinational corporations. If it were the case that states enjoyed roughly comparable levels of

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<sup>333</sup> Will Kymlicka, *Multicultural Odysseys: Navigating the New International Politics of Diversity* (Oxford: Oxford University Press, 2007), p. 11.

<sup>334</sup> Pettit, *Just Freedom*, p. 162.

<sup>335</sup> *Ibid.*, p. 164.

resources and were able to resource the basic liberties without competing for multinationals, we can imagine that states might agree to international regulations such as these. Nonetheless, the fact that some states do not enjoy access to sufficient resources and cannot secure the basic liberties for their citizens, suggests that it will be unlikely that states would (or indeed, should) agree to regulate their interactions in this way. Indeed, given the huge disparities in wealth and resources between states, it seems odd to conclude that poorer or weaker states would voluntarily agree to such regulations: to agree to forgo a potential source of employment and tax revenue from multinationals or to agree to environmental regulations which impede industrialisation, would be an irresponsible action if the state in question is unable to protect and resource its citizens' basic liberties. These comments suggest that weaker states would either not agree to be constrained by the international system that Pettit outlines, since it would not be in their citizens' interests to do so, and would have to be coerced into supporting and obeying the international regime, or they would agree to the constraints and seek to extricate themselves from obligations which actively undermine their capacity to secure the basic liberties for their citizens.<sup>336</sup>

The overarching problem with Pettit's proposals in *Just Freedom*, then, is that they rely on all states continuously acting virtuously in their dealings with other agents (when it may not be in the interests of powerful or weak states to do so), and this is a strategy which we rejected in the first chapter when looking at how individuals might be secured against domination. Indeed, I outlined in the first chapter that we cannot rely on Torvald's goodwill to secure Nora's freedom as, even if Torvald vowed to not interfere with her, the fact that he retains the capacity to renege on this vow means that Nora is always dependent upon her husband's goodwill and is therefore dominated. This, we have seen, led Pettit to argue that, 'My power of interference in your choice, and my domination over you, can only be contained by external checks that remove or replace the interference option or put it cognitively off the menu,'<sup>337</sup> and led us to embrace the strategy of constitutional provision.

These comments are relevant for considering Pettit's strategy in *Just Freedom* because, even if states do accept that it is wrong to interfere with one another, the quasi-external constraints on interference (including treaties, international agencies and forums), are upheld and enforced by states themselves. This gives rise to a situation in which each state might enjoy freedom from interference, if all other states voluntarily agree to uphold and comply with international regulations, but not non-domination because each state is *dependent* upon other states' voluntary

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<sup>336</sup> It is important to note, in anticipation of my own suggestions in the next chapter, that my primary concern here is with the necessity of ensuring *ongoing* compliance with international arrangements. Indeed, following Pettit, I think that it is plausible to suppose that states could be induced to agree to participate in transnational governance if they were incentivised to do so. Nonetheless, I think that it is implausible to suppose that they will continue to do so irrespective of changing circumstances, and without further integration and constitutionalisation.

<sup>337</sup> Pettit, *On the People's Terms*, p. 63.

compliance in continuing to uphold and obey the international order. As we have seen with Torvald and Nora, this is insufficient for securing neo-republican freedom because it relies upon agents' ongoing goodwill and forbearance which, in the absence of external constraints, can be withdrawn at any time. Indeed, just as Nora is subject to Torvald's *dominium* as long as she is dependent upon him resolving to forbear from interfering with her, states will be similarly subject to domination while they're dependent upon all other states agreeing to uphold and support the international order. In each case, interference remains a viable option because there is no external authority removing or replacing the option of interference or putting it cognitively off the menu.

We therefore face the fact that non-interference will only be secured as long as states are inclined to support this goal, and non-domination will remain unrealised because, as per Pettit's own arguments, each state is dependent upon others' ongoing voluntary compliance. Importantly, Pettit seems to acknowledge this problem since he argues that states would act as required through fear of ostracism, ignominy, or a loss of prestige. Irrespective of the fact that this just isn't how states necessarily behave (the United States was not concerned about its prestige when it withdrew from the jurisdiction of the International Court of Justice) and it is unlikely that states will be motivated by their image rather than their strategic interests, the biggest problem with this claim is that the constraint, a fear of condemnation, is an *internal* constraint on action. As such, it is directly analogous to Torvald's vow to not interfere with his wife and, as we have already seen, this is insufficient to secure non-domination.

Indeed, Pettit argued that such a strategy is doomed to failure when he asked, 'Can I alienate my power of interference, and suspend the domination I practice, by persuading myself that it is wrong to interfere in your choice? Will the moral constraints that I thereby recognise act as checks on my will and serve to liberate you, whether wholly or in part?'<sup>338</sup> At the individual level, Pettit answered in the negative because, 'Even if I form the view that it is wrong to interfere with you, it remains the case that I may prefer to practice interference, whether out of weakness of will, out of malice, or out of a will for evil; the option continues to lie within my capacity.'<sup>339</sup> If individuals cannot be trusted to forbear from exerting domination, there seems to be even less hope of states acting virtuously since they, like multinational corporations, 'lack the vulnerability and the capacity for empathy that individuals generally display.'<sup>340</sup>

We therefore have good reasons to believe that non-domination will not be secured in an international system in which states are free from externally-enforced constraints which would put the option of interference off the menu. Just as individuals cannot be relied upon to always forbear from interfering with others, and must therefore be subject to external constraints which would remove the option of interference from their grasp, states similarly cannot be relied upon

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<sup>338</sup> *Ibid.*, p. 63.

<sup>339</sup> *Ibid.*, p. 63.

<sup>340</sup> *Ibid.*, p. 116.

to uphold an international order when it is not in their interests to do so, and will also need to be subject to external constraints which put the option of interference out of reach. As long as agents, whether individuals or states, retain the capacity to interfere with one another, all are dependent on others' forbearance and goodwill, and therefore subject to domination.

It therefore seems necessary to conclude that Pettit's attempts to secure global non-domination in *A Republican Law of Peoples* and *Just Freedom* must be judged to have failed. Indeed, they have failed within the context of Pettit's own theorising because each account embraces a strategy discarded in his earlier work as incompatible with securing non-domination. Importantly, Pettit's accounts of global non-domination also have nothing to say about the problem of individualised transnational domination wherein transnational agents interfere with individuals rather than the state. It is necessary to be clear that I am not suggesting that Pettit is unconcerned with the ways in which individuals' lives are affected by transnational control: clearly he is, since he states that, 'since any restrictions at the level of the state would inevitably involve restrictions on their democratic lives.' Nonetheless, it would be perfectly possible in Pettit's account of international justice, in which states are secured against external interference, for individuals to be subject to individualised transnational domination. As noted above, we can imagine a situation in which a state unilaterally closes its borders to all Muslims. In this case, the closing of the borders will not necessarily affect specific political communities (although it may have that effect if a state were organised as a Muslim state), but will instead affect a spatially dispersed group of individuals who live in different political communities. Pettit's account has little to say about such issues because he ignores the fact that control can be exercised across borders, affecting the lives of individuals without directly interfering with the state or its activities. It is necessary, then, to consider how we might address the problem of individualised transnational domination, and it is to Bohman's account of cosmopolitan republicanism which we can now turn.

### **Individualised Transnational Domination and Deliberative Polyarchy**

As noted above, Bohman argues that individuals, 'are now included in various schemes without being individuated, [and] globalization has...thus undermined the capacity of those who are nonvoluntarily included in such plans to contest the authority that others exercise at a distance.'<sup>341</sup> Indeed, he argues that the new circumstances of politics, wherein global activities now affect an indefinite number of individuals who we cannot individuate but can specify, necessitates a reconsideration of the republican claim that to be free is to be a citizen of a free state. Bohman's suggestion for addressing individualised transnational domination is to focus on securing what he

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<sup>341</sup> Bohman, 'Republican Cosmopolitanism', p. 342.

calls the democratic minimum. The aim, he argues, should be to secure each individual's capacity, 'to form and change the terms of their common life,'<sup>342</sup> and ensure that each individual has, 'the capacity to initiate deliberation and thus take up the common activity of deliberating about common concerns, including the agenda of political institutions and the rules which guide political activity within them.'<sup>343</sup> Globally, this would require the creation of a democracy of *demoi*, a deliberative polyarchy of political communities, which organise inquiry into, and deliberation on, the rules and conditions of ongoing cooperation.<sup>344</sup> Indeed, a democracy of *demoi*, characterised by robust deliberative connections, would secure a dispersal of power across *demoi*, and would ensure that citizens are able to determine the rules and terms of their associations.<sup>345</sup>

Indeed, Bohman defends an interactive polyarchy at the transnational level precisely because, 'Often authority is unresponsive not because citizens as a collective body are disempowered, but because these democratic structures were constructed for a public that is different from the one that currently exists.'<sup>346</sup> The problem, here, is that existing democratic institutions, including national parliaments, were created before the onset of the latest phase of globalisation, when it was still possible for such institutions to respond to the people's common good and enforce their decisions. In the globalised world, states cannot respond to many pressing international issues alone (including famine, the spread of global diseases, poverty, migration etc.), and may be unable to address domestic issues because of global circumstances (for example, states may be unable to secure a sufficient standard of living for their citizens because of global financial markets or a need to pay off international debts). In addition, existing democratic institutions cannot address the problem of multinational corporations who are able to dictate terms of cooperation to states, undermining national democracy.<sup>347</sup> The problem, then, is that globalisation has made existing democratic institutions insufficient for securing non-domination.

Bohman's response to this problem is to argue that if non-domination is to be realised, then all issues, including national borders, must be included in an open agenda for deliberation, otherwise persons who are excluded from having a say in the formulation of decisions will be subject to domination. For example, questions of EU enlargement do not just affect those

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<sup>342</sup> Bohman, *Democracy across Borders*, p. 46.

<sup>343</sup> *Ibid.*, p. 47.

<sup>344</sup> A similar account of democratic deliberative polyarchy is defended by Joshua Cohen and Charles Sabel who approvingly discuss the emergence of publics which arise in response to specific issues and which develop across national boundaries in response to transnational issues. See: Joshua Cohen and Charles F. Sabel, 'Sovereignty and Solidarity: EU and the US', in Jonathan Zeitlin and David M. Trubek (eds.) *Governing Work and Welfare in a New Economy* (Oxford: Oxford University Press, 2003), pp. 345-375; and Joshua Cohen and Charles Sabel, 'Directly-Deliberative Polyarchy', *European Law Journal* 3 (1997), pp. 313-340.

<sup>345</sup> Bohman, *Democracy across Borders*, pp. 55-57.

<sup>346</sup> *Ibid.*, p. 66.

<sup>347</sup> *Ibid.*, pp. 64-67.

currently located within the EU but also those who are looking to apply for accession. While these comments might seem to suggest a need to develop a global government to ensure that all individuals possibly affected by a decision have a say in the formulation of that decision, Bohman argues that, 'A larger, global, self-legislating demos would only repeat the same problems as at the national level since it is the limits of political control by such a mechanism that leads to a need for principal-agent relationships... This overarching demos would be an agent for the constitutive demoi, and thus be a potential dominator.'<sup>348</sup>

As a result, Bohman argues that it is necessary to focus on the emergence of publics and their cross-border communication (facilitated by technological innovations such as the Internet) which creates a, 'new sort of distributive rather than unified public sphere, with new forms of interaction...that decentres the public sphere; it is a public of publics rather than a distinctively unified and encompassing public sphere in which all communicators participate.'<sup>349</sup> Indeed, because the Internet is 'aterritorial' Bohman believes that it is well suited to supporting the emergence of different networks of individuals whose concerns cannot be addressed by outdated democratic institutions.<sup>350</sup> Bohman goes on to argue that rather than relying on existing democratic institutions to respond to shifting demoi's will, the transformation of public spheres through communicative freedom will create the conditions in which new democratic institutions can emerge which map onto the relevant demoi. Indeed, Bohman claims that this will result in, 'a transformation both of what it is to be a public and of the institutions with which the public interacts. Such interaction will provide the basis for determining how the functions of the new form of political organisation will be limited and expanded.'<sup>351</sup> Importantly, the scope of these new political organisations will be determined through experimentation (a point we will return to in the next chapter when we look at Charles Sabel's 'experimentalist' approach to global governance).

Such an approach would ensure that transnational democracy is interactive and reflexive, enabling publics to shape the institutions that will, in turn, shape their freedoms and powers.<sup>352</sup> This will secure non-domination as it will enable an individual, 'to avoid having his terms set by others,'<sup>353</sup> and ensure that everyone can challenge the rules of cooperation and exert influence

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<sup>348</sup> Ibid., p. 69.

<sup>349</sup> Ibid., p. 77.

<sup>350</sup> Although we should note that Gould is sceptical of the Internet's usefulness for supporting democracy, arguing that, 'networks themselves are often used in hierarchical and antidemocratic ways. For example, websites may be controlled by webmasters, or discussion boards by moderators...Internet services such as AOL or Yahoo exercise control over content'. See: Carol C. Gould, *Globalizing Democracy and Human Rights* (Cambridge: Cambridge University Press, 2004), p. 246.

<sup>351</sup> Bohman, *Democracy across Borders*, pp. 91

<sup>352</sup> Ibid., p. 91.

<sup>353</sup> Ibid., p. 93 .



over the ways in which they're governed.<sup>354</sup> Bohman also notes that his account is able to realise Pettit's dispersal of power condition, noted earlier, because in a deliberative polyarchy, power would be dispersed across multiple levels, creating a system in which individuals are able to realise their 'differentiated citizenship' as members of various demoi. This, Bohman, argues, will secure robust non-domination since it creates the conditions in which individuals can make legitimate claims on a variety of authorities, ensuring that they're not subject to the depredations of a single coercive government.<sup>355</sup>

Bohman goes on to cite the European Union as an example of a democracy of demoi and claims that, 'From the criterion of non-domination implied by the democratic minimum, it follows that some distinctly transnational form of federalism is the proper general type of institutional design.'<sup>356</sup> Indeed, he claims that the, 'institutionalization of human rights in the 1950 European Convention for the Protection of Human Rights and the recent 2000 Charter of Fundamental Rights of the European Union,'<sup>357</sup> alongside the accompanying European Court of Human Rights, helps to secure a system in which citizens of the EU member states are empowered to invoke their rights, and lead their lives in a system of overlapping demoi.<sup>358</sup> That is, in holding both European and national citizenship, citizens are better able to realise their rights in multiple demoi which secure to them diverse entitlements.<sup>359</sup> While citizens of EU member states are better positioned to dictate and reconstruct the terms of their cooperation than other individuals who are not members of multiple demoi, Bohman goes on to argue that the EU itself may come to represent a dominator in the way that it differentiates between citizens and non-citizens: that is, while it secures some rights for non-EU citizens, these rights are of a lesser kind than those granted to EU citizens. As such, Bohman claims that it would be necessary to embed the EU in a larger overlapping demoi in order to create the conditions in which EU and non-EU citizens would be able to realise their communicative freedom and reconstitute the terms of their cooperation.

Bohman's argument, then, is that individuals across the world are non-voluntarily included within transnational schemes which exert a great deal of indirect control over their lives. When, for example, multinational corporations make decisions which impact upon global markets, individuals themselves are controlled (since the global markets will significantly impact upon the choices available to individuals) and yet such actions will not directly interfere with states (in the sense of deliberately interfering with states' options). As a result, securing external protections for peoples will not address this form of domination. Addressing individualised

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<sup>354</sup> Ibid., p. 93.

<sup>355</sup> Ibid., pp. 127-130.

<sup>356</sup> Ibid., p. 145.

<sup>357</sup> Ibid., p. 145.

<sup>358</sup> Ibid., p. 145.

<sup>359</sup> Ibid., pp. 145-146.

transnational domination, Bohman argues, requires that emerging cross-border deliberative publics co-determine the terms of their cooperation and reconstitute democracy and democratic institutions in accordance with their emerging and changing needs. As such, Bohman thinks it would be necessary to create a multi-level, federated system of global governance in which individuals enjoy membership in a variety of demoi which are engaged in an ongoing discussion of how to govern themselves. This would ensure that democracy is responsive to accelerating changes and would seem to address individualised transnational domination by ensuring that citizens are able to initiate deliberation and redesign the world around them rather than being subjected to control which they have no influence over.

While Bohman's suggestion of creating a global, federated, interactive, deliberative polyarchy would seem to offer a solution to the problem of individualised transnational domination, it is nonetheless unable to secure global non-domination. This is because it would be infeasible to create democratic institutions capable of responding to continually fluctuating demoi and, even assuming we could create such democratic institutions, there seems to be no way to clearly define each demos' scope, powers, and competencies in relation to other demoi. This suggests that each demos' jurisdiction will be subject to contestation by other demoi and, in the absence of an overarching adjudicatory authority, there seems to be no clear means for determining which overlapping demos enjoys any degree of sovereignty in a given area. These issues suggest that it is highly unlikely that fluctuating demoi could ever secure the requisite degree of internal social and political justice, entailing domination.

So, let us assume, for the sake of argument, that Bohman is correct that the democratic minimum requires that individuals are free to choose who they interact with and how that interaction ought to be governed. This seems to suggest that the emergence of various demoi will occur in the same way that civil society groups emerge: individuals with similar interests, tastes, beliefs or political concerns will come together to decide how to regulate their common activities. Demoi, in Bohman's account, will seemingly emerge through the voluntary association of individuals within and across borders. But, this kind of spontaneous, grass-roots style democreation is exceptionally problematic from the perspective of creating and redefining democratic institutions since it suggests that demoi will emerge in response to specific issues and then dissolve as these issues are resolved. Problematically, it would likely be exceptionally difficult, costly, and time-consuming to continually create and redesign democratic institutions which could map onto the demoi which fluctuate in accordance with individuals' vacillating concerns. As such, it is unlikely that any democratic system could ever be subject to its citizens' influence and direction since those citizens and the democratic institutions will be continuously changing.

It is possible to avoid this problem if we instead aim to create democratic publics over or across existing democratic publics. That is, individuals would retain membership in their existing demos, and they would obtain membership in new and emerging demoi. A citizen of, for example,

Germany would enjoy German and European citizenship, alongside membership within transnational and sub-state special interest publics. Such an approach would, presumably, give rise to the overlapping membership which he advocates. Nonetheless, this approach is also problematic as we face the issue of defining the powers, scope, competencies, and jurisdiction of these new demoi, and continuously reconstituting them as publics evolve and change.

Indeed, we can imagine a situation in which a cross-border public emerged to address the migrant crisis facing the European Union, encompassing individuals in Europe, the Middle East, and North Africa. In this case, it is entirely unclear exactly who would comprise the public which would have jurisdiction and be able to resolve the issue. Indeed, it seems likely that each of these publics would have different views on the issue: the cross border public may advocate the opening of borders to migrants; the EU might advocate a quota system for allowing entry; and the states immediately affected, including Greece and Italy, may prefer no migration. Bohman's account does not specify how such issues might be resolved since it is unclear which public has jurisdiction in this area. In such a case, where competing publics claim sovereignty, we would need to develop a means for adjudicating between competing claims and yet Bohman advocates the denationalisation and deterritorialisation of authority and sovereignty across a 'horizontal' set of overlapping demoi. Such an approach would seemingly preclude the creation of any kind of 'higher' or hierarchical system of democratic governance which would be able to adjudicate on the kinds of problems identified. Absent an overarching authority capable of resolving such disputes, the demoi themselves would be required to adjudicate on which public enjoys jurisdiction in any instance, possibly giving rise to conflicting policies within the same area, conflict between competing demoi, and global anarchy in which no polity has any security in its scope or powers.

Since individuals' right to initiate and decide the terms of their common associations entails that the global democratic system must always be open to revision, we face the fact that all demoi will be subject to continuous reconstitution and redefinition, with democratic institutions somehow attempting to respond to such changes and ensure that they remain subject to their fluctuating citizens' influence and direction. This aim is likely to be unrealisable since fluctuating demoi will be unable to identify all of those who comprise the demos, and will therefore be unable to ensure that all relevant individuals are able to take part in the formulation of the polity's norms and democratic processes. Additionally, with new demoi emerging across and within borders, we will find that democratic governments will come into competition and conflict with one another over which demos has jurisdiction in any given case. As such, it seems exceptionally unlikely that democratic governments will ever be able to act in accordance with their citizens' common good: their powers and jurisdiction will be apt to vacillate as their own demos and other demoi expand or contract. In such a system, democratic legitimacy could never

be secured, governments would most likely be unable to secure the basic liberties, and international anarchy would be likely.

It seems, then, that Bohman's attempt to address the problem of individualised transnational domination has led him to advocate an account of global governance which could never ensure that those affected by a policy issue would actually be able to exert influence and direction over that issue. Though Bohman is correct to highlight that myriad transnational decisions control spatially-dispersed individuals, and that addressing this requires a reconfiguration of democratic politics, his solution simply exacerbates the problem of securing global non-domination. This is because, in decoupling democratic decision-making from fixed territories and defending individuals' right to reconstitute themselves in whatever cross-border demoi they deem appropriate, Bohman advocates a deliberative polyarchy in which even the most basic issues cannot be properly addressed: if a demos doesn't have jurisdiction over a given territory, it would seem to be extremely difficult for its government to secure the basic liberties, utilise common or natural resources, or ensure that all of those subject to control are able to exert influence and direction over governance. His account of democracy across borders will therefore be unable to secure global non-domination and it is unlikely that citizens anywhere would enjoy social, political, or international justice.

### **Conclusion - Towards Global Non-Domination**

We now have a clear account of the problem of transnational domination and the ways in which two prominent neo-republicans have sought to address this problem. Pettit has shown us that transnational domination can arise when democratically legitimate polities, which secure social and political justice for their citizens, are subject to external interference or the threat of interference by other transnational agents. We have also seen that transnational agents can bypass the state and exert control over spatially dispersed individuals. Addressing the problem of transnational domination therefore requires that we acknowledge and respond to each of these problems simultaneously. We concluded that the two most prominent accounts of global republicanism, Pettit's *Just Freedom* and Bohman's *Democracy across Borders* seem unable to realise their aim of offering a model of global non-domination.

Pettit's account may achieve non-interference but will fail to secure non-domination. This is because states are required to support and uphold the multilateral global order and we have good reasons to suppose that they will be disinclined to do so. In the absence of external constraints on states' actions, the *option* to interfere is not removed from their choice-sets, and therefore interference remains a possibility. This being the case, it seems unlikely that multinational corporations and international institutions will be prevented from exerting domination either. Additionally, Pettit's account fails to acknowledge the problem of

individualised transnational domination. This is because he believes that securing the external non-domination of peoples is sufficient for securing the freedom of all individuals within the state irrespective of the fact that decisions can have a coercive impact across borders. Although Pettit's account is problematic, it does nonetheless provide us with an insight into how we might address the problem of transnational domination by highlighting the importance of avoiding a state-centric/liberal internationalist approach to securing global non-domination. This is because such an approach would only secure non-interference and not non-domination because states are not subject to external constraints which would put the option of interference off the menu. This suggests that we need to look to create an independent transnational political order which would perform a role analogous to the state in constraining all transnational agents and preventing them from interfering arbitrarily with one another.

Bohman's account, on the other hand, takes individualised transnational domination seriously but offers us an account of global deliberative polyarchy which would fail to secure global non-domination. This is because individuals would never be able to exert influence and direction over governance because all demoi are in a state of continuous flux, have an undefined jurisdiction (since democratic decision-making is decoupled from national communities and deterritorialised), and there is seemingly no overarching authority capable of adjudicating on the appropriate competencies and powers of the competing demoi. As such, his account fails to address the first form of transnational domination because states are not secured against external domination, and it is unlikely that any demos would be able to secure social and political justice within its fluctuating borders. Although problematic, Bohman's work also offers us an insight into how we might secure global non-domination. Indeed, his approach shows us that we must take the problem of individualised transnational domination seriously, such that we acknowledge that control can diffuse across the globe, affecting many identifiable but unspecifiable individuals who must exert influence and direction over this control in order to render it non-dominating. With that said, his account also highlights that we cannot opt for a global deliberative polyarchy as it will give rise to a fluctuating transnational political system in which it is unlikely that communities could ever secure social and political justice. This suggests that we will need to address individualised transnational domination while also acknowledging the importance of defined democratic communities for securing social and political justice.

The necessity of addressing the two forms of transnational domination, and avoiding the problems noted above, point us towards a need to reconsider our approach to securing global non-domination. Importantly, I think that Pettit's arguments in *Republicanism: A Theory of Freedom and Government* provide us with the foundations for a solution. Indeed, in his earlier work, Pettit argued that we need to, 'establish cultural, economic, and legal networks to the extent that such regional or global systems of relationships inevitably discipline members in the manner of constitutional commitments... [and] encourage different layers of multinational cooperative and

institutionalisation. The emergence of institutional order, regional and global, promises to serve the cause of defence more effectively than exclusive reliance on military capacity.<sup>360</sup> This would require that republican states seek to develop a regional and global institutional order, and create multinational bodies which would take control of some of states' existing powers.<sup>361</sup> This is because, 'there is nothing sacred from the republican point of view about the state or about the state's sovereignty. Given the existence of multinational bodies of various kinds, there are some domestic issues on which it may be better...to give over control to those bodies and restrict the local state.'<sup>362</sup> Indeed, he suggests that it might be necessary for transnational institutions, 'to expatriate domestic sovereignty,'<sup>363</sup> on issues such as gay or women's rights. He goes on to argue that the dispersion of power condition would require the decentralisation of power through federalism and the empowerment of transnational institutions.<sup>364</sup> This, he suggests, might require conferring some degree of autonomous self-rule upon sub-state indigenous or religious groups such as the Amish.<sup>365</sup>

This account of multi-level governance therefore seems to provide us with a foundation for pursuing the aim of addressing transnational domination. That is, we should start from the premise that states are *prima facie* the primary means by which social and political justice are secured, and they should therefore be granted protections against external domination. This suggests that we look to replicate the strategy of constitutional provision at a transnational level. Doing so will ensure that the option to interfere with socially and politically just states is removed from transnational agents' choice-sets; and would secure an overarching political framework within which a set of regulations could be developed which would constrain private transnational associations, such as multinational corporations and churches, preventing them from exerting

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<sup>360</sup> Pettit, *Republicanism*, p. 152.

<sup>361</sup> It is important to note that while this account of transnational governance seems to include elements of Pettit's later work (that is, it requires that states take the lead in developing the transnational architecture in which global non-domination might be secured), I think that it would be wrong to conceive of it as a precursor to his later multilateralism. Indeed, the requirement that states devolve their powers to semi-autonomous, sub-state units through federalism, and expatriate their powers to transnational institutions, coupled with the claim that states are of no special significance suggests that the transnational political system would be closer to a multi-level system of governance. That is, sub-state groups might be entitled to a measure of self-governance, *overseen* by the state, with the state subject to regulation by transnational institutions which will have acquired some of the state's traditional powers. This seems to suggest that, at least in Pettit's earlier work, states were conceptualised more or less as administrative units which existed solely to fulfil the role of securing non-domination, the implicit assumption being that if better ways for securing non-domination could be found, then it would be appropriate to further divest the state of its powers and competencies. It seems possible, then, to read Pettit's earlier work as a defence of some form of republican cosmopolitanism, albeit one which has not been fully clarified.

<sup>362</sup> Pettit, *Republicanism*, p. 152.

<sup>363</sup> *Ibid.*, p. 153

<sup>364</sup> *Ibid.*, pp. 178-179.

<sup>365</sup> *Ibid.*, p. 200.

domination over peoples or individuals. Concurrently, we should also explore how powers might be devolved from the state to lower levels of decision-making and expatriated to transnational levels of governance, so that we can develop a means for ensuring that all forms of political control are rendered democratically legitimate and non-dominating. Finally, while exploring these interlinked issues, we should also aim to ensure that securing global non-domination does not give rise to new and more pervasive forms of domination. The task of the next chapter is to explore how such a system of global governance might be developed.

## **Chapter Four - A Framework for Transnational Republican Governance**

### **Introduction**

Our analysis so far has shown that protecting individuals from domination requires that political communities secure both internal and external non-domination. Indeed, we saw in the first and second chapters that it is necessary for states to secure social and political justice within their borders through the following practices: protecting and resourcing the basic liberties; guarding against adaptive preferences; and ensuring that their political institutions remain subject to individuals' influence and direction. Importantly, we have also seen that these efforts alone will not secure non-domination because it is possible for individuals within socially and politically just states to be subject to interference or the threat of interference by external agents. Indeed, we saw in the preceding chapter that such transnational domination can occur in two distinct ways. Transnational agents can exert domination over states, and they can dominate individuals within those states without directly interfering with the state itself. Securing non-domination, I have argued, therefore requires that we look at how we might provide states with protections against external domination and thereby safeguard their capacity to secure internal social and political justice. This, I have suggested, can be achieved through replicating the strategy of constitutional provision at a transnational level and creating an independent political system which is able to constrain transnational agents. Concurrently, we need to explore how decisions, which affect spatially dispersed individuals, can be rendered democratically legitimate and non-dominating. I have suggested that this can be achieved through the devolution and expatriation of states' powers to sub-state and transnational levels of decision-making so that individuals are able to influence and direct the decisions which they're subject to. This will ensure, at the transnational level, that there are authorities capable of regulating the activities of transnational agents, including multinational corporations and regulatory institutions such as the World Trade Organisation and World Bank, whose actions affect the lives of myriad individuals. Finally, I have argued that it is imperative that each level of governance is subject to individuals' influence and direction in order to ensure that new levels of governance are democratically legitimate and prevented from becoming sources of domination.

The task of this chapter is to explore how we might develop a transnational political system capable of realising these aims, and thereby provide an alternative framework within which individuals can enjoy social, political, and international justice. Indeed, doing so, I will argue, requires us to first consider 'the boundary problem'. This foundational issue in democratic theory is concerned with determining who should be deemed to be a member of a given demos, and therefore who can be deemed to be entitled to participate in democratic decision-making within a given polity. Formulating an answer to this issue ought to be a central concern for neo-



republicans because, as we saw in the second chapter, securing democratic legitimacy requires that political control is ‘forced to track the interests and ideas of *the person suffering the interference* (my emphasis).’<sup>366</sup> Importantly, as we saw in the preceding chapter, control can be exerted across borders, in the form of individualised transnational domination, seemingly extending the boundaries of existing demoi and necessitating a reconsideration of how we draw democratic boundaries in order to ensure that all of those subject to control are able to influence and direct it, and thereby render it non-dominating. I will argue, here, that demoi must be constituted on the basis of who can be deemed to be *possibly affected* by a given issue, while taking into account real world constraints and thereby acting in accordance with a principle of subsidiarity. After outlining this approach to constituting demoi, we will turn to a consideration of how we might develop a democratic framework within which we can realise these principles of affectedness and subsidiarity alongside the three aims of neo-republican governance noted above. My aim, here, will be to argue that Held’s cosmopolitan democracy can be harnessed to republican ends as it provides us with the means to secure social, political, and international justice and would, if suitably refined, secure individuals against domination.

To that end, this chapter proceeds as follows. The first section will outline what neo-republicanism requires of a transnational political system and then explore the issue of how to specify the respective demoi which would comprise the various levels of the system of multi-level governance. It argues that such specification should be carried out in accordance with Robert Goodin’s recommendation, via the principle of affectedness. The second section will then focus on an issue which Goodin dismisses: that the principle of affectedness can be ‘overinclusive’. This is problematic as including too many individuals within the demoi will prevent those who are actually subject to an instance of control from determining the outcome. That is, in allowing unaffected individuals to determine outcomes, those who are subject to the control will not be able to exert the requisite degree of influence and direction over the ways in which they’re controlled. As such, I will argue that the principle of ‘all possible affected interests’ must be supplemented by a principle of subsidiarity which would aim to mitigate against excessive overinclusion. The third section then looks at two possible means by which these principles may be realised within a system of transnational democracy: Sabel’s account of experimentalist governance and Gould’s transnational interactive democracy. The section argues that both models would be unable to secure the requisite degree of influence and direction over governance, and that we should instead embrace cosmopolitan democracy as a framework within which neo-republican principles can be realised. The fourth section then outlines David Held’s global social democracy as an account of how neo-republicanism’s principles can be realised, while the fifth section will outline why I think that Pettit’s account of the basic liberties and resourcing against

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<sup>366</sup> Pettit, *Republicanism*, p. 55.

dependence ought to be conceptualised as an account of human rights which require global entrenchment and enforcement. The sixth section will then consider and refine Held's suggestion that we develop a boundary court to ensure that decisions are taken at the correct level of governance. The final section will conclude.

### **Specifying the Demos**

As noted in the introduction, our first aim is to explore the boundary problem. In brief, this problem concerns how we determine who can be deemed to be a member of a given polity, and therefore specify who is entitled to participate in democratic decision-making. This is an important issue within democratic theory, and one which neo-republicans in particular ought to be concerned with. This is because, as we saw in the second chapter, securing democratic legitimacy requires that political control is 'forced to track the interests and ideas of *the person suffering the interference* (my emphasis),'<sup>367</sup> and yet, as we saw in the previous chapter, individualised transnational domination is exerted across borders, implicating individuals within transnational demoi in which they're unable to exert influence and direction. The problem, then, is that Pettit's account of democratic legitimacy presupposes the existence of self-contained demoi within which citizens can influence and direct governance, and yet the previous chapter's discussion of individualised transnational domination suggests that demoi are not isolated in this way. As such, we need to consider exactly how to draw democratic boundaries in a way which would enable all of those suffering interference or the threat of interference to exert influence and direction over that interference. Once we have an account of exactly how democratic boundaries ought to be drawn, we can then precede to a consideration of how states' existing powers might be devolved and expatriated to these different demoi so that the problem of individualised transnational domination can be addressed.

In his discussion of the boundary problem, Robert Goodin argues that it does not matter how we initially constitute a demos, as long as we look to reconstitute that demos according to democratic principles. This is because he argues that there is no way to democratically constitute a demos (at least initially), as it would be, 'incoherent to constitute the electorate through a vote among voters who would be entitled to vote only by virtue of the outcome of that very vote.'<sup>368</sup> As a result of this incoherence, Goodin argues that we ought to focus our attention on the more fundamental issue of deciding what principles ought to guide the ways in which we reconstitute demoi.

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<sup>367</sup> Ibid., p. 55.

<sup>368</sup> Robert E. Goodin, 'Enfranchising All Affected Interests, and Its Alternatives', *Philosophy & Public Affairs* 35 (2007), pp. 40-68 (pp. 40-43).

It would seem, on the face of it, that the principle of subjectedness would be the most appropriate means for determining the demos within neo-republican political theory. This is because there are obvious parallels between the principle of subjectedness, which claims that, ‘all those who will be *bound* by a rule should have a say in making the rule (my emphasis),’<sup>369</sup> and the focus on how coercion ‘binds’ individuals, and domination and the focus on how control interacts with individuals’ choices. As formulated by theorists such as Jurgen Habermas,<sup>370</sup> Arash Abizadeh,<sup>371</sup> Claudio Lopez-Guerra,<sup>372</sup> and Robert Dahl,<sup>373</sup> the principle of subjectedness stipulates that it is those whose actions are *governed* by specific laws who can be said to be subject to them and, being subject to them, should have a say in their formulation.<sup>374</sup> Nonetheless, the problem is that this principle would seem to misidentify those who comprise the relevant demos: this is because, as we saw in the second chapter, control must track the interests of all of those suffering interference or the threat of interference and yet it is possible for individuals not *governed* by a specific decision to nonetheless be interfered with by it.

To illustrate, Goodin asks us to imagine a law being passed in Germany which would require factories which produce pollution to build tall chimneys, with the aim of ensuring that emissions are directed towards Scandinavia. In this situation, the law is made by the German people and obviously coerces German manufacturers, but will also affect Scandinavians’ lives as well.<sup>375</sup> Goodin goes on to argue that the problem with the principle of subjectedness is that while the ‘bound’ individuals, the Germans, would have a say in the formulation of this decision, and would therefore exert the appropriate influence and direction, those who are also affected by the decision, the Scandinavians, would have no say.<sup>376</sup>

I think that it is possible to view this situation as one in which both transnational and individualised transnational domination might occur. That is, if the decision to pollute in Scandinavia has an effect upon Scandinavians as a collective agent, perhaps by rendering their option to live in a pollution-free country unrealisable or forcing them to develop ways to combat such pollution, then it will be an instance of the kind of transnational domination that Pettit is concerned with. If, however, the pollution has a disparate effect, perhaps aggravating specific

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<sup>369</sup> Ibid., p. 49.

<sup>370</sup> Jurgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, William Rehg (trans.), (Cambridge: Polity Press, 1996).

<sup>371</sup> Arash Abizadeh, ‘Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders’, *Political Theory* 36 (2008), pp. 37-65.

<sup>372</sup> Claudio Lopez-Guerra, ‘Should Expatriates Vote?’, *Journal of Political Philosophy* 13 (2005), pp. 216-34.

<sup>373</sup> Robert A. Dahl, *Democracy and its Critics* (London: Yale University Press, 1989), pp. 119-131.

<sup>374</sup> Eva Erman, ‘The Boundary Problem and the Ideal of Democracy’, *Constellations* 21 (2014), pp. 535-546 (p. 538).

<sup>375</sup> Goodin, ‘Enfranchising All Affected Interests’, pp. 49-51.

<sup>376</sup> Ibid., pp. 49-50.

individuals' health problems or causing damage to farmers' land, then we should construe this example as one of individualised transnational domination. Nonetheless, irrespective of which form of domination Germany's decision takes, we must nonetheless construe it as an instance in which political control interferes in individuals' lives: as such, it is necessary to ensure that the interests of those suffering the interference are able to exert influence and direction over the determination of that decision.

The problem, in the Germany-Scandinavia example, is that while the German decision officially 'binds' German manufacturers, it may nonetheless control Scandinavians in a myriad ways (through, for example, rendering their option to live in a pollution-free country unrealisable or causing damage to farmers' land). As such, the principle of subjectedness, with its focus on drawing boundaries around individuals 'bound' by a decision, seems to be too narrow and underinclusive for our purposes because it ignores the fact that unbound individuals can be controlled and dominated by decisions taken within that community.

As an alternative, we might take a statist approach to this issue, such as that taken by Pettit, and claim that all of those living in a particular state are those who can be deemed to be subject to coercion and who must therefore exert influence and direction over governance. Nonetheless, this doesn't quite seem quite right either as decisions taken by national governments can, as in the above example, exert individualised transnational domination over individuals not living within that territory. Indeed, Pettit seems to acknowledge that borders, for example, will affect those outside of a given state, but argues that this will, 'be a by-product of an independently necessitated, otherwise unobjectionable policy: a restriction on your freedom of movement, to be sure, but one that vitiates that freedom rather than invades it.'<sup>377</sup> While therefore acknowledging that individuals outside of a state can be coerced by decisions taken within that state, Pettit nonetheless opts for his statist account of democratic legitimacy, and excludes non-citizens from inclusion within the demos.

Although both the subjectedness and statist responses to the affectedness problem are problematic, they nonetheless seem to suggest a way forward. Indeed, Goodin goes on to argue that those who claim that democracies are constituted by a shared territory, history, or national identity, usually do so because, 'the interests of individuals within those groups are affected by the actions and choices of others in that group.'<sup>378</sup> Constituting a democracy on the basis of a shared territory, history, or nationality is therefore only an approximation to what really matters, which is that these individuals usually share a set of intertwined interests.<sup>379</sup> So, when it is argued that some people's interests are inappropriately included or excluded from consideration in the determination of a decision, Goodin argues that theorists are usually employing the more

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<sup>377</sup> Pettit, *On the People's Terms*, p. 162.

<sup>378</sup> Goodin, 'Enfranchising All Affected Interests', p. 48.

<sup>379</sup> *Ibid.*, p. 49.

fundamental claim that those who are *affected* by a decision ought to have a say in its formulation.<sup>380</sup> This principle, the principle of affectedness, requires that all of those affected by a given decision have a say in its formulation.

The principle of affectedness seems to be a more promising guide to determining democratic boundaries because it acknowledges that control can be exerted across borders, constraining the options available to spatially dispersed individuals. As such, it seems to be a better mechanism for determining who is subject to individualised transnational domination than Pettit's statism or the principle of subjectedness, and appears better able to identify which individuals need to exert influence and direction over political decisions in order to render those decisions democratically legitimate. Nonetheless, while the principle of affectedness avoids being underinclusive, it remains significantly underspecified and can be conceptualised in a variety of ways.

To that end, Goodin starts by outlining the 'all actually affected interests' principle. This principle entails that, 'the decision-making body should include all interests that are actually affected by the actual decision.'<sup>381</sup> As examples of this principle of affectedness, we find Thomas Pogge defending the 'all legitimately affected interests' principle,<sup>382</sup> David Held outlining a principle of 'all significantly affected interests',<sup>383</sup> and Gould defending a principle of 'all importantly affected interests.'<sup>384</sup> Interestingly, Gould notes, after outlining her own specification of the principle of affectedness, that, 'Paramount among the difficulties [with specifying the principle of affectedness] is the impossibility of specifying all who would be affected, since

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<sup>380</sup> Ibid., p. 49.

<sup>381</sup> Ibid., p. 52.

<sup>382</sup> Pogge argues that 'The qualification "legitimately" is necessary to rule out claims such as this: "I should be allowed to vote on the permissibility of homosexuality, in all parts of the world, because the knowledge that homosexual acts are performed anywhere causes me great distress."' This qualification therefore seems to be intended to screen out what Ronald Dworkin calls external preferences, preferences about what others should do, and ensure that it is only individuals' personal preferences, about what they themselves should do, which are taken into account. See: Thomas W. Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press, 2002), p. 302 (note. 294).

<sup>383</sup> Held specifies three tests for determining the extent of affectedness: The test of extensiveness examines the range of peoples within and across delimited territories who are significantly affected... The test of intensity assesses the degree to which [a policy issue] impinges on a group of people(s) and, therefore, the degree to which national, regional or global legislation or other types of intervention are justified. The third test, the assessment of comparative efficiency, is concerned to provide a means of examining whether any proposed national, regional or global initiative is necessary in so far as the objectives it seeks to meet cannot be realised in an adequate way by those operating at 'lower' levels of decision-making. David Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge: Polity Press, 1995), p. 236.

<sup>384</sup> Gould's principle entails that, 'a person is to be regarded as importantly affected if the decision in question impacts the basic freedom, needs, or central interests that are protected by *human rights*, or if the decision has significant effects on that person's ability to realise these human rights.' See: Gould, *Globalizing Democracy and Human Rights*, p. 212.

decisions obviously have unintended consequences and their reach is potentially unending.<sup>385</sup> She further acknowledges that, ‘people are most often differentially affected [by political decisions]. In addition, the principle is difficult to apply concretely because it cannot always be known in advance who is going to be affected.’<sup>386</sup>

This acknowledgement highlights a foundational issue with specifying the principle of affectedness, and it is one which Goodin has outlined.<sup>387</sup> This is that, irrespective of how we define what being significantly/legitimately/importantly affected entails, we cannot know who will *actually* be affected until a decision has been made. That is, ‘which interests are “actually affected” depends on who gets to vote. Hence it is incoherent to try to determine who should get to vote by asking whose interests are actually affected by the course of action actually decided upon.’<sup>388</sup> Fundamentally, the problem with focusing on those *actually* affected by a decision is that those who are actually affected by any decision will depend on what the actual decision turns out to be which, in turn, depends on those who actually get to make the decision.<sup>389</sup>

In order to avoid the incoherence associated with defining who is *actually* affected by a decision, Goodin suggests three further ways in which we might specify the principle of affectedness. These are the ‘all possibly affected interests’, ‘all and only affected interests’, and ‘all probably affected interests’ principles. The ‘all possibly affected interests’ principle acknowledges that individuals are not only affected by whatever decision is reached, but are also affected by whatever decision could have possibly been reached. Understood in this way, the principle, taken to its logical conclusion, requires that we, ‘give a say to anyone who might possibly be affected by any possible decision arising out of any possible agenda.’<sup>390</sup> This principle avoids the incoherence of the ‘all actually affected interests’ principle by acknowledging that, at least in principle, anyone could be affected by any decision. Nonetheless, as Goodin acknowledges, this principle runs the risk of being too overinclusive since it would seem to permit those who will never actually be affected by a given decision to have a say in the formulation of that decision (we’ll return to this point in the next section).

As a way of avoiding this potentially overinclusive outcome, the ‘all and only affected interests’ principle would attempt to limit the expanding demos by acknowledging that the outcome of a specific decision could never really affect certain individuals. Although this principle seems initially to be plausible, Goodin argues that it is problematic as it would give rise to continually shifting demoi which change with each issue. This is because we would need to determine who is going to be affected by a decision and then give only these people a voice. Since

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<sup>385</sup> Ibid., p. 176.

<sup>386</sup> Ibid., p. 211.

<sup>387</sup> Goodin, ‘Enfranchising All Affected Interests’, pp. 52-53.

<sup>388</sup> Ibid., p. 53.

<sup>389</sup> Ibid., pp. 52-53.

<sup>390</sup> Ibid., p. 55.

different people will be affected by different issues, it follows that the demos for each decision will be different. This principle therefore entails the same incoherence as the ‘all actually affected interests’ principle (since we cannot know who will actually be affected until an actual decision has been made) and would be infeasible as it would likely give rise to a demos of fluctuating demoi as I have argued would occur with Bohman’s account.

The final substantive principle of affectedness outlined by Goodin, the ‘all probably affected interests’ principle would attempt to draw a democratic boundary around those who would probably, rather than merely possibly, be affected by a decision. This principle is also problematic, however, because those who will probably be affected by a decision will again depend on who gets to formulate the decision.<sup>391</sup> This principle, as with the ‘all actually affected interests’ and ‘all and only affected interests’ principles, cannot tell us who the relevant demos is until after the decision has been made.

Goodin’s work therefore shows that the actual specification of ‘affectedness’ is ancillary to the issue of *actual* or *possible* affectedness. That is, irrespective of whether we define affectedness in terms of being legitimately, significantly, or importantly affected by a policy issue, our more fundamental concern is the issue of whether to define affectedness in terms of who is actually, possibly, or probably affected by a given issue. I think that Goodin has shown that we cannot define affectedness in terms of being actually affected since this would commit us to the absurdity of attempting to constitute a demos after a decision has been reached. Nor can we attempt to define demoi on the basis of who will probably be affected since, as noted above, those probably affected will depend upon who gets to make the decision. It therefore seems that we must adopt the principle of ‘all possibly affected interests’ as it is the only way of ensuring that that all genuinely affected individuals have their interests tracked: by tracking *all* interests we can be assured that the correct ones are definitely tracked, and it would avoid the incoherence of the other substantive principles of affectedness since we can specify the demos *prior* to the making of a decision.

### **The Overinclusive Demos**

Goodin goes on to argue that, if the ‘all possibly affected interests’ principle is the best interpretation of the principle of affectedness, ‘then it does indeed provide good grounds for thinking that (at least in principle) we should give virtually everyone a vote on virtually everything virtually everywhere in the world.’<sup>392</sup> Acknowledging that attempting to realise such a principle in the real world would be wildly impractical, he goes on to argue that we need to think about

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<sup>391</sup> Ibid., pp. 52-62.

<sup>392</sup> Ibid., p. 64.

which arrangements would be feasible in practice, and explore how we might supplement the existing state system (which he has defended elsewhere as an administrative mechanism for ensuring that universal duties are effectively discharged)<sup>393</sup> to ensure that all of those possibly affected have their interests tracked in the formulation of decisions.

To that end, he goes on to suggest two possible ‘overlays’ which would leave the existing state system intact. The first proposal would be to, ‘put a layer of “world government” over the top of them, giving people a right to appeal over the heads of territorial states if their interests were affected by actions of territorial states in which they have no say.’<sup>394</sup> The aim with this approach would be to ensure that states take responsibility for issues which do not affect other peoples or generate externalities, with a ‘higher’ level of governance tasked with adjudicating on complaints from people and peoples whose interests are affected by other polities. While noting that he is unsure how such a system might operate in practice, Goodin does suggest that a world government could be constituted as a court of appeal which would adjudicate upon those ‘rare cases’ where decisions spill across national boundaries. On this view, we would find that states are responsible for the vast majority of decisions, with an overarching ‘court’ responsible for internalising the externalities generated by states and, ‘making those agents who cause the effects somehow responsible for the consequences of their actions.’<sup>395</sup>

The second option would be to, ‘put a layer of “international law” over the top of territorial states, imposing an obligation on territorial states to honor claims for compensation from people and peoples whose interests have been affected by actions of territorial states in which they have no vote.’<sup>396</sup> The aim, again, would be to internalise externalities, ensuring that those states which produce external costs compensate those who must bear them. For example, if Germany were to pollute in Scandinavia, the aim would be to ensure that Germany adequately compensates the Scandinavians for its actions. With that said, Goodin notes that the compensatory strategy is the third best option available (the best being giving virtually everyone everywhere a vote on virtually everything, and the second best being the creation of a ‘federal’ system of global governance where states discharge their duties and the global government ensures that they bear the costs of their actions) because determining what counts as adequate compensation is a tricky issue. That is, sometimes compensation might require financial remuneration, but at other times it will be difficult to determine what can be deemed adequate compensation in kind, particularly if the wrong committed is the wrongful exclusion from the demos which made a decision on a particular issue.<sup>397</sup>

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<sup>393</sup> We will consider Goodin’s defence of the state in the next chapter.

<sup>394</sup> Goodin, ‘Enfranchising All Affected Interests’, p. 64.

<sup>395</sup> *Ibid.*, pp. 65-66.

<sup>396</sup> *Ibid.*, pp. 64-65.

<sup>397</sup> *Ibid.*, pp. 66-67.



Goodin therefore offers us three approaches for reconstituting global governance to ensure that decisions are made in accordance with the principle of ‘all possibly affected interests’. While each of these suggestions would seem to ensure that individuals are either included in the making of decisions which may affect them or compensated in some way if excluded, I think that only one of these approaches is compatible with the requirements of neo-republican governance. To see why, it is useful to consider each approach in turn.

Starting with the suggestion of enfranchising all possibly affected individuals, Goodin effectively dismisses the problem of overinclusion, noting in his discussion of constituting the demos on the basis of shared territory, history, or nationality, that, ‘Sometimes the approximation is overinclusive, including in the demos someone whose interests are not affected by the decision of the demos (either in the case of this particular decision, or in general). Sometimes the approximation is underinclusive, excluding from the demos someone whose interests are affected by the decision of the demos.’<sup>398</sup> As we’ve already seen, Goodin goes on to explore how we ought to reconstitute the demos in accordance with the principle of affectedness, such that we can ensure that all of those who are possibly affected by a decision have a say in its formulation. In this way, he effectively dismisses the problem of including myriad individuals who could never plausibly be affected by a political decision, focusing instead on ensuring that we avoid underinclusion. In doing so, he advocates a best-case solution which would entail that a significant number of unaffected individuals will have their interests tracked in the formulation of decisions that will never plausibly affect them, undermining the requirement, explored in earlier chapters, that those interfered with are able to exert influence and direction over that control.

For example, we will find in the Germany-Scandinavia example that unaffected individuals will determine Germany’s polluting decision. Indeed, if we enfranchised everyone in the making of this decision, then the interests of every living person would be tracked in the formulation of this decision. The problem here is that while it is logically possible that Germany’s decision could affect everyone, real world constraints on where Germany can pollute mean that it is radically unlikely that Germany’s decision could ever realistically affect the vast majority of individuals whose interests are included within the decision-making process. In this way, the individuals who are likely to be affected by whatever decision is reached by Germany (presumably including all of those within polluting distance of Germany) will find that they are unable to influence and direct the decision in the requisite way because the interests of individuals who will never plausibly be affected will determine the outcome of the decision.

This ought to be a significant concern for neo-republicans because, as we saw in the second chapter, rendering an act non-arbitrary requires that any act of interference is, ‘forced to

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<sup>398</sup> *Ibid.*, p. 49.

track the interests and ideas of *the person suffering the interference* (my emphasis).<sup>399</sup> That is, it is only those subject to a specific instance of interference or threat of interference who must exert influence and direction over the making of that decision. But, in the case of Germany-Scandinavia and a decision being referred to a global demos, it is clear that those suffering the interference will not exert influence or direction over the decision: instead, it will be billions of other interests which determine the outcome of the decision.

The third-best solution that Goodin advocates, compensating those who are affected by the externalities generated by national decisions, ought to be just as problematic for neo-republicans. Indeed, this approach would seem to suggest that constraints on freedom can be adequately compensated and mitigated against through financial recompense, and states would be permitted to act with impunity as long as they compensated those that they have dominated. This would create a licence for interference, enabling states such as Germany to emit their pollution where they will as long as they have the resources necessary to compensate those that they have interfered with. Even more problematically, this approach would seem to create the conditions in which powerful and wealthy states would have a wider area of freedom in which to act. That is, if they are sufficiently wealthy, states could interfere with others and then simply recompense them for their transgressions; poorer states would have no such freedom since they would lack the resources necessary to compensate others for the externalities generated by their decisions. This approach would therefore fail to provide an adequate blueprint for transnational governance since it would not resolve the problem of externalities; it would simply make it easier for powerful states to act with impunity and subject weaker states to the depredations of the powerful.

To my mind, Goodin's second-best solution, that states form the primary demos with an overarching global high court tasked with redressing the externalities generated by states' decisions, seems to be the most promising suggestion for resolving the affectedness problem as it strives to avoid overinclusion by allowing some issues to be decided by states, while avoiding underinclusion by ensuring that decisions which generate externalities can be addressed by a global demos or its representatives. Nonetheless, this solution does not go far enough in balancing between over- and underinclusion. For example, there are myriad issues which, if decided at a state level, would result in excessive overinclusion, and likewise many which would entail overinclusion if referred immediately to a global layer of governance. For example, if the U.K. government were tasked with making all decisions for each of the constituent countries, it is likely that the Welsh, Scottish, and Northern Irish would find that the control that is exercised over them is subject to others' influence and direction. That is, we would find that the national demos, comprised of roughly 55 million English individuals, 5 million Scots, 3 million Welsh, and 2

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<sup>399</sup> Pettit, *Republicanism*, p. 55.

million Northern Irish, would be dominated by the English, whose influence and direction would determine the ways in which others are controlled. Similarly, if all supra-national decisions were immediately referred to a global demos or high court, then we would find that, again, those actually subject to a decision do not get to influence or direct it. Indeed, we've already seen that referring the Germany-Scandinavia issue to a global demos will likely result in a decision which does not reflect the interests of those who will be affected by the outcome.

The problem, here, is that Goodin only recognises the necessity of two levels of decision-making, at national and global levels. And yet there are decisions which would be better made at sub-state and supra-national levels, and which would enable us to better avoid both excessive over and underinclusion. For example, in the Germany-Scandinavia example, we would better avoid excessive overinclusion if the decision were referred to a European level of governance rather than a global one; in the U.K. example, we would better avoid overinclusion if we referred the decision to a sub-state level of decision-making.

This suggests that it will be necessary to complement or qualify the principle of 'all possibly affected interests' with a more fully elaborated principle of subsidiarity. That is, the aim would be to ensure that decisions are taken in a way which ensures that all of those possibly affected by a decision are able to influence and direct the making of that decision, while also striving to avoid taking the decision at a level of governance which includes myriad individuals who will never plausibly be affected because of real world constraints (such as Germany's geographic location, or the fact that English children are unlikely to be educated in Scotland).

Our aim, then, is to mitigate against the problem of underinclusion by delegating decisions upwards in accordance with the principle of 'all possibly affected interests', thereby striving to ensure that all of those affected by a decision are able to influence and direct it. Simultaneously, the principle of subsidiarity will aim to mitigate against the problem of overinclusion by delegating decisions downwards, such that real world constraints are taken into account and decisions are taken at a level which excludes those who cannot realistically be affected by a given decision. To that end, the aim of the next section is to explore how we might develop a transnational democratic framework premised upon these principles of affectedness and subsidiarity. While doing so, it is imperative that we also retain a focus on the need to safeguard states' capacity to secure social and political justice, and ensure that democratic governance is subject to individuals' influence and direction.

## **Transnational Frameworks**

Addressing the problem of individualised transnational domination, while simultaneously protecting states' capacity to secure social and political justice, therefore seems to require a multi-level, transnational political system premised upon the principles of affectedness and subsidiarity.

My aim in this section is to explore two different suggestions from the literature on transnational governance, experimentalist governance and Gould's interactive democracy. However, in the end, both are found wanting in terms of securing non-domination. The next section will then go on to explore and endorse a transnational framework inspired by Held's cosmopolitan democracy as the most suitable system for securing non-domination.

The first approach to transnational governance which we need to consider is what Charles Sabel, Robert Keohane, Jonathan Zeitlin and others call 'Experimentalist Governance' or 'democratic deliberative polyarchy.' Indeed, De Burca, Keohane, and Sabel argue that experimentalist governance, or GXG, is, 'an institutionalised process of participatory and multilevel collective problem solving, in which the problems (and the means of addressing them) are framed in an open-ended way, and subjected to periodic revision by various forms of peer review in light of locally generated knowledge.'<sup>400</sup> They argue that this form of governance is normatively justified because of the deliberative and inclusive approach taken to redefining goals and preferences and, in its ideal form, would entail five key 'deliberation-fostering steps.'<sup>401</sup> These steps are as follows: there will be reflection and discussion amongst stakeholders who share a broadly similar perception of a common problem; resulting in the development of a framework for addressing this problem through the articulation of open-ended goals; with responsibility for implementing solutions allocated to lower-level, contextually-situated actors; who would continuously feedback to higher-level actors, enabling reporting and monitoring across a range of contexts, with outcomes subject to peer-review; and with goals and practices being routinely reviewed and re-evaluated and, where appropriate, being revised in light of the outcomes of the process of peer review.<sup>402</sup>

Elsewhere, Sabel and Zeitlin discuss the use of experimentalist governance within the context of the EU. They argue that the EU is now, 'a functioning novel polity without a state,'<sup>403</sup> because decision-making is a deliberative process which socialises participants (including civil servants, scientists, and interest-group representatives) into epistemic communities through their participation in 'comitological' committees which are comprised of such experts and member states' representatives.<sup>404</sup> Such a process is deemed to link national administrations with each other and EU institutions, in the manner of a multi-level system of governance, without establishing a hierarchy. This is because, as noted above, decisions taken at lower levels of

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<sup>400</sup> Grainne De Burca, Robert O. Keohane, and Charles Sabel, 'Global Experimentalist Governance', *British Journal of Political Science* 44 (2014), pp. 477-486 (p. 477).

<sup>401</sup> *Ibid.*, pp. 477-478.

<sup>402</sup> *Ibid.*, p. 478.

<sup>403</sup> Charles F. Sabel and Jonathan Zeitlin, 'Learning from Difference: The New Architecture of Experimentalist Governance in the EU', in Charles F. Sabel and Jonathan Zeitlin (eds.), *Experimentalist Governance in the European Union: Towards a New Architecture* (Oxford: Oxford University Press, 2010), pp. 1-28 (p. 2).

<sup>404</sup> *Ibid.*, p. 2.

decision-making can influence decision-making across the network. They argue that networked governance in this form therefore blurs the distinction between centralised and decentralised decision-making through the continuous process of review, evaluation, and revision across the network and in light of units' findings.

It is useful to quote Sabel and Zeitlin at length as they provide a concise discussion of how such a system would operate, arguing that:

In this design, first, framework goals (such as 'good water status', safe food, non-discrimination, and a unified energy grid) and measures for gauging their achievement are established by joint action of the Member States and EU institutions. Lower-level units (such as national ministries or regulatory authorities and the actors with whom they collaborate) are, second, given the freedom to advance these ends as they see fit. Subsidiarity in this architecture implies that the lower-level units have sufficient autonomy in implementing framework rules to propose changes to them. But in return for this autonomy, they must, third, report regularly on performance, especially as measured by the agreed indicators, and participate in a peer review in which their own results are compared with those pursuing other means to the same general ends. Fourth, and finally, the framework goals, metrics, and procedures themselves are periodically revised by the actors who initially established them, augmented by such new participants whose views come to be seen as indispensable to full and fair deliberation.<sup>405</sup>

Importantly, the lower levels of decision-making are not required to reach a consensus on how to proceed with the implementation of overarching aims as they would in other deliberative processes, but are instead required to be responsive to one another and the discoveries made by other units. The aim would be for the overarching level of governance, the EU, to set framework goals in discussion with Member States, and for lower levels to adapt and implement these frameworks within their respective contexts and report on their experiences, producing an experimental system of governance in which all units learn from others. They go on to argue that this experimentalist form of governance is an instance of directly deliberative polyarchy because it, 'uses argument to disentrench settled practices,'<sup>406</sup> and, 'uses the concrete experience of actors' differing reactions to current problems to generate novel possibilities for consideration.'<sup>407</sup> Importantly, 'It is polyarchic because it is a system in which the local units learn from, discipline, and set goals for each other...In this sense, deliberative polyarchy is a machine for learning from diversity, thereby transforming an obstacle to closer integration into an asset for achieving it.'<sup>408</sup>

Importantly, Sabel and Zeitlin do acknowledge that a governance process whereby technical experts and elites make decisions is a significant departure from established norms of representative democracy, wherein laws are deemed legitimate only when they are produced by

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<sup>405</sup> Ibid., p. 3.

<sup>406</sup> Ibid., p. 5.

<sup>407</sup> Ibid., p. 6.

<sup>408</sup> Ibid., p. 6.

the sovereign people through their representatives, and, ‘naturally looks suspicious from this point of view.’<sup>409</sup> This is because it seems to undermine the requirement that, ‘not only [must] citizens be equally subject to the law, but also that they be jointly and equally its authors.’<sup>410</sup> Importantly, in addition to not enjoying traditional democratic validation by representatives, this governance process appears, ‘to deliver decision-making into the hands of a technocratic elite, whose potentially self-interested manipulations are cloaked in the robes of dispassionate deliberation.’<sup>411</sup> Leaving aside the former issue, which the authors argue would require recourse to an independent account of democratic justification, they focus on arguing that not only is a concern with technocratic governance unfounded, but that technocracy in the envisioned form can have a democratising effect. This is because experimentalist governance has a destabilising effect upon entrenched forms of authority.<sup>412</sup>

This account of governance would seemingly enable us to achieve the twin aims of avoiding excessive over and underinclusion and protecting states’ capacity to secure social and political justice. Indeed, states seemingly retain their existing responsibilities and ‘pool’ their decision-making and problem-solving capacities to address common problems. The fact that this system is multi-level and polyarchic would seem to ensure that democratic boundaries are drawn in a way which coheres with the principles of affectedness and subsidiarity. That is, individuals, as members of the European demos, would seemingly have their interests represented in the determination of common problems and goals and, as members of the national demos, would have their interests represented in the formulation of national solutions. Nonetheless, the problem with this approach to global governance, as should be clear from the acknowledgement that it appears to deliver decision-making into the hands of unelected technocrats, is that it seems unlikely that control would be properly constrained to track the interests of those suffering from interference since decision-making powers will be handed to unelected technocrats. If these technocrats are not subject to democratic mechanisms, i.e. if they’re not elected, it seems unlikely that individuals would be able to adequately influence how they’re governed, and if the technocrats are not constrained by the norms produced by public deliberation and contestation, the direction pursued is unlikely to be one which is equally acceptable to all individuals. In this way, this approach would give rise to *imperium*.

Now, it is important to acknowledge that Pettit does defend a range of constitutional and quasi-constitutional mechanisms as a supplement to democratic mechanisms and, on the face of it, technocratic decision-making may comprise one justified component of a democratic constitutionalism. Nonetheless, we must be concerned that this process seems to entirely confer

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<sup>409</sup> Ibid., p. 2.

<sup>410</sup> Ibid., p. 17.

<sup>411</sup> Ibid., p. 18.

<sup>412</sup> Ibid., pp. 18-19.

decision-making powers upon a range of experts who will be able to determine overarching goals, implement them within lower units, assess performance through peer review, and revise these procedures in light of emerging results. Indeed, if we were to look to implement such an approach globally, we might find that global experts come to exert a significant and potentially tyrannical level of control over lower units of decision-making, and we may see the rise of a technocratic global Leviathan setting goals, invigilating implementation, and revising aims and ends for all polities. The obvious response to this concern would be to argue that as long the technocrats are appointed by officials who have been elected, and are subject to governmental and non-governmental oversight, then the technocrats would fulfil a function somewhat analogous to that of senior civil servants and judges in the U.K. political system, wherein significant powers are exercised by unelected officials within the confines of an overarching democratic framework without giving rise to tyrannical governance.

Nonetheless, I do not think that this response is adequate because the powers and responsibilities which technocrats would be granted would be more significant and far-reaching than those enjoyed by other unelected officials. Indeed these powers would permit these officials to set, implement, and revise their own policies, seemingly unconstrained by the usual separation of powers which occurs within democratic systems. That is, while judges apply the law, they do not formulate it, and while civil servants enact policy, they do not determine it. These technocrats, however, would be able to formulate, implement, oversee, and revise their policies without being subject to the same constraints that other government functionaries are subject to. Such an approach would therefore fail to adequately realise the dispersion-of-power condition noted earlier, and would permit an unelected body of officials to exercise extensive, unconstrained decision-making powers, likely giving rise to domination. Finally, in such a situation, it seems clear that individuals are unlikely to be able to exert the requisite degree of influence over the ways in which they're controlled, and it seems unlikely that individuals' shared interests or common good would ever enjoy the directive effect required by Pettit's account of democratic legitimacy.

Since the experimentalist account of transnational governance is insufficient for our purposes, it is necessary to consider an alternative approach offered by Carol Gould. It is important to begin by noting that Gould's account of transnational democracy is comprised of two distinct principles. The first principle, the principle of 'common activities', entails that, 'rights of democratic participation arise from rights to self-determination in the context of common or joint activities,'<sup>413</sup> because, 'when such common activities are institutionalised, they serve as arenas for democratic decision-making in a formal sense.'<sup>414</sup> This principle therefore requires that

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<sup>413</sup> Gould, *Globalizing Democracy and Human Rights*, p. 175.

<sup>414</sup> Carol C. Gould, *Interactive Democracy: The Social Roots of Global Justice* (Cambridge: Cambridge University Press, 2014), p. 88.

when individuals are engaged in an ongoing scheme of cooperation, they are able to exercise full and equal rights in co-determining their common lives. As layers of institutionalisation emerge above the state, individuals will correlatively acquire full democratic rights of participation in these schemes of cooperation and as cross-border networks of individuals emerge to address specific challenges they will need to be fully democratised. But, beyond these ‘formal’ arenas of common activities, individuals’ rights to participation weaken: that is, if a decision is taken elsewhere in the world, and individuals are not members of whatever institution makes such decisions, individuals will acquire a right to have an ‘input’ into the making of the decision, irrespective of the extent to which they’re affected. It is here that Gould’s second principle, the principle of ‘all importantly affected interests’ becomes operative. This principle requires that individuals have an *input* into the making of a decision when it importantly affects them, where, ‘a person is to be regarded as importantly affected if the decision in question impacts the basic freedom, needs, or central interests that are protected by human rights, or if the decision has significant effects on that person’s ability to realise these human rights.’<sup>415</sup> Indeed, she claims that this latter principle, ‘calls for substantial input into the functioning of global governance institutions, when people are impacted in their human rights. This sort of input could partly proceed online, in terms of contributions to the deliberations over their policies.’<sup>416</sup>

Fundamentally, the aim of Gould’s approach is to develop a multidimensional and interactive global democratic framework with the principles of ‘common activities’ and ‘all importantly affected interests’ justifying differential democratic participation. She goes on to suggest a series of institutional proposals. These include: the requirement that international institutions and transnational corporations prepare human rights impact assessments when developing policies or rules; the construction of a series of human rights courts at regional and global levels; the pursuit of substantive deliberative democracy in delimited contexts where face-to-face interaction is possible; the extension of democratic decision-making to firms and other economic institutions; the use of the internet to facilitate participation; the creation of regional decision-making bodies akin to the EU; the democratisation of NGOs and INGOs; the creation of a peoples’ assembly within the UN (although such an institution would need to be prevented from becoming tyrannical) and supplemented by regional associations which would better enable recognition of global diversity; the democratisation of the WTO and World Bank through including representatives of distant peoples; and a more general reform of existing governmental institutions.<sup>417</sup>

Although an interesting account of transnational democracy, I think that it is nonetheless problematic for two interlinked reasons. The first concerns an incoherence in the distinction made

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<sup>415</sup> Gould, *Globalizing Democracy and Human Rights*, p. 212.

<sup>416</sup> Gould, *Interactive Democracy*, pp. 237-238.

<sup>417</sup> *Ibid.*, pp. 238-241.



between the categories of ‘common activities’ and affectedness. The second is that the less stringent ‘input’ requirement will fail to secure the degree of influence and direction required by neo-republicanism’s account of democratic legitimacy. Starting with the former issue, Gould’s principle of ‘common activities’ seems to be premised upon the idea that, ‘the interests of individuals within those groups are affected by the actions and choices of others in that group.’<sup>418</sup> As we have already seen when considering Goodin’s discussion of affectedness, however, this is only an approximation to what really matters, which is that these individuals seem to share a set of intertwined interests and are *affected* by the decisions taken within the community.<sup>419</sup> The argument that Gould advances therefore seems to be that individuals tend to be *more* affected by decisions taken within their community than they do by those decisions taken outside of their community, and it is the *extent* of affectedness which justifies differentiated participation in decision-making. It is this insight which seems to motivate the distinction between full rights of participation and input into decision-making. Nonetheless, as we’ve already seen, the issue is whether or not individuals are possibly affected by a given decision, not the extent of affectedness. Indeed, it is perfectly possible for decisions taken at a distance to have a huge and significant effect upon individuals’ lives and yet, in Gould’s account, such decisions would only require input from those affected rather than an equal say in the determination of the outcome.

A brief example will make this point clearer. Let us imagine a community in which everyone has a right to equally participate in decision-making. This community, however, is heavily dependent upon a local manufacturing plant which is owned by a foreign company. Indeed, the vast majority of inhabitants are employed within this plant. Nonetheless, the foreign company decides that it should cease its local operations since it is not sufficiently productive or there are better opportunities available elsewhere. Gould wants us to believe that the company’s decisions only exert a modest impact upon the lives of the individuals who depend upon the plant for their livelihood, and as such these individuals do not need to have a full say in this decision and instead only need an *input* to the company’s decisions. This doesn’t seem right since the decision made by the foreign company will have a huge effect upon individuals’ lives, ‘importantly’ affecting the realisation and enjoyment of their human rights.

And even if this could be overcome, the requirement that individuals have an input into transnational decisions will fail to secure the requirement that individuals are able to influence and direct the ways in which they’re controlled. Indeed, we saw in the second chapter that rendering political control legitimate and non-arbitrary requires that it is subject to citizens’ influence (through representatives and constitutional/quasi-constitutional mechanisms) and direction, where direction is understood in terms of citizens’ shared interests or common good

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<sup>418</sup> Goodin, ‘Enfranchising All Affected Interests’, p. 48.

<sup>419</sup> *Ibid.*, p. 49.

exerting a directive effect over policy-making. Indeed, the problem, here, is that while both influence and direction might be secured within the communities premised upon the principle of ‘common activities’, the less stringent principle of affectedness will give rise to a situation in which individuals can only, at best, have a say over rather than direct decisions taken at a distance. Indeed, there seems to be no requirement that decisions taken elsewhere in the world are truly responsive to citizens’ good and, in the above example, would likely entail that the company simply disregards the community’s needs.

We can see, then, that neither of these approaches would adequately ensure that governance remains subject to individuals’ influence and direction. That being the case, the final account of transnational governance that we need to consider is cosmopolitan democracy. Indeed, we find an array of theorists offering distinct accounts of transnational governance in which familiar mechanisms of democratic governance are transmuted from the state to higher and lower levels of governance, including, for example, Thomas Pogge’s account of ‘nested territorial units’ which apply at a series of levels of governance.<sup>420</sup> Broadly, ‘Cosmopolitan democracy is an ambitious project whose aim is to achieve a world order based on the rule of law and democracy,’<sup>421</sup> and cosmopolitan democrats favour, ‘an international system more densely populated by institutions that both secure order and are democratically accountable in a direct fashion...Institutions would exist at multiple levels...subordinate to a common legal framework.’<sup>422</sup> It seems that, *prima facie*, cosmopolitan democracy, with its emphasis on combining democracy with constitutionalism and multi-level governance, seems to offer us a way to pursue the strategy of constitutional provision, protect states’ capacity to secure justice, develop a multi-level system of governance in which individualised transnational domination is addressed, and ensure that individuals are able to exert influence and direction over the ways in which they’re governed. Importantly, Held’s cosmopolitan democracy provides us with a blueprint for how we might achieve each of these aims and which, with slight amendment, could be harnessed to republican ends, providing us with a transnational framework in which non-domination can be secured.

### **The Neo-Republican Global Covenant**

Held argues that, ‘the project of global social democracy can be conceived as a basis for promoting the rule of law at the international level; greater transparency, accountability and

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<sup>420</sup> See: Thomas W. Pogge, ‘Cosmopolitanism and Sovereignty’, *Ethics* 103 (1992), pp. 48-75.

<sup>421</sup> Daniele Archibugi, ‘Principles of Cosmopolitan Democracy’, in Daniele Archibugi, David Held, and Martin Kohler (eds), *Re-imagining Political Community: Studies in Cosmopolitan Democracy* (Cambridge: Polity Press, 1998), pp. 198-228 (p. 198).

<sup>422</sup> John S. Dryzek, ‘Transnational Democracy in an Insecure World’, *International Political Science Review* 27 (2006), pp. 101-119 (pp. 101-102).

democracy in global governance; a deeper commitment to social justice in the pursuit of a more equitable distribution of life chances; the protection and reinvention of community at diverse levels; and the regulation of the global economy through the public management of global trade and financial flows, and the engagement of leading stakeholders in corporate governance.<sup>423</sup> Importantly, Held endorses something like Bohman's 'new circumstances of politics', arguing that, 'Political events in one part of the world can rapidly acquire worldwide ramifications. Spatially focused political activity...can become embedded in extensive networks of political interaction.'<sup>424</sup>

Contra Goodin, Held believes that states can no longer be considered discrete worlds because they're, 'enmeshed in complex structures of overlapping forces, relations and networks.'<sup>425</sup> These processes, he argues, strain a world order which has been designed in accordance with the principle of state sovereignty which extends over a delimited territory.<sup>426</sup> Importantly, he argues that we face a paradox in that governance is becoming increasingly multilevel and spatially dispersed, while representation, loyalty, and identity remain rooted in traditional ethnic, regional or national communities (an issue which we will consider in the next chapter).<sup>427</sup> Indeed, individuals are stakeholders in myriad transnational political problems but do not have a say in the resolution of these problems.

Addressing these myriad issues, Held argues, requires that we embrace the principle of significantly affected interests such that those who are significantly affected by a global good or ill (those whose life expectancy and life chances are significantly affected by processes or decisions) have a say in its provision or regulation either directly or indirectly through representatives. Additionally, he argues that, 'Democracy is best located when it is closest to and involves those whose life expectancy and life chances are determined by powerful entities, bringing the circles of stakeholders and decision-makers closer together.'<sup>428</sup> The aim would be to match stakeholders with decision-makers through embracing the principle of affectedness alongside principles of inclusivity and subsidiarity. He goes on to note that the principles of inclusivity and subsidiarity would simultaneously require the centralisation and decentralisation of political power. That is, if decisions are decentralised as much as possible, it increases the ability of those affected, 'to influence the social conditions that shape his or her life.'<sup>429</sup> Nonetheless, if decisions are translocal, transnational, or transregional, then it will be necessary

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<sup>423</sup> David Held, *Global Covenant: The Social Democratic Alternative to the Washington Consensus* (Cambridge: Polity Press, 2004), p. 16.

<sup>424</sup> *Ibid.*, p. 73.

<sup>425</sup> *Ibid.*, p. 87.

<sup>426</sup> *Ibid.*, p. 89.

<sup>427</sup> *Ibid.*, p. 92.

<sup>428</sup> *Ibid.*, pp. 92-100.

<sup>429</sup> *Ibid.*, p. 100.

to create institutions with wider scope and power – ‘In this context, the creation of diverse sites and levels of democratic fora may be unavoidable.’<sup>430</sup> This is because such decisions do not clearly map onto demarcated territories, necessitating the expansion of the relevant public to ensure that those significantly affected have the chance to influence decisions. He concludes that, ‘If diverse peoples beyond borders are effectively stakeholders in the operation of select regional and global forces, their de facto status as members of diverse communities would need to be matched by a de jure political status, if the mechanisms and institutions that govern these political spaces are to be brought under the rubric of the principle of inclusiveness and subsidiarity. Stakeholders in de facto communities and networks of local, national, regional and global processes will be politically empowered only if they achieve the necessary complementary de jure status.’<sup>431</sup>

Indeed, he argues that the world is comprised of, ‘overlapping communities of fate. Recognising the complex processes of an interconnected world, it ought to view certain issues – such as housing, education and policing – as appropriate for spatially delimited political spheres (the city, region or state), while seeing others – such as the environment, world health and global economic regulation – as requiring new, more extensive institutions to address them.’<sup>432</sup> He goes on to note that decision-making centres beyond the state should only be utilised when they uphold the principles of affectedness, inclusivity, and subsidiarity: that is, transnational institutions would only be competent to make decisions when the demos whose life chances are affected by a decision cuts across national borders, and when lower levels of decision-making are unable to satisfactorily resolve these issues.<sup>433</sup> This would require the establishment of a multi-level network of overlapping democratic public fora, ranging from cities to global centres of decision-making. Importantly, it is likely that participatory forms of decision-making could be utilised at lower levels of governance, and higher levels of decision-making would establish a process for public deliberation, ensuring that a, ‘broad spectrum of views are considered, and collective judgements are arrived at, through deliberation – deliberation guided by the requirements of impartiality,’<sup>434</sup> where being impartial requires that parties are open to, and argue from, all points of view.<sup>435</sup>

Held also offers us a series of concrete policy suggestions. These include: the formation of a global assembly of states and agencies tasked with addressing global problems and promulgating, implementing, and embedding global standards, laws, and democratic principles which would secure the minimum conditions for human agency to flourish; the creation of

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<sup>430</sup> Ibid., p. 101.

<sup>431</sup> Ibid., p. 101.

<sup>432</sup> Ibid., p. 107.

<sup>433</sup> Ibid., p. 108.

<sup>434</sup> Ibid., p. 109.

<sup>435</sup> Ibid., p. 109.

regional parliaments and governance structures along the lines of the EU, with enhanced powers for regional regulation; the opening up of international governmental organisations (IGOs), such as the World Trade Organisation, World Bank, and International Monetary Fund, to public scrutiny and agenda-setting, and making them accountable to regional and global assemblies; the creation and enhancement of IGOs to address social and environmental issues, offsetting and counterbalancing the influence and power of market-oriented organisations such as the WTO; enhancing the transparency and accountability of transnational civil society agencies, including non-governmental international organisations (NGOs), as well as ensuring that those in developing countries enjoy equal representation in such agencies; the increased use of cross-border referenda at regional and global levels when aiming to address global concerns; and the development of an independent global law enforcement agency tasked with peacekeeping and peace-making.<sup>436</sup>

Importantly, in contrast to Pettit, Held argues that there may be a need for the creation of a new transfer system within and across national communities to secure social justice.<sup>437</sup> The aim would be to create a system in which resources are, ‘generated to alleviate the most pressing cases of avoidable economic suffering and harm.’<sup>438</sup> Indeed, Held argues that just as national governments require taxation to secure the basic liberties and other public goods, so will similar fundraising and redistributive mechanisms be required at the global level in order to address the plight of the least well-off. Such mechanisms might include consumption taxes on energy usage, a tax on the extraction of national resources, or a tax on the GNP of countries above a specified level of development. Fundamentally, the aim would be to create independent, global funds which would be used to address severe poverty.<sup>439</sup>

It is also important to note that Held offers us an idea of how multinational corporations might be regulated within a transnational system of governance, arguing that, ‘if economic interaction is to be entrenched in a set of mechanisms and procedures that allow markets to flourish in the long run within the constraints of core labour, social and environmental standards, the rules of the game will have to be transformed systematically, at regional and global levels... While corporations are already embedded in complex-rule systems, these will have to be reconfigured so that companies are required to meet new standards.’<sup>440</sup> The aim would be to provide the framework within which those powers which compromise, disrupt, or undermine the fair and sustainable conditions for economic cooperation and competition, to be reformed and regulated. This would, ‘involve the entrenchment of revised codes, rules and procedures –

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<sup>436</sup> Ibid., pp. 110-113.

<sup>437</sup> Ibid., p. 65.

<sup>438</sup> Ibid., p. 65.

<sup>439</sup> Ibid., pp. 65-66.

<sup>440</sup> Ibid., p. 154.

concerning health, child labour, trade union activity, environmental protection, stakeholder consultation and corporate governance, among other matters – in the articles of association and terms of reference of economic organisations and trading agencies,<sup>441</sup> and that, ‘governments should aim to create a legally binding international protocol...to govern the production, trade and consumption of all resources,’<sup>442</sup> as well as, ‘extend the principles of anti-monopoly legislation found within national borders to the wider economic community.’<sup>443</sup> The suggestion, here, seems to be that the regional and global levels of governance would take steps to ensure that multinational corporations would sign up to a set of rules which specify how they may behave, thereby securing, ‘an enduring settlement [is] created between business interests, regulatory capacity and cosmopolitan concerns.’<sup>444</sup>

While Held also has much to say about global economic regulation, human rights, and transnational legislation, we need not consider these arguments here since they’re beyond the focus of this thesis. What is crucial is that Held offers us an example of a framework in which we would be able to pursue the strategy of constitutional provision at a transnational level, enabling us to develop a set of external constraints which would remove the option of interference from transnational agents’ choice-sets, thereby protecting states’ capacity to secure social and political justice and preventing multinational corporations from acting with impunity. It would also enable us to develop a multi-level system of governance in which individuals are able to exert influence and direction over the ways in which they’re governed, thereby securing democratic legitimacy. Indeed, Held notes that, ‘Globalisation does not lead to the end of state choice or the end of national political strategies...but the regulative capacity of states increasingly has to be matched to the development of collaborative mechanisms of governance at supranational, regional and global levels.’<sup>445</sup> That is, states would still be able to secure social and political justice for their citizens within a hierarchical system of overlapping demoi. Importantly, if the transfer system enabled failing or developing states to adequately provide for their citizens, this would be a significant improvement on Pettit’s account, and would be better able to ensure that states can secure internal social and political justice. Such an approach would also potentially provide a further check on multinational corporations’ power: if all states have access to adequate levels of wealth and resources, they will be less likely to engage in a ‘race to the bottom’ on labour and environmental regulations or corporation taxes in order to attract wealthy corporations to their shores.

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<sup>441</sup> Ibid., p. 155.

<sup>442</sup> Ibid., p. 69.

<sup>443</sup> Ibid., p. 69.

<sup>444</sup> Ibid., p. 156.

<sup>445</sup> Ibid., p. 15.

In addition, the fact that such a system of governance is premised upon principles of affectedness, inclusivity, and subsidiarity will ensure that those coerced by transnational decisions will be able to direct and influence them. Indeed, even though I have already argued that Held's specific principle of affectedness, the 'all significantly affected interests' principle, is incoherent (since we cannot know who is significantly affected until a decision has been made), Held's multi-level system of governance could be premised upon the principles affectedness and subsidiarity outlined above. That is, within this multi-level system of governance, where the aim is to ensure that those affected by political decisions have a say in their formation, we could embed the subsidiarity-qualified principle of 'all possibly affected interests', such that decisions would be taken at the level which ensures that all of those possibly affected by a decision have a say in its formation, without including those who are unlikely to be affected. For example, if the issue under consideration is education in Scotland, the decision could be taken by a Scottish government rather than an overarching U.K. government. Likewise, if the issue is the development of European infrastructure, the decision could be taken at a regional level without it being referred to a global demos.

Finally, it is important to note that such a system could be rendered non-arbitrary if we replicate Pettit's democratically shaped constitutional mechanisms at each level of governance, ensuring that individuals have the requisite degree of influence and direction over all levels of decision-making. Securing such influence suggests that we would need democratic mechanisms for selecting representatives, as well as constitutional and quasi-constitutional mechanisms which would constrain decision-makers, including ombudsmen, statisticians, auditors, central bankers, pressure groups, interest groups and judges and perhaps a written constitution specifying the rights and powers held by the respective demoi.<sup>446</sup> Securing direction suggests that we would need to develop mechanisms for deriving deliberative norms or a common good for each demoi (a point which we'll return to in the next chapter) and suggests a need to secure deliberative mechanisms at each level of governance. Importantly, if we replicated the deliberative institution, outlined in the second chapter, at each level of governance, we would make it easier for the common good to emerge in each demos, as well as facilitating the transformation of adaptive preferences and securing individuals' capacity to keep tabs on the different levels of governance. Indeed, as argued in the second chapter, such a deliberative institution will better ensure that citizens retain a vigilant oversight of their governments. If each demoi, from the local to the global, could be constituted along similar lines to the domestic state, with citizens electing representatives who make decisions in accordance with their common good, and supported and regulated by a range of constitutional and quasi-constitutional agents, it seems possible to ensure that an increased array of governance structures do not become a new source of domination.

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<sup>446</sup> Pettit, *Just Freedom*, pp. 124-129.

Importantly, this is not to suggest that each level of governance or each demoi needs to necessarily adopt the same political institutions and laws. Indeed, the requirements of securing influence and direction are sufficiently broad as to permit a wide variety of political systems and institutions. For example, at local levels of governance, democracy may take the form of town-hall meetings or public fora while the global level of decision-making may call for a global parliament, populated by states' representatives who are elected directly by national citizens. The actual form taken of any level of governance need not be determined in advance. Instead, the sole imperatives are to ensure that states' capacity to secure and political justice are protected; that decisions are taken at the level that ensures that all of those possibly affected by a decision have a say in its formation (in accordance with the principle of subsidiarity); and that those who comprise each level of governance are able to influence and direct the decisions taken at that level of governance. This suggests that there will be significant scope for institutional variation and experimentation.

What we will find in such a system of governance is that individuals will be members of a series of overlapping demoi, with each demos responsible for specific issues and accountable to their respective demos. Individuals would be able to influence and direct the ways that they're controlled at all levels, and ensure that all political control is non-arbitrary. Global redistribution would better ensure that states are able to secure the basic liberties, and multinational corporations would be subject to genuine constraints: their economic leverage would be mitigated through states being lifted out of poverty and the creation of a series of international regulations which specify the ways in which they may and may not act.

With that said, such an account poses two important challenges. Firstly, we need to consider how we might entrench the basic liberties and secure the resourcing of individual choice, in order to guard against vitiating and dependence, within this transnational framework. Secondly, we have to explore how we might resolve jurisdictional disputes when it is unclear exactly which level of governance ought to be tasked with making a decision. The next two sections will seek to address these issues.

### **Human Rights: Protecting and Resourcing Individual Choice**

In order to explore how we might securely entrench the basic liberties and the resourcing of personal choice within this transnational framework, it is necessary to briefly reiterate Pettit's account of social justice, and then consider his comments on the role played by human rights within his account of international justice. Doing so is necessary because Pettit's comments in *Just Freedom* suggest that it is possible to cast the minimal requirements of securing personal independence as a set of human rights which ought to enjoy transnational and global entrenchment and enforcement.



To that end, I outlined, in the first chapter, that the basic liberties are those choices that are capable of being co-exercised and co-satisfied, and acknowledged that Pettit claims that those choices which meet these criteria will vary across societies. Importantly, the choices which meet the criteria for qualifying as a basic liberties will be those which are general and distal; that is, they will be liberties which secure further liberties (as when, for example, freedom of speech will secure the freedom to speak at political meetings). Importantly, Pettit further outlines a set of general distal choices which would likely secure individuals against *dominium*, including: freedom of thought; freedom of expression; freedom of religion; freedom of association; property rights and freedom to trade and exchange; employment rights, including the right to change occupation; and freedom of travel within the community.<sup>447</sup> We saw that Pettit also argues that guarding against vitiating will require the provision of a range of resources which would secure individuals from dependency, and would presumably include the provision of resources to meet individuals' basic needs (including access to shelter, clean water, food, education, adequate healthcare etc.).<sup>448</sup> I also noted that Pettit argues that, 'Culturally diverse societies may call for the entrenchment of divergent sets of basic liberties,'<sup>449</sup> and that, 'there is no reason to think that only a single candidate will be right from the point of view of freedom as non-domination.'<sup>450</sup> We also saw that the eyeball test represents the yardstick for measuring the extent to which the basic liberties are entrenched: once individuals can walk tall and look others in the eye, free from dependence upon their goodwill, they can be deemed to be protected against *dominium*.

Interestingly, however, we also saw that Pettit argues that it is justifiable for representative states to interfere in the affairs of failing or oppressive states. Indeed, I noted that Pettit specifically argues that he is concerned with developing an account of international justice which secures the external non-domination of *peoples* rather than states, as doing so allows us to retain a focus on the possibility of a state failing to secure social or political justice. As such, Pettit acknowledges that state sovereignty does not take precedence over the necessity of securing non-domination for citizens, and oppressive regimes do not enjoy external protections against interference. He goes on to argue that, 'a state counts as oppressive just to the extent that it offends against those human rights of its subjects.'<sup>451</sup> Importantly, he acknowledges that there are contested accounts of exactly what counts as a human right, but goes on to suggest that there is nonetheless, 'broad agreement that many rights count as human rights in the relevant sense.'<sup>452</sup>

There seems, then, to be something of a contradiction in Pettit's arguments. He seemingly adopts a somewhat ambivalent, relativist account of the basic liberties, such that the basic liberties

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<sup>447</sup> Pettit, *On the People's Terms*, p. 103; Pettit, *Just Freedom*, p. 72.

<sup>448</sup> Pettit, *On the People's Terms*, pp. 69-74.

<sup>449</sup> *Ibid.*, p. 70.

<sup>450</sup> *Ibid.*, p. 70.

<sup>451</sup> Pettit, *Just Freedom*, p. 179.

<sup>452</sup> *Ibid.*, p. 179.

will differ across societies, while a set of objective, though unspecified, human rights will be globally entrenched and used to justify the global community's interference into oppressive regimes. I think that this tension can be reconciled if we understand Pettit to be arguing that the most general, distal basic liberties, and the resources required for personal independence, are those items which would form a set of human rights, with the further liberties which the fundamental basic liberties generate, as well as the actual specification of the liberties, diverging across societies. Indeed, he notes that the basic liberties are not, 'natural liberties that are set in stone, but rather as liberties that are universally applicable across societies, though open to variations of interpretation in each.'<sup>453</sup> As such, it seems that the fundamental basic liberties and rights which secure personal independence (including rights to food, clean water, shelter, education, healthcare etc.), can be cast as a set of human rights, contravention of which justifies multilateral intervention by the international community.

Indeed, I think that it is necessary to conceptualise these items as human rights as it would be hard to imagine how anyone could be deemed to enjoy non-domination if they lacked access to the resources necessary to lead a life of their own choosing, and were thereby forced into dependency upon others, or if they were denied freedom of expression or thought, or prevented from practicing their religion or associating with others of their choosing. These items should therefore be viewed as human rights precisely because they secure the minimum protections necessary for individuals everywhere to plan and lead a life of their own choosing, free from interference by others. These items, which are necessary components of mitigating against *dominium* and securing social justice, therefore should be seen to enjoy universal applicability across all states, with scope for differential implementation in different communities.

Within the context of my own account of international justice, which emphasises the project of cosmopolitan democracy and the creation of transnational institutions, such rights would acquire global recognition and entrenchment: that is, the fundamental basic liberties and welfare rights would be cast as a set of human rights which all states would be required to safeguard. Responsibility for ensuring that these rights are upheld would be primarily entrusted to states, with the transnational and global demoi of which states are constituent members overseeing and regulating their proper enforcement.

Importantly, Pettit's and my own approach to safeguarding human rights mirrors that of Rawls and Raz with human rights functioning as a constraint or limit on state sovereignty and pluralism. Indeed, Rawls, in *The Law of Peoples*, has argued that:

Human rights are a class of rights that play a special role in a reasonable Law of Peoples: they restrict the justifying reasons for war and its conduct, and they specify limits to a regime's internal autonomy.... Human rights set a necessary, though not sufficient,

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<sup>453</sup> Ibid., p. 71-72.

standard for the decency of domestic political and social institutions. In doing so they limit admissible domestic law of societies in good standing in a reasonably just Society of Peoples. Hence the special class of human rights has these three roles:

1. Their fulfilment is a necessary condition of the decency of a society's political institutions and of its legal order.
2. Their fulfilment is sufficient to exclude justified and forceful intervention by other peoples, for example, by diplomatic and economic sanctions, or in grave cases by military force.
3. They set a limit to the pluralism among peoples.<sup>454</sup>

Similarly, Raz has argued that, following Rawls, he understands, 'human rights to be rights which set limits to the sovereignty of states, in that their actual or anticipated violation is a (defeasible) reason for taking action against the violator in the international arena,' and goes on to argue that, 'such measures set limits to state sovereignty for when states act within their sovereignty they can, even when acting wrongly, rebuff interference, invoking their sovereignty...Violation of human rights disables this response, which is available to states regarding other misdeeds.'<sup>455</sup> We can see, then, that Pettit, Rawls, and Raz all conceive of human rights in the same way: they act as constraints on state sovereignty and trigger international intervention, though this may not necessarily entail military intervention.<sup>456</sup>

My approach follows this conception of human rights, with states enjoying internal sovereignty within an overlapping network of demoi. Where it differs from these other theorists' approaches is in more fully entrenching and regulating the protection of these rights: that is, there will be continuous oversight by transnational and global demoi. Indeed, states' fulfilment of their obligations would be overseen by global and transnational constitutional and quasi-constitutional institutions and agents, including NGOs, international organisations, as well as the overlapping democratic communities. My approach therefore furthers and more fully entrenches Pettit's account of human rights at all levels of governance and would, hopefully, ensure that all individuals enjoy the basic liberties and material resources necessary to lead lives of their own choosing and, if not, ensure that they have recourse to transnational institutions and agents. Additionally, in embedding human rights within a cosmopolitan democratic framework, the need for military intervention to secure human rights is less likely to be necessary. This is because violations would be quickly identified by international organisations and transnational demoi, and

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<sup>454</sup> John Rawls, *The Law of Peoples* (London: Harvard University Press, 1999), 79-80.

<sup>455</sup> Joseph Raz, 'Human Rights without Foundations', in Samantha Besson and John Tasioulas (eds.), *The Philosophy of International Law* (Oxford: Oxford University Press, 2010), pp. 321-337 (p. 328).

<sup>456</sup> For alternative accounts of the role of human rights, see: James W. Nickel, 'Are Human Rights Mainly Implemented by Intervention', in Rex Martin and David A. Reidy (eds.), *Rawls's Law of Peoples: A Realistic Utopia?* (Oxford: Blackwell Publishing, 2006), pp. 263-277; John Tasioulas, 'Are Human Rights Essentially Triggers for Intervention?', *Philosophy Compass* 4 (2009), pp. 938-950.

could be remedied through diplomatic or economic pressure exerted across states and by the transnational and global communities. Finally, it is important to acknowledge that human rights will, in setting limits to the internal autonomy of states, make certain conceptions of the good unrealisable, or otherwise come into conflict with individuals' ethical commitments. We will consider this issue in the next chapter when we explore the conflicts engendered by providing a republican education which is incompatible with some ethical traditions.

### **Boundary Courts**

The final task of this chapter is to look at how jurisdictional disputes might be resolved within the transnational framework being developed. Indeed, this is necessary because I haven't specified exactly what decisions would be taken at each level of governance, or indicated what the competencies of the respective demoi would be. This is because the appropriate location for decision-making would be determined in accordance with the principles of 'all possibly affected interests' and subsidiarity, and it will be difficult to specify in advance exactly what decisions will affect who. For example, we can imagine a situation in which a sub-state nation, such as the Catalans or Scots, wish to become an independent state. It is unclear, here, exactly where a decision should be made. Indeed, the outcome will affect those living in the sub-state nation which seeks independence, will have an effect upon the overarching state of which they're a constitute member, and will presumably have an effect upon the regional blocs of which they're members (for example, Scotland's request to retain membership of the EU if it gains independence has been blocked by the Spanish government which is concerned that a worrying precedent would be set for its Catalan and Basque populations). In such a case, it is therefore unclear exactly where a decision should be made in accordance with the principles of affectedness and subsidiarity.

Indeed, Held acknowledges this problem, noting that, 'the boundaries demarcating different levels of governance will always be contested...Disputes about the appropriate jurisdiction for handling particular public issues will be complex and intensive; but better complex and intensive in a clear public framework than simply left to powerful geopolitical interests (dominant states) or market-based organisations to resolve them alone.'<sup>457</sup> While he doesn't offer a solution to this problem in *Global Covenant*, he does offer a suggestion for resolving jurisdictional disputes in a footnote in his earlier work, arguing that:

The principle that decisions about public affairs should rest with those significantly affected by them, or their representatives, will, of course, not always lead to clear demarcations among the appropriate levels of decision-making, even with the aid of the proposed filter principles and tests. Disputes about the appropriate jurisdiction of particular communities will in all likelihood be complex and intensive (as they are in the

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<sup>457</sup> Held, *Global Covenant*, p. 108.

EU). Accordingly, ‘issue-boundary’ forums or courts will have to be created to hear cases concerning where and how a ‘significant interest’ in a public question should be explored and resolved.<sup>458</sup>

Since Held does not specify how such boundary courts would operate, it is important for this thesis to briefly indicate how such a system might resolve disputes about affectedness in a way which does not entail domination. As we’ve seen above, we’re also concerned with whether someone is possibly affected by an issue rather than whether or not they’re significantly affected. The aim of such a court, then, would be to resolve jurisdictional issues when it is unclear who will be possibly affected by an issue. For example, in the German-Scandinavia case, it is unclear whether the appropriate level for decision-making would be at the state, regional, or global level since, as we’ve seen above, the decision will have a differential impact depending upon who gets to make the decision. That is, if just Germans get to choose, the outcome will affect Scandinavians; if Scandinavians are included, then the decision may well affect another group.

Importantly, I have already argued that while this example seems to make the case for including everyone everywhere in determining where Germany can pollute, real world constraints will nonetheless prevent Germany from affecting individuals in, for example, the Far East, the Americas, or Africa. Indeed, the logistical constraints on Germany manufacturers’ chimneys mean that the only individuals with any real prospect of being affected are those within a determinable distance from Germany. In making a decision, the court would need to take such evidence into account and hear deputations from the relevant parties (including those who think they might be affected by the decision). The court would be required to aim to strike a balance between the Scylla of overinclusion (raising the possibility of unaffected interests determining the outcome for those who will be affected), and the Charybdis of underinclusion (and the possibility of individuals being affected by a decision and not having a say in its making) through pursuing the principles of affectedness and subsidiarity in conjunction.

In such a case, the court would likely rule that the decision ought not to be made at a global level, since this would allow myriad unaffected individuals or their representatives to determine the outcome. The court would then need to look at whether the decision ought to be taken at a state or regional level. In this case, where Germany’s intention is to pollute their neighbours, it seems clear that the decision would be a regional one since, even if Germany decided against polluting in Scandinavia, it would be able to pollute in a number of neighbouring states. The court would therefore be likely to rule that the decision ought to be made at the regional level of governance. This would ensure that those possibly affected, including Germans, Scandinavians, Danes, French, and Italians, all get to have a say in the outcome. There will be some overinclusion since not all Europeans will be affected by whatever decision is reached.

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<sup>458</sup> Held, *Democracy and the Global Order*, p. 237 (note. 6).

Though there will be some overinclusion, such an approach would nonetheless be a significant improvement upon existing arrangements in which states unilaterally take decisions which have a huge effect upon others' lives, and Goodin's suggestions for enfranchising all possibly affected interests or overlaying states with a layer of world government, each of which would allow billions of unaffected individuals to determine outcomes.

While the court would have a straightforward role in addressing such transnational decisions where it is clear that decisions will affect others beyond the state, we must nonetheless consider whether the court ought to be able to adjudicate on sub-state jurisdictional disputes as well. That is, we have to decide whether the court ought to allow states to rule on all issues *within* their borders, as Goodin suggests, or whether the court ought to also ensure that the principles of 'all possibly affected interests' and subsidiarity are properly upheld at a sub-state level. There are two primary concerns that we must consider, here. On the one hand, if the court were tasked with adjudicating upon sub-state disputes, it would likely be inundated with cases and be required to rule on a huge number of decisions every day. This would seem to be wildly inefficient and potentially infeasible. On the other hand, if sub-state disputes were left for states to resolve, this would seem to permit states to be judges in their own cause and allow them to ignore the principles of affectedness and subsidiarity. Indeed, the Spanish government's refusal to countenance a Catalan independence referendum offers us an example of this kind of issue, with the higher level of governance routinely disregarding and overruling the concerns of constituent demoi.

The first issue, then, concerns whether a boundary court could ever achieve its aims if it were required to adjudicate on all jurisdictional disputes at sub-state and transnational levels. Indeed, it is likely that if the court were required to rule on all such issues, it would be inundated with disputes: it would have to rule on whether sub-state regions ought to have fiscal autonomy, where local authority's jurisdictions extend to and what issues they can competently resolve, whether supra-national institutions can impose tax-raising measures within their regions or whether taxation remains a national concern, as well as a whole host of other problems. I think that it is fairly clear that a global court would be unable to adequately discharge its duties, collecting evidence, hearing depositions, and ruling on disputes, if it were required to resolve a significant number of these issues on a daily basis. This seems to suggest that such disputes would either go unresolved for long periods of time (presumably well beyond the deadlines in which they'd need to be resolved), or that the boundary court would come to represent a Leviathan-like bureaucratic entity, with a huge degree of power over the workings of the global political system. Indeed, this raises the spectre of totalitarianism as, if the court were to be captured by special interests or pursue an ideological approach towards resolving such disputes (perhaps always favouring global decisions, for example) it would be incompatible with the aims of neo-republicanism.

To avoid such problems, it might be prudent to adopt an amended version of Goodin's approach and require the court to simply resolve transnational jurisdictional disputes. If we adopted such an approach, states would fulfil a role much closer to that which they undertake now, with national governments setting policies as they see fit. This would ensure that the boundary court's remit is more heavily circumscribed, seemingly preventing it from becoming a global Leviathan or a cumbersome bureaucratic entity which is unable to quickly and accurately resolve jurisdictional disputes. Nonetheless, this approach is problematic because it seemingly permits states far too much discretion within their own borders. For example, we might find the U.K. government determining education and healthcare policies in Scotland or Wales; the Spanish government might completely remove the fiscal autonomy of the Autonomous Communities or legislate against the language rights of the Catalans or Basques; or the U.S. federal government might undertake to usurp states' traditional rights and implement a uniform system of governance, expanding its own jurisdiction at the expense of states. Such an approach would, as we've seen above, be problematic from a neo-republican perspective as it would permit those unaffected by an issue to determine the outcome of that issue, giving rise to arbitrary governance.

We are faced, then, with a choice between equally unattractive options. We can either advocate a court which may be unable to adequately discharge its duties, or one which permits domination at sub-state levels. Since the latter option is the more obviously problematic from a neo-republican perspective, since it would allow national majorities to determine decisions over all sub-state groups irrespective of whether or not they're affected by the decisions reached (as would be the case, for example, if the government in Madrid denied the Catalans the option to conduct their local government in Catalan rather than Castilian Spanish), it seems appropriate to embrace the former option and aim to refine the court in such a way that we can avoid the problems noted above. That is, we should aim to develop a court which rules on sub-state jurisdictional issues, and thereby upholds and enforces the principles of affectedness and subsidiarity, but which is designed so that it can respond to millions of different disputes without becoming a global Leviathan.

To that end, I think that the most appropriate form for the boundary court to take would be a hierarchical system of courts, each tasked with resolving jurisdictional disputes at a specific level of governance. In order to develop such a system, it would be necessary to start by convening an initial worldwide constitutional convention, comprised of representatives of all peoples, with the aim of specifying the broad competencies of each level of governance. We might find, for example, that responding to global ills such as climate change, poverty, or terrorism, would be a responsibility of the global level of decision-making, whereas the provision of the basic liberties would be entrusted to states. Once such a convention had specified a rough outline of the powers of each level of governance, courts would be assembled at each level of governance to adjudicate on disputes. For example, we might have a state-level court which resolves sub-state disputes

(between, for example, cities, boroughs, and counties or their equivalents), a state level court which resolves disputes, where applicable, between states and their constituent nations (for example, this court would adjudicate on jurisdictional disputes between the U.K. and Scotland, Ireland, and Wales, or between Spain and the Basque Country and Catalonia). We would then have supranational courts, resolving issues between states and regional governance institutions (for example, between Germany or France and the European Union) and courts resolving disputes between regions (for example, between the European Union and an African or Asian equivalent). At the pinnacle of the system, we would have a global boundary court, regulating the lower courts, and ensuring that issues which require a global decision are taken at a global level of governance (for example, on issues of global poverty, and addressing global ills such as AIDs, terrorism, or economic practices).

While a full analysis of how such courts might be constituted and operated is beyond the scope of this thesis, it is necessary to note a few qualifications. The first is that it would be necessary to ensure that those tasked with resolving jurisdictional disputes do not have a stake in their outcome. That is, for the court adjudicating upon disputes between the U.K. and the constituent nations, it would be necessary to draw the courts' members from outside of the U.K. to ensure that the decisions reached are as impartial as possible. Secondly, it would be necessary to develop mechanisms for ensuring that decisions are made in a timely manner. This will be necessary when an immediate decision must be made but there is a disagreement over who gets to make that decisions. For example, we can imagine a situation in which there is an outbreak of a new disease which is able to spread rapidly. It may be the case that it is momentarily confined to a state or region such as the EU and a decision must be reached about how it ought to be addressed and prevented from spreading. In such a situation, it will be necessary for an immediate decision about whether the EU ought to resolve the issue or whether the global government should step in. This suggests that there would be a need to develop mechanisms and processes for distinguishing between non-urgent disputes (perhaps over education policy), and crises, such that a specific dispute can be rapidly referred to the appropriate court. This also suggests that it would be appropriate to develop a pre-screening system, as operates in existing courts, wherein the disputants submit their cases for an initial assessment so that it can be appropriately prioritised. Finally, it is important to note that each of these courts would need to be subject to oversight by non-governmental organisations and interest groups, who would aim to ensure that the courts' activities are transparent, and would need to be held accountable by governance institutions. Exactly what balance would need to be struck is unclear, but we can tentatively suggest that there would need to be a means for the peoples of the respective demoi to sanction the courts if they fail to adequately discharge their duties. This might require some form of impeachment process for the judiciary which can be enacted by the peoples' representatives, and undertaken by other judges.



It is clear that this process will be far from perfect: it may be a cumbersome way to resolve jurisdictional disputes, it may still result in over or underinclusion in the making of political decisions, and it may permit boundary judges too much power within political decision making. Nonetheless, it would be a vast improvement on our current system of governance in which geopolitical interests determine a great many issues, and in which powerful states make unilateral decisions or influence international bodies to pursue their goals. Moreover, if the boundary courts could select the most appropriate level for decision-making, in accordance with the principles of ‘all possibly affected interests’ and subsidiarity, and decision-makers at each level of governance were subject to their demos’ influence and direction, we would seemingly be able to render the majority of decisions legitimate and non-dominating.

Although I have only presented this account of transnational governance in very broad terms, it seems that such a system would be preferable to those advocated by Pettit and Bohman as it would seemingly better enable us to realise the aims of neo-republican governance. That is, states would be able to discharge their duties within an overarching framework which would be able to discipline states and other transnational agents in a manner analogous to the state’s disciplining of individuals. If democratically shaped constitutional mechanisms were developed at all levels of governance, as well as the development of a means for determining each demos’ shared interests, then we could be assured that individuals would be able to exercise the requisite degree of influence and direction over the ways in which they’re controlled, securing democratic legitimacy. Finally, boundary courts would, if suitably designed, be able to uphold the principles of affectedness and subsidiarity and ensure that individuals are able to influence and direct the political coercion that they’re subject to, thereby addressing the problem of individualised transnational domination.

With that said, these comments do indicate a serious issue which we must address if we would develop such an overarching system of governance. This is that, as noted by Jurgen Habermas, attempting to develop a supranational democracy runs into the ‘no-demos thesis’:<sup>459</sup> that is, beyond the nation-state, there is little evidence of the mutual trust, or civic and cultural foundations necessary for individuals to see themselves as co-members of a *demos*. Indeed, the problem that we must face is that it may not be possible or desirable to extend democracy and democratic institutions beyond the state to groups of individuals who may be subject to deeply irreconcilable differences, or who lack the civic or cultural foundations which support national democracy. The task of the next chapter is to explore a series of objections to cosmopolitan democracy in order to argue that it is possible to support the emergence of supranational *demos* through a combination of transnational deliberation, civic education, and ‘trans-nationalism’.

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<sup>459</sup> Jurgen Habermas, ‘Democracy in Europe: Why the Development of the EU into a Transnational Democracy is Necessary and How it is Possible’, *European Law Journal* 21 (2015), pp. 546-557 (p. 552).

## Conclusion

The task of this chapter has been to explore how we might develop a transnational political system capable of providing the framework within which individuals can enjoy social, political, and international justice. In order to do so, I firstly explored ‘the boundary problem.’ This has been central to the development of this chapter, and the overall aims of this thesis, because securing non-domination requires that political control is forced to track the interests and ideas of the person suffering the interference and, as we saw in the third chapter, the problem of individualised transnational domination shows that control is not territorially-confined. As such, it has been necessary to consider how we might redraw democratic boundaries in order to ensure that all of those subject to control are able to influence and direct it, and thereby render it non-dominating. I have argued that *demos* must be constituted on the basis of who can be deemed to be *possibly affected* by a given issue, while taking into account real world constraints and thereby supplementing the principle of affectedness with a principle of subsidiarity. After outlining this approach to constituting *demos*, I have argued that Held’s cosmopolitan democracy provides us with the means to secure social, political, and international justice and would, if suitably refined, secure individuals against domination.

To that end, the first section focused upon briefly outlining that we need to offer a solution to the boundary problem. This is because we have seen that securing democratic legitimacy requires that all of those suffering interference must exert influence and direction over that interference, and yet the problem of individualised transnational domination has shown that interference is not confined to self-contained territorial units. These issues necessitate a reconsideration of how we draw democratic boundaries. I have argued, here, that the foundational issue in specifying *demos* is over whether we focus on those *actually* affected or those who are *possibly* affected, agreeing with Goodin that we must focus on drawing democratic boundaries around those who are possibly affected by a given decision. With that said, I have then argued, in the second section, that Goodin’s approach dismisses a problem with which neo-republicans ought to be concerned. This problem is that if we adopt an overinclusive approach to constituting *demos*, we will be unable to realise the neo-republican aim of ensuring that control is forced to track the interests and ideas of *the person suffering the interference*. Acknowledging that we’re faced with the equally unattractive options of drawing boundaries in an under- or overinclusive way, I have argued that we should attempt to develop a transnational system of governance premised upon Goodin’s principle of ‘all possibly affected interests’ but qualified and supplemented by a principle of subsidiarity which would aim to mitigate against excessive overinclusion.

I then, in the third section, considered two accounts of transnational governance as possible means for implementing these principles and pursuing the aims of neo-republican governance. We have seen that both approaches would fail to secure the influence and direction required to render political processes democratically legitimate: the former because too much power is handed to unelected technocrats; the latter because it only advocates a lesser ‘input’ right to those affected by decisions taken at a distance. This then led into a discussion of cosmopolitan democracy, and an extended analysis of Held’s global social democracy. Here, I argued that Held’s approach would enable us to realise each of the requirements of neo-republican governance, as well as balance between excessive over and underinclusion.

In the fifth section I argued that we ought to conceive of the fundamental basic liberties, those that are general and distal, and rights to food, clean water, education, healthcare, and shelter, as a set of human rights. Indeed, I argued that this is necessary as these items are the minimum conditions necessary for individuals to lead lives of their own choosing and, as such, should enjoy global entrenchment and protection. I claimed, following Pettit, Rawls, and Raz, that we should see the contravention of these human rights as a trigger for international interference with the internal autonomy of political communities (though such intervention will likely stop short of being military interference since communities will be embedded within overarching transnational and global *demos*, thus enabling us to identify infringements early and bring diplomatic and economic sanctions to bear). Responsibility for ensuring the provision of these goods will rest primarily with states, and will be overseen by transnational and global *demos* which will be supplemented by a range of constitutional and quasi-constitutional agents who can monitor the actions of states.

I then, in the sixth section, acknowledged that we need to develop a means for ensuring that the principles of affectedness and subsidiarity are properly upheld within the transnational political system. Noting that Held has tentatively suggested that it would be possible to create boundary courts as a means for resolving jurisdictional disputes, I attempted to explicate just such a model, arguing that it is important to ensure that the principles of affectedness and subsidiarity are upheld *within* states as well as at a transnational level. I have therefore argued for the creation of a system of courts at each level of governance which would resolve such disputes.

I finally noted a significant problem which this thesis must confront, and this is that it may be infeasible or undesirable to create *demos* beyond the nation-state because there are deeply irreconcilable differences between peoples who lack a shared culture, language, or history. This problem, which Habermas refers to as the ‘no *demos* thesis’ must be addressed if we are going to be able to derive a common good at each level of governance, and thereby ensure that individuals are able to direct the ways in which they’re controlled. Outlining, analysing, and responding to this problem is the task of the next chapter.

## **Chapter Five – Securing the Conditions for Transnational Republicanism**

### **Introduction**

The previous chapter argued that securing non-domination requires the creation of a multi-level system of cosmopolitan governance. Such a framework offers a number of advantages: states would be able to secure social and political justice; transnational agents, including multinational corporations, would be subject to constitutional constraints; and individuals would be able to influence and direct the governance that they're subject to. I concluded, however, by noting that we must confront a serious problem if such a system of governance is to be feasible. This issue is that beyond the nation-state, there is little evidence of the mutual trust, shared understanding, or linguistic commonalities necessary for individuals to see themselves as co-members of democratic communities. If we cannot surmount these issues, it seems unlikely that we would ever be able to develop functioning transnational republics, and would therefore fail in our attempt to address the problem of transnational domination. Indeed, this is because, as we saw in the second chapter, in order to render political control non-dominating and democratically legitimate, it is necessary to ensure that citizens are able to exert influence and direction over the ways in which they're controlled, and that that securing direction requires that governance is determined in accordance with citizens' shared interests or common good. Our problem, then, is that if trust, understanding, and the capacity to engage in deliberation are absent beyond the state, we would be unable to derive sets of transnational or global shared interests capable of rendering political control democratically legitimate, and we would therefore fail to secure transnational non-domination.

The task of this chapter is to address these problems. Indeed, my aim is to consider three broad critiques which would apply to the multi-level system of governance outlined in the previous chapter, and outline how we might surmount these various challenges. These critiques are as follows: that transnational demoi are unnecessary since states already fulfil the requisite political functions; that transnational demoi could never function properly because they would lack the shared history and identity necessary for mutual trust and understanding to emerge between individuals and which provides the foundations for social justice and legitimate governance; and that a lack of a shared language will prevent us from deriving a common good capable of directing governance. Although unlikely to be achieved in the short term, I aim to show that we can create the conditions for the emergence of transnational civic solidarity through the promotion of a transnational nationalism or 'trans-nationalism', the use of a civic education, and the opening up of national public spheres to one another, such that their interaction creates a transnational public sphere. In this way, I hope to show that it may be possible in the near future to create functioning transnational republics and thereby secure non-domination.

To that end, this chapter will proceed as follows. The first section will outline Goodin's concern that that cosmopolitan democracy may be unnecessary or may entail a co-ordination problem, and discuss why I think this concern is surmountable. The second section will then explore the 'no-demos' thesis and David Miller's liberal nationalism in detail, outlining the concern that the necessary pre-conditions for social justice and democratic legitimacy are missing beyond the state. The third section will then outline a response to this problem, arguing that we should aim to promote a 'thinner' trans-nationalism which would seek to promote a shared identity and history. The fourth section will then outline the importance of a civic education to the task of creating transnational demoi, as well as indicating that such an education should aim to create citizens who embrace reasonable pluralism and are capable of deliberating with one another in order to derive a common good capable of directing governance. The fifth section will then explore the claim that the crafting citizens in this way might be construed to be a form of cultural imperialism, and then argue that this is but one example of a more general problem: namely that the rights outlined in the previous chapter are likely to come into conflict with some ethical doctrines. After responding to this concern, the sixth section will then focus on Will Kymlicka's claim that cosmopolitan democracy is infeasible because politics is conducted in the vernacular and that individuals do not see themselves as members of supranational demoi. I will outline that this problem can be surmounted if we follow Jurgen Habermas and John Dryzek's suggestions of opening national public spheres to one another in order to create a transnational public sphere, one in which national publics engage in deliberative interaction with one another. If realisable, this would enable us to further entrench trans-nationalism and derive a transnational common good to direct governance, thereby securing democratically legitimate transnational governance and addressing the problem of transnational domination. The final section will conclude.

### **Duties to Compatriots**

We saw in the previous chapter that Goodin, while advocating an approach to affectedness which would, ideally, require enfranchising everyone everywhere in every decision, nonetheless acknowledges that this is impractical and suggests a second approach which would see national decision-making supplemented by a global government. It is important to explore this claim at some length as Goodin, in 'What is So Special about Our Fellow Countrymen?', defends the ongoing importance of states as a mechanism for ensuring that universal duties are effectively discharged. If he is correct, this would seem to count against the prospects of developing a multi-level system of governance along the lines of outlined by Held because it would seem to show that transnational and global governance are unnecessary or likely to complicate states' capacity to function properly.

Goodin starts by outlining the distinction between general and special duties, with the former being concerned with what we owe to people by virtue of their humanity, and the latter being focused on the ‘especially *good* treatment,’<sup>460</sup> that we owe to individuals with whom we stand in a special relationship.<sup>461</sup> Noting that duties to compatriots fall in the latter category, he goes on to contend that we are required to be more scrupulous in our treatment of non-nationals and that, ‘some of our general duties to those beyond our borders are at least sometimes more compelling, morally speaking, than at least some of our special duties to our fellow citizens.’<sup>462</sup> As examples, he suggests that that it is permissible for the government to appropriate citizens’ property, providing they’re properly compensated, but that such an act is impermissible with non-nationals; that fellow citizens can be conscripted but foreign nationals cannot be; that fellow citizens can be taxed, even if abroad, whereas foreigners living abroad cannot be taxed; that a government can dam or divert the flow of a river within its territory, disadvantaging citizens, but cannot similarly dam or divert a river that travels across national boundaries to the disadvantage of non-citizens; that we can allow factories to emit noxious fumes within our own territory, to the detriment of citizens, but cannot similarly allow it to disadvantage those in neighbouring countries; and the government must treat non-citizens in accordance with established international rules and laws, whereas citizens may be treated with some discretion.<sup>463</sup> Goodin argues that these examples show that, ‘Sometimes we are indeed permitted (sometimes even required) to treat our fellow citizens better than we treat those who do not share that status with us. Other times, however, we are required to treat noncitizens better than we need to treat our own fellow citizens.’<sup>464</sup>

Goodin goes on to argue against the magnifier, multiplier, and mutual-benefit explanations for special duties, and outlines his own preferred explanation which he calls the assigned responsibility model. In Goodin’s view, we have special duties towards compatriots because our general duties need to be distributed to specific agents to ensure that they’re properly discharged. He offers us an example to illustrate why we should consider special duties to be largely derived from general duties, and outline why states’ ongoing existence can be justified by reference to our general duties. He suggests that we imagine that we live under a general injunction to save someone from drowning if you, and you alone, can do so. If by happenstance you are one day in a position where someone is drowning, that general duty becomes a compelling commandment to save someone. But, if it were the case that many people were watching a

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<sup>460</sup> Robert E. Goodin, ‘What is So Special about Our Fellow Countrymen?’, *Ethics* 98 (1988), pp. 663-686 (p. 663).

<sup>461</sup> It is important to note that Pettit endorses a similar position, arguing that states have special obligations to their citizens which they don’t have to others. See: Pettit, *Just Freedom*, p. 184.

<sup>462</sup> Goodin, ‘What is So Special about Our Fellow Countrymen?’, p. 663.

<sup>463</sup> *Ibid.*, pp. 668-669.

<sup>464</sup> *Ibid.*, p. 671.

swimmer drown, the injunction to save him may descend into a melee, with those seeking to save the drowning swimmer impeding one another's progress. To avoid this problem, one individual, the lifeguard, is duly appointed as the one to discharge the general injunction as a special duty.<sup>465</sup>

This example, Goodin argues, seems to provide a good model for many of our special duties and, 'A great many general duties point to tasks that, for one reason or another, are pursued more effectively if they are subdivided and particular people are assigned special responsibility for particular portions of the task.'<sup>466</sup> He goes on to argue that national boundaries perform this function: 'National boundaries simply visit upon those particular state agents special responsibility for discharging those general obligations vis-à-vis those individuals who happen to be their own citizens.'<sup>467</sup> Importantly, Goodin argues that this justifies states in pressing the claims of their own citizens as, given the state system, everyone will have an advocate or protector, leading, 'to maximal fulfilment of everyone's general duties toward everyone else worldwide.'<sup>468</sup>

Goodin therefore seems to make two points which might be employed against the argument of the previous chapter. Firstly, he seems to be arguing that cosmopolitan democracy is unnecessary because states, however imperfectly, already discharge the duties required of a political system.<sup>469</sup> Secondly, he seems to suggest that cosmopolitanism might actually undermine states' capacities to secure the basic liberties by replicating the swimmer problem. That is, if individuals were deemed to be citizens of various overlapping demoi, and therefore had numerous 'advocates/protectors' seeking to discharge general moral duties, then it is possible that none of them would do so adequately, much as would occur if many individuals sought to save a drowning individual and accidentally hindered one another's ability to do so. Within the context of my own account of multi-level governance, this would seem to suggest that sub-state, national, transnational, and global decision-making units might compete for jurisdiction in certain cases, thereby failing to discharge their duties effectively.

Neither of these problems is insurmountable. Indeed, in response to the first point, that states already adequately discharge general duties, it is important to note that Goodin himself claims that, 'Special responsibilities are, on my account, assigned merely as an administrative device for discharging our general duties more efficiently. If that is the aim, then they should be assigned to agents capable of discharging them effectively,'<sup>470</sup> and that, 'Citizenship is merely a device for fixing special responsibility in some agent for discharging our general duties vis-à-vis each particular person.'<sup>471</sup> That is, states are seemingly not morally significant, and are simply the

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<sup>465</sup> *Ibid.*, p. 680.

<sup>466</sup> *Ibid.*, p. 681.

<sup>467</sup> *Ibid.*, p. 682.

<sup>468</sup> *Ibid.*, pp. 683-684.

<sup>469</sup> *Ibid.*, p. 686.

<sup>470</sup> *Ibid.*, p. 685.

<sup>471</sup> *Ibid.*, p. 686.

most appropriate units for discharging these duties (it is interesting to note that this view of states conforms to Pettit's own earlier view of states as discussed in the third chapter). Therefore, if it could be shown that states were unable to discharge their general duties, it would be appropriate to look to other units capable of doing so.

And indeed, this is precisely the argument that I have advanced: states' capacity to secure social and political justice requires an overarching framework which protects states; and the problem of individualised transnational domination can only be addressed if those subject to such control are able to influence and direct its formulation. Indeed, we saw that states are unable to discharge the general duty to secure non-domination without the support of additional levels of governance and law. It seems, then, that Goodin is ambivalent towards the importance of states: states are only relevant, and duties to compatriots are only special, because states seem to be the most appropriate means to ensure that general duties are discharged. Since states cannot discharge these duties adequately in an increasingly globalised world, I think that Goodin would be inclined to support the dispersal of these special duties across administrative units capable of discharging them: that is, if states are unable to address global ills such as poverty or disease, then it would be incumbent upon us to create administrative units which can discharge these duties.

Indeed, this leads into my response to the co-ordination problem which, as noted above, arises when too many agents seek to discharge a duty. Centrally, I think that this problem is unlikely to arise in a cosmopolitan framework as long as the powers, responsibilities and duties of each level of governance are defined, as I've suggested they would be at a constitutional convention prior to the creation of the boundary courts, such that each unit of governance is tasked with discharging specific duties. Again, this is precisely what I have argued: states would still be tasked with securing social and political justice within their borders, but they would devolve and expatriate some powers to other levels of governance. Indeed, unlike in Bohman's deliberative polyarchy (in which this co-ordination problem would be unresolvable) the different levels of governance within a cosmopolitan framework would be responsible for discharging specific duties over specified people. For example, a Scottish government could discharge a general duty to provide education in accordance with the shared interests of Scots and a U.K. government could ensure that U.K. citizens are able to realise their basic liberties.

It seems, then, that Goodin's ambivalence towards the ongoing importance of states actually supports my own argument: if we're inclined to believe that states can no longer adequately discharge their duties because globalisation has undermined their capacity to do so, then we have a *prima facie* obligation to create democratic communities capable of discharging these general duties. Furthermore, as long as these communities are responsible for distinct duties and peoples, the co-ordination problem can be avoided. Far from undermining my claims, Goodin's argument therefore supports the move towards embedding states within an overarching cosmopolitan framework so that general duties can be properly discharged by agents capable of



doing so in a globalised world; and states' capacity to discharge their duty to secure social and political justice is also assured and strengthened.

### **Demoi without a Demos**

Nonetheless, a bigger, and potentially more damning, problem with cosmopolitan democracy remains. This is that transplanting national democracy to higher levels of governance, without also somehow transplanting the pre-conditions for democracy, will give rise to a poorly functioning, if not outright antagonistic, system of decision-making. This objection to cosmopolitanism, the 'no-demos' thesis, aims to show that cosmopolitans wrongly assume that the benefits of liberal democracy can be simply replicated at supranational levels of governance.

According to Habermas, in his discussion of European transnational democracy, 'there is a lack of mutual trust that citizens of different nations would have to show each other as a precondition for their willingness to adopt a common perspective when making political decisions on shared federal issues.'<sup>472</sup> Habermas' concern, which is especially salient within the context of my own argument, is that while we tend to find a degree of mutual trust between co-nationals, thereby enabling them to see one another as participants in a cooperative endeavour, such trust is lacking beyond the nation-state. Indeed, even within the EU there are deep divides between the citizens of the Member States, suggesting that within my own account of multi-level governance, there is unlikely to be sufficient levels of trust between those individuals included within the regional and global levels of governance.

Problematically, these deep divides are likely to make decision-making beyond the nation exceptionally difficult. For example, suppose that in the Germany-Scandinavia example, a decision must be reached at a regional level about where Germany directs its pollution, but there is an insufficient degree of trust between European citizens. In this case, it is possible, if not likely, that the individuals of each state would simply look to their own best interests in an attempt to secure the best outcome for themselves, irrespective of how this impacts upon other European citizens. In such a case, regional geo-political issues are likely to be exacerbated by antagonistic decision-making between *peoples* who are forced to cooperate with others. Indeed, the problem, here, is that unlike within national communities, disagreement will not be seen as principled but instead an instance of geo-political *realpolitik*.

Importantly, Habermas is not the only theorist concerned with the 'no-demos' thesis. Indeed, Adam Lupel, in his discussion of securing democratic legitimacy beyond the nation-state, argues that cosmopolitanism, 'is charged with misunderstanding the importance of identity to the

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<sup>472</sup> Habermas, 'Democracy in Europe', p. 552.

foundations of political obligation and solidarity,<sup>473</sup> and Held himself acknowledges that, 'There is no common global pool of memories; no common global way of thinking; and no 'universal history' in and through which people can unite.'<sup>474</sup> The issue, then, is that the cosmopolitan project may flounder on the rocks of nationalism: that is, beyond the nation-state there is an obvious lack of a shared language, heritage, or culture, suggesting that the mutual trust and shared identity which underpin national democracies will be missing and the pre-requisites for a well-functioning democracy will be absent. Indeed, decision-making would likely be characterised by mutual antagonism and distrust and, as such, the decisions reached at the supranational and global levels are likely to be ones which few can accept. Even more problematically, if we cannot address these concerns it seems unlikely that we would ever be able to derive a 'common good' within transnational demoi. As such, individuals would not be able to direct governance at regional or global levels, and would only be able to influence it through democratic mechanisms, entailing domination.

Since David Miller has explored this issue at length, it is useful to consider his arguments for why cosmopolitan democracy will flounder on the rocks of nationalism. To that end, Miller starts by outlining five features of nations which serve to distinguish them from other forms of collective identity: they are constituted by shared belief and mutual commitment; they are extended in history; active in character; they are connected to a delimited territory; and are marked off from other nationalities by its distinct public culture.<sup>475</sup> Importantly, Miller then turns to the issue of whether unchosen membership in an historic community is a defensible component of personal identity. He argues, here, that underlying this question is the assumption that, 'a person's identity should be something that he works out for himself, reflecting his choices as to what is really valuable to him,'<sup>476</sup> and the concern that, 'The trouble with nationality, however, is precisely that it is something for the most part unchosen and unreflectively acquired.'<sup>477</sup> In response to this concern, Miller argues that this 'radical chooser view' misunderstands the process whereby individuals choose their identities. Indeed, he argues that this model of identity-formation would require that individuals engage in abstract reasoning to determine what values are most important to them, and to then find groups which embody these values. Miller, however, argues that, 'A more reasonable picture recognizes that we always begin from values that have been inculcated in us by the communities and institutions to which we belong...As we come to reflect on these values, we find we can no longer adhere to some, we find tensions and

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<sup>473</sup> Adam Lupel, 'Tasks of a Global Civil Society: Held, Habermas and Democratic Legitimacy beyond the Nation-State', *Globalizations* 2 (2005), pp. 117-133 (p. 120).

<sup>474</sup> Held, *Democracy and the Global Order*, p. 125.

<sup>475</sup> David Miller, *On Nationality* (Oxford: Oxford University Press, 1995), p. 27.

<sup>476</sup> *Ibid.*, p. 43.

<sup>477</sup> *Ibid.*, p. 43.

contradictions between others, and so forth.<sup>478</sup> Through this process of reflection and re-evaluation, individuals come to form their personal identities, of which nationality is often an integral, and defensible, component.<sup>479</sup>

From here, Miller goes on to argue that there are ethical reasons for aiming to ensure that, where possible, the boundaries of the political community or state coincide with the boundaries of nationality. Indeed, Miller claims that, ‘The potency of nationality as a source of personal identity means that its obligations are strongly felt and may extend very far – people are willing to sacrifice themselves for their country in a way that they are not for other groups and associations,’<sup>480</sup> and that, ‘these obligations are somewhat indeterminate and likely to be the subject of political debate; in the best case, they will flow from a shared public culture which results from rational deliberation over time about what it means to belong to the nation in question.’<sup>481</sup> Fundamentally, Miller’s argument amounts to a defence of ethical particularism, and the claim that individuals give particular weight to their particular commitments and relationships. Indeed, just as individuals have greater obligations to their family, friends, or local community, Miller argues that they have greater obligations towards their co-nationals than they do to outsiders.<sup>482</sup>

Miller then turns to the issue of national self-determination, arguing that, ‘national communities have a good claim to be politically self-determining...each nation should have its own set of political institutions which allow it to decide collectively those matters that are the primary concern of its members.’<sup>483</sup> He argues that national self-determination is an expression of collective autonomy and, noting that this proposition is controversial because it supposes that individuals have an interest in shaping the world with others with whom they identify, that, ‘what the state does should correspond to what we might call the popular will.’<sup>484</sup> Importantly, pursuing the popular will requires the voluntary co-operation of citizens who must trust one another and the state entrusted to pursue their good.

It is at this point that Miller’s objections to cosmopolitan democracy emerge as he argues that the mutual trust and shared identity which underpins collective autonomy and national self-determination is present within groups but absent across groups.<sup>485</sup> That is, he believes that mutual trust is integral to the creation and maintenance of states committed to social justice and the provision of welfare (arguing that Rawls’ work presupposes this mutual trust in the requirement

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<sup>478</sup> *Ibid.*, pp. 44-45.

<sup>479</sup> *Ibid.*, p. 45.

<sup>480</sup> *Ibid.*, p. 70.

<sup>481</sup> *Ibid.*, p. 70.

<sup>482</sup> *Ibid.*, p. 65.

<sup>483</sup> *Ibid.*, p. 81.

<sup>484</sup> *Ibid.*, p. 89.

<sup>485</sup> *Ibid.*, pp. 92-93.

that members acknowledge ties of solidarity);<sup>486</sup> and that democracy itself can only function well when these conditions obtain. Indeed, he argues that if a community is to be guided by the ideal of deliberative democracy it must aim to ensure that decisions are reached through an open and uncoerced discussion. Doing so requires that participants offer consistent and sincerely held reasons for their views, and that they should be willing to moderate their claims in order to find a common ground on which all participants can agree.<sup>487</sup> Miller's central claim, here, is that nationality provides a shared identity and encourages mutual trust between individuals with disparate views, thereby securing social justice and deliberative democracy. Since a shared nationality does not exist beyond the nation-state, the obvious conclusion to be drawn is that democracy and social justice will remain unrealisable: without mutual trust, individuals will be less inclined to support redistributive measures, and will be less likely to aim to reach a consensus when making decisions together, making decision-making more conflictual.

Acknowledging that this conception of national self-determination is an ideal which many states fall short of, Miller goes on to argue that it may be necessary for states to transfer some of their powers to overarching confederal bodies but, importantly, that doing so must be regarded as provisional: that is, states can enter binding agreements with others to regulate their common defence or address economic issues but must retain the capacity to exit when they wish to.<sup>488</sup> This leads him to outline his own account of international justice which, in many ways, parallels that outlined by Pettit in *Just Freedom*. Components of this account of international justice include: an obligation to respect the territorial integrity of other states; a duty not to exploit vulnerable states through threats; a duty for nations to comply with whatever international agreements they have entered into; obligations of reciprocity, such that nations are informally required to come to the aid of other states when in need (for example, if they're dealing with a famine or drought); and, more controversially, an obligation to ensure a fairer distribution of resources through international redistributive mechanisms, such that each state can, 'reach a threshold of viability, giving it an economic base from which national self-determination can meaningfully be exercised.'<sup>489</sup>

Miller then turns to the effects of globalisation on nationality, and the issue of whether we can expect to see an emergence of supra-national nationalities which overlay existing national identities. On this issue, he notes that Europe would be the most promising site for the emergence of a new 'higher-level identification' beyond the state because European nations are already integrated into the European Union. Problematically, he notes that, 'Despite attempts by Euro-ideologists to create a European national identity, drawing upon the common cultural background

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<sup>486</sup> Ibid., pp. 93-96.

<sup>487</sup> Ibid., pp. 96-97.

<sup>488</sup> Ibid., pp. 96-108.

<sup>489</sup> Ibid., pp. 104-106.

of the European states, very few Europeans actually acknowledge this in preference to their traditional national identities. They support membership of the EU on practical grounds, but their emotional loyalty (feelings of national pride, etc.) continues to be directed towards their country of origin;<sup>490</sup> and that there has been no observable convergence of national beliefs and values at the European level.<sup>491</sup> Indeed, he claims that, ‘Since the EU is currently the strongest of the supra-national organizations, its failure to displace inherited national allegiances is surely of some significance. If no trans-European national identity has yet emerged, the prospects for a North American identity, a pan-Arab identity, or an East Asian identity...must remain extremely dim.’<sup>492</sup> Miller concludes that attempts to displace nationality with international humanism is misguided because, ‘the majority of people are too deeply attached to their inherited national identities...[and] it provides the wherewithal for a common culture against whose background people can make more individual decisions about how to lead their lives; it provides the setting in which ideas of social justice can be pursued...; and it helps to foster the mutual understanding and trust that makes democratic citizenship possible.’<sup>493</sup>

In summation, Miller’s concerns would seem to render the arguments of the preceding chapter untenable and show that the project of cosmopolitan republicanism is entirely misguided because, beyond the nation-state, there is paucity of trust and understanding (owing to a lack of a shared nationality), and this will undermine attempts to secure transnational democracy.

Indeed, this conclusion is particularly problematic for this thesis because it would seem to suggest that we could never secure influence and direction beyond the nation-state. That is, without mutual trust or understanding between participants, deliberation (if it could be achieved), would likely be antagonistic and directed towards factional interests. Indeed, it is likely that the various nationalities partaking in deliberation would seek to realise their own ends at the expense of the overarching demos. This would seem to suggest that the deliberation which precedes democratic decision-making would either be unrealisable or would descend into factional disputes and thereby undermine the legitimacy of democratic outcomes.

Even more problematic is the fact that in such circumstances, in which participants are unable to view themselves as a demos with common interests, we would likely be unable to derive a common good capable of directing governance. Indeed, Pettit’s account of democratic legitimacy, as discussed at length in the second chapter, seems to presuppose the existence of a common political culture in which mutual trust already pertains between citizens. As such, deriving a common good is simply a matter of deliberation between individuals who already see themselves as members of an ongoing cooperative venture which they want to succeed: the pre-

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<sup>490</sup> *Ibid.*, pp. 159-160.

<sup>491</sup> *Ibid.*, pp. 161-162.

<sup>492</sup> *Ibid.*, p. 162.

<sup>493</sup> *Ibid.*, pp. 184-185.

conditions for reciprocal deliberation thus already exist within the nation-state and it would seemingly be a straightforward matter to explore what shared interests individuals converge upon and then ensure that these direct governance. But, at a supranational level, such a shared public culture of understanding would be entirely absent, and therefore the conditions for deriving a common good would be non-existent.

This conclusion, however, would be premature. For in fact, Miller's own discussion of nationality provides us with the means to respond to these charges. Indeed, Miller notes the importance of, 'a revived project of nation-building,'<sup>494</sup> to combat the withering away of the nation-state under globalisation, and the centrality of a civic education, 'as a means for transmitting the redefined and constitutionally embodied national identity to the incoming generation.'<sup>495</sup> The aim of such an education, he argues, would be to ensure that that disparate groups which comprise the nation are exposed to a core curriculum which is inclusive of minorities in order to enable them to, 'participate in the continuous redefinition of national identity.'<sup>496</sup> While Miller is obviously concerned with revitalising the nation-state, I think that his suggestions of reviving the process of nation-building, utilising a civic education, and encouraging public deliberation can help to create the conditions in which supranational democracy can emerge over time, thereby enabling us to aim towards a neo-republican cosmopolitan future.

### **Mythologizing and Excavating a Shared History: Crafting a Trans-nationalism**

It is important to note that while Miller is extremely sceptical of the prospects of replicating national democracy beyond the nation-state, he does nonetheless acknowledge that a nation's, 'existence depends on a shared belief that its members belong together,'<sup>497</sup> and that it, 'is an identity that embodies historical continuity.'<sup>498</sup> Importantly, he further acknowledges that, 'national identities typically contain a considerable element of myth. The nation is conceived as a community extended in history and with a distinct character that is natural to members...It is also likely to reveal that many things now regarded as primordial features of the nation in question are in fact artificial inventions – indeed, very often deliberate inventions made to serve a political purpose.'<sup>499</sup> If he is correct, and a shared identity is constituted through individuals' beliefs and political myth-making, then it may be possible to replicate these processes beyond the nation.

Noting that sceptics might construe this to mean that nations are spurious inventions which are intellectually suspect, he goes on to argue that such mythologizing is integral to

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<sup>494</sup> Ibid., p. 180.

<sup>495</sup> Ibid., p. 180.

<sup>496</sup> Ibid., p. 180.

<sup>497</sup> Ibid., p. 22.

<sup>498</sup> Ibid., p. 23.

<sup>499</sup> Ibid., p. 35.

building and sustaining nations and national-identity. Indeed, he argues that these processes have two benefits: they provide members with reassurance that the national community is solidly based in history and represents a continuity between generations of which current members are participants; and they perform a moralising role by holding up the virtues of past members and encouraging us to live up to their standard. In this way, myths help to create the political community, ensuring that, 'People's sense of solidarity with and obligation to their compatriots will be increased.'<sup>500</sup> He goes on to approvingly cite the 'Dunkirk Spirit' as an example of myth-making which supports national solidarity and performs a moralising function. Indeed, he argues that it reveals to us that our ancestors came together to address a national crisis and did so instinctively rather than being ordered to. Importantly, Miller argues that this myth was used by later politicians, such as Harold Wilson, to mobilise the British people in an attempt to ward off the sterling crisis.<sup>501</sup>

Miller therefore explicitly acknowledges that national identity is constituted by participants' shared beliefs, and is subject to creation and reinterpretation. This seems to suggest that if we could replicate such a process beyond the nation-state, emphasising shared myths and ideals which pertain within supranational communities, then we might be able to provide the foundation of mutual trust and shared understanding necessary for a well-functioning democracy. Indeed, Jurgen Habermas defends precisely this process within the context of the EU, arguing that it is necessary to craft a trans-European civic solidarity in order to surmount the, 'long shadow cast by nationalism.'<sup>502</sup>

In a similar analysis to Miller, Habermas argues that, 'In European states that emerged from national unification movements, a national consciousness was fostered, indeed produced, by schools, the military, national historiography and the press.'<sup>503</sup> Indeed, he claims that national communities did not develop spontaneously, but were instead deliberately constructed. That is, unlike the solidarity between neighbours which emerged organically and which rests on existing forms of social integration, national consciousness, 'is the result of an organised form of *political integration*...the mass of the population was mobilised over the course of the nineteenth century and was included step by step in political will-formation.'<sup>504</sup>

Importantly, Habermas believes that the distrust between European peoples is not a product of xenophobic self-isolation, but is instead a patriotic response to the achievements of their respective nations: citizens believe that they owe their well-being to their nation's achievements. As such, the European peoples have an interest in their nations remaining the

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<sup>500</sup> Ibid., p. 35-36.

<sup>501</sup> Ibid., p. 37.

<sup>502</sup> Jurgen Habermas, 'The Crisis of the European Union in the Light of a Constitutionalization of International Law', *European Journal of International Law* 23 (2012), pp. 335-348 (p. 346).

<sup>503</sup> Habermas, 'Democracy in Europe', p. 552.

<sup>504</sup> Ibid., p. 552.

guarantors of these achievements and therefore enjoy civic solidarity with their compatriots but not with other European peoples whose identities remain tied to their nation's historic achievements. The response to this insularity amongst peoples is to aim to extend an abstract civic solidarity across the European peoples,<sup>505</sup> opening up national public spheres to one another, so that European citizens can communicate with one another and begin to see each other as co-participants in a new kind of community. It would be necessary to encourage national media to also report on the discussions being had elsewhere within the Union about issues of common concern. The aim of opening up national public spheres to one another would be to translate the trust which exists within national communities into a more abstract form of trust which would encompass European citizens within an abstract transnational civic solidarity.<sup>506</sup>

I think that Miller and Habermas' comments point us towards a partial solution to the problem of creating transnational *demos*. That is, if a shared nationality, history, and identity provide the foundations of mutual trust and understanding necessary to secure social justice and democratic deliberation within nations, then a shared transnational 'nationalism' might provide a similar foundation for securing trust and understanding in transnational *demos*. Importantly, if Miller and Habermas are correct that nationality has been developed through political direction and mythologizing, then it should be possible to replicate this process beyond the nation-state by using similar mechanisms. The aim, then, would be to excavate an underlying trans-nationalism which would bind national peoples together in mutual trust and understanding. Indeed, a brief analysis of how a European trans-nationalism might be cultivated provides us with a blueprint for how this process might be replicated within other trans-national *demos* and at a global level.

To see why, let us start by supposing that the European national media could be induced to widen the scope of their reporting, opening up each nation's public sphere to others. In doing so, we would create the conditions in which transnational public debate and deliberation can begin to take root. Now, I think it likely that trans-European debate and deliberation would, as noted by Miller, be conducted in a nationalistic or jingoistic manner, with participants deliberating from a national perspective. Nonetheless, I think that it would be possible, over time, to craft a European 'nationalism' or civic solidarity through mythologizing and emphasising shared European achievements and history.

This might include, for example, emphasising the Reformation and the gradual emergence of religious freedom; the Treaty of Westphalia and the move towards recognising national sovereignty; and emphasising the Enlightenment and the emergence of universalistic norms. It might, more controversially, emphasise European solidarity in combatting the various despotisms which have emerged across the continent, including the alliances to halt the

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<sup>505</sup> Habermas, 'The Crisis of the European Union in the Light of a Constitutionalization of International Law', p. 346.

<sup>506</sup> Habermas, 'Democracy in Europe', p. 553.



Napoleonic Wars, the resistance movements which fought Hitler and the Nazis, and the attempts to free peoples from Communism. It would be possible to draw national heroes into a pantheon of Europeans who could serve as moralising examples. Such figures, though controversial, might include historic thinkers who have contributed to European thought and civilisation (including, perhaps, Plato, Aristotle, Hobbes, Locke, Rousseau, Kant, etc.) or those who provide an example of resistance to tyranny (including Joan of Arc, the French Resistance, Winston Churchill), or those whose achievements are world-renowned (perhaps including Einstein, Beethoven, Darwin etc.). Similarly, we might strive to emphasise European peoples' shared Judaeo-Christian roots, or shared values regarding democracy, the rule of law, and secularism.

While specifying exactly what form this mythologizing might take is beyond the scope of our analysis, it is important to note that the aim would be to emphasise a shared history and commonalities - a trans-nationalism - which could be endorsed and engaged with from a variety of national perspectives. Indeed, this pan-European identity need not be so abstract that it can be fully endorsed from all perspectives (as is required by the common good), as we do not need to have a universally acceptable transnational identity; instead, it would need to be capable of engaging the European peoples in a process of critical discussion, contestation and self-definition. Indeed, it is through this process of collective mythologizing and self-definition that a trans-nationalism might emerge, in parallel to the way in which nationalism is reproduced over generations. For example, in the U.K., Winston Churchill might be interpreted as a chauvinist, as the architect of the Gallipoli disaster, or as a heroic leader who saved the country from Nazism and ensured that European civilisation could eventually be saved from Hitler. Likewise, the First World War might be interpreted as a defence of national sovereignty, a war between collapsing colonial and imperial powers, or a British involvement in continental politics which need not have occurred. The point, here, is that nationalism is not an objective phenomena which all individuals uncritically endorse: instead it is produced and altered over time through individuals' critical discussion and contestation over their shared history. In this way, all national myths and history are subject to contestation, reformation and redefinition and it is to be expected that the same process will occur at a transnational level. Indeed, I think that such contestation would be a sign that the process of transnational nation-building is working: Europeans would be engaged in a process of self-definition and deliberation which, over time, might facilitate the emergence of a transnational civic solidarity.

Importantly, as noted by Habermas, such a transnational civic solidarity would be 'thinner' than national solidarity. The reason for this is obvious: individuals do, and we can suppose will continue to, often identify with their nation state and it is likely that their identity will remain rooted within the nation. Nonetheless, I do not think this is a problem because European nationalisms are rooted within a shared European history, one which encompasses each nation's history. That is, we cannot understand the idea of British exceptionalism without

reference to wider European history: the invasions by Romans, Angles, Jutes, Vikings, and Normans; the split with the Catholic Church which helped to define Anglicanism; or the centuries dedicated to maintaining a European balance of power. It is Britain's place within Europe which helps to define British national identity. Similarly, German nationalism cannot be understood without reference to European history: the collapse of the Roman Empire; Charlemagne; the rise of the Holy Roman Empire; the Habsburg dynasty; Germany's geographic position in the centre of the continent; the rise of Protestantism and the Treaty of Westphalia; Germany's subjection to Napoleonic rule; its eventual unification following the Franco-Prussian wars; the rise of Prussia as the most powerful of German states; the two world wars; the Holocaust; and German reunification.

We can therefore see that both British and German nationalism are inextricably intertwined with European history and neither nationalism can be understood without reference to a wider European history. Importantly, this suggests that Britons and Germans, while primarily identifying as members of their respective nations, may also come to identify as Europeans. Indeed, this European identity clearly distinguishes Europeans from other peoples, and suggests that the seeds of a transnational identity are latent in the concept of nationalism: that is, Europeans are likely to understand themselves as constituting a distinct 'people' in opposition to Arabs, Africans, and Asians. It seems plausible to suppose, then, that a European trans-nationalism forms a latent component of Europeans' identity: it defines Europeans in opposition to other peoples. As such, there is a shared European history which we can draw upon to provide a foundation for 'nation-building' beyond the nation-state.

Indeed, it is important to note that this argument would also apply to the emergence of other transnational nationalisms. That is, just as there are commonalities and a shared history within Europe, there will be similar foundations to create other regional trans-nationalisms. For example, in different regions we would emphasise a shared Asian, African, or Arabian history, with a view to utilising this shared history and mythologizing to provide a foundation of mutual trust and shared understanding upon which the transnational demos can be built.

Importantly, such arguments would also apply to the creation and cultivation of an even 'thinner' global nationalism, one which emphasises a common anthropological history, a pantheon of global heroes, and a set of common values. Indeed, drawing upon the intersection of national and transnational identities, we might emphasise the shared evolutionary and biological history of the human race; or emphasise the ways in which competing values and worldviews have contributed to emergence of global human rights. The aim, here, would be to facilitate the emergence of a global cosmopolitan identity in which individuals across the globe are encouraged to see each other as compatriots rather than antagonists. Indeed, just as opening up national public spheres to one another may facilitate the emergence of a transnational identity, so too can we hope that opening up transnational communities to one another might facilitate the gradual emergence

of such a global identity. That is, if national and transnational media could be encouraged to report events elsewhere in a neutral or sympathetic manner, we may be able to create the conditions in which cross-border communication becomes commonplace, and in which individuals are able to surmount their particular identities and see themselves as members of a global community. While an analysis of exactly what would need to be emphasised at each level in order to promote transnationalism is beyond the scope of this thesis, it does seem to be at least logically possible to replicate the processes of nation-building and mythologizing beyond the nation-state, creating the underlying conditions in which mutual trust and shared understanding can flourish.

Although brief, I think that these comments suggest that it might be possible to create a thinner trans-nationalism to provide the foundations necessary for transnational democracy by securing trust and understanding across peoples. With that said, such a process would, as noted by Miller in his discussion of the emergence of nationalism, require the existence of a common education. Indeed, historically a common education was used to propagate and facilitate the emergence of a national identity, emphasising a shared history and pantheon of national heroes and myths. If suitably designed, a civic education would be able to similarly facilitate the emergence of transnational identities and civic solidarity.

### **A Republican Civic Education**

As noted above, Miller explicitly argues that reviving the project of nation-building requires the promotion of an education, ‘as a means for transmitting the redefined and constitutionally embodied national identity to the incoming generation,’<sup>507</sup> and that a core curriculum ought to be developed which would enable minorities to, ‘participate in the continuous redefinition of national identity.’<sup>508</sup> Miller therefore sees education as a means for ensuring that citizens are capable of discharging the basic duties of citizenship, and as a mechanism for securing the foundation upon which a political edifice can be built in which social justice and legitimate political outcomes can be generated.

A civic education is no less integral to the aims of neo-republicanism, and particularly to the project of securing democratic legitimacy beyond the nation-state. Indeed, we saw in the first chapter that Pettit notes that national infrastructure will have to, ‘provide for the education, training, and information available to citizens,’<sup>509</sup> such that individuals are able to enjoy the basic liberties; and we saw in the second chapter that Pettit argues, following Barry, that in order to secure democratic legitimacy, governance must track citizens’ community-oriented ‘political’ interests, which arise from membership in a community which they want to see progress and

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<sup>507</sup> Miller, *On Nationality*, p. 180.

<sup>508</sup> *Ibid.*, p. 180.

<sup>509</sup> Pettit, *Just Freedom*, p. 84.

flourish.<sup>510</sup> Securing democratic legitimacy therefore seems to require that citizens are concerned for the well-being of their community, and are able to abstract from their particular concerns and engage with the community's good: neo-republicanism seems to require virtuous citizens.

While this aim might be readily achieved in a cohesive national community, we face the further issue of ensuring that individuals are not only able to abstract from their particular ends in order to pursue their community's good, but that they're also able to see beyond their national community's self-interest in order to derive a common good for supranational communities. Indeed, assuming it is possible to induce individuals to derive their nation's good solely from public-oriented interests rather than their private interests, it would then be necessary to repeat this process at a transnational level, necessitating that citizens are able to abstract from both their private and national ends in order to derive a transnational common good. For example, addressing global ills such as AIDs or climate change would require that individuals, when determining their global shared interests, do not seek to secure a good outcome for themselves or their nation at the expense of other communities. Instead, they would need to adopt a transnational or global perspective, conceiving of themselves as members of these broader communities, and determine deliberatively what the good consists of, irrespective of the costs to themselves or their nation. Indeed, this requirement is bound up with our previous discussion of encouraging the emergence of a trans-nationalism: for individuals to be able to derive a transnational or global good, they must see themselves as members of transnational and global *demos*, each of which has different interests. For example, a British individual who owns an industrial company may have a private interest in reduced environmental regulations but, when it comes to deriving a British common good, would need to abstract from this perspective and strive to derive a set of shared interests in conjunction with other British citizens. But, more demandingly, this same individual, as a member of a transnational and global *demos*, would also have to strive to derive a set of transnational and global shared interests which may impact upon either his particular or national ends: global regulations may require that Britain contributes a significant sum of money to addressing global pollution, or that the manufacturer complies with regulations that impact upon his personal ends.

Importantly, however, we cannot just assume that citizens will behave in the requisite way and deliberate in accordance with the norm of norms at each level rather than pursuing personal, national, or sectarian interests. Instead, it is necessary to take steps to ensure that they can discharge the basic duties of citizenship as, 'What we sometimes forget is that the vitality of the political order depends on an education that is dedicated to specific ideals of character.'<sup>511</sup> As such, we need to consider how we might utilise a civic education to create virtuous citizens

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<sup>510</sup> Pettit, 'The Common Good', pp. 158-159.

<sup>511</sup> Eamonn Callan, *Creating Citizens: Political Education and Liberal Democracy* (Oxford: Oxford University Press, 1997), p. 3.

capable of abstracting from their particular ends and identifying with their communities' good, such that we can derive a set of shared interests capable of exerting direction over each level of governance.

Problematically, however, pursuing such a civic education would seem to conflict with the requirements of non-domination. That is, creating 'reasonable' citizens would seem to require inculcating a worldview in children which is anathema to the vast majority of families who would prefer to bring their children up as they see fit without the state intervening to teach them contrary views. For example, atheist parents may prefer that their children are not taught the 'reasonableness' of religious worldviews, and religious families may prefer that their children aren't taught about other reasonable conceptions of the good. The problem, then, is that children would need to be taught, contrary to their parents' beliefs, that their own comprehensive doctrines are but one conception of the good amongst many equally viable and acceptable conceptions; and that membership in political communities requires that they abstract from their particular ends and beliefs in order to derive a common good with their fellows. Parents would therefore seem to be denied the capacity to raise their children as they see fit, seemingly giving rise to an invasion of their choice-sets and entailing domination.

Nonetheless, I do not think that this objection is insurmountable. Indeed, Callan, in his discussion of liberalism and civic education, has shown that a civic education, while subject to limits, can plausibly aim at crafting 'reasonable' citizens. Indeed, he claims that, 'we cannot coherently reject the importance of liberal soulcraft.'<sup>512</sup> Importantly, Stephen Macedo makes a similar point, arguing that, 'Each of us can reasonably be asked to surrender some control over our own children for the sake of reasonable common efforts to insure that all future citizens learn the minimal prerequisites of citizenship. There is no right to be exempted from measures reasonably designed to help secure the freedom of all.'<sup>513</sup> While Callan's discussion is concerned with the limits of reasonable pluralism and political liberalism, he summarises our problem concisely as a dilemma in which, 'The need to perpetuate fidelity to liberal democratic institutions and values from one generation to another suggests that there are some inescapably shared educational aims, even if the pursuit of these conflicts with the convictions of some citizens. Yet if repression is to be avoided, the state must give parents substantial latitude to instil in their children whatever religious faith or conception of the good they espouse.'<sup>514</sup> He argues, through an analysis of Rawls' accounts of reasonable pluralism, the political conception of individuals, and the burdens of judgement, that, 'A political education that meets the challenge will teach the young the virtues and abilities they need in order to participate competently in reciprocity-

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<sup>512</sup> Ibid., p. 5.

<sup>513</sup> Stephen Macedo, 'Liberal Civic Education and Religious Fundamentalism: The Case of God vs. John Rawls?' *Ethics* 105 (1995), pp. 468-496 (pp. 485-486).

<sup>514</sup> Callan, *Creating Citizens*, p. 9.

governed political dialogue and to abide by the deliverances of such dialogue in their conduct as citizens.<sup>515</sup> Callan's aims are therefore the same as our aims: utilising a civic education to ensure that citizens can undertake the basic duties of citizenship, including engaging in reasoned deliberation with others with a view to deriving a set of shared public interests, over and above their own good, which would direct governance and render it non-dominating.

Callan argues that creating virtuous citizens requires that individuals are taught to accept the burdens of judgement. That is, they must accept, amongst other issues, three things: that there may be complex and conflicting evidence when considering an issue; that individuals may disagree about the relative weight of evidence; and the way in which individuals assess and weigh evidence will depend upon their life experience.<sup>516</sup> Callan, however, goes further than Rawls, arguing that a genuine acceptance of the burdens of judgement would entail that, 'the relevant acceptance must be an active and taxing psychological disposition, pervasively colouring the beliefs we form and the choices we make.'<sup>517</sup> Callan goes on to acknowledge that if children were taught to embrace the burdens of judgement, then this would likely come into conflict with family values because, 'parents will naturally reason with the child inside the framework of the comprehensive doctrines they favour.'<sup>518</sup> As such, Callan acknowledges that the family will be an inappropriate locus for securing future citizens' capacity to engage in reasoned deliberation because the doctrines learned in the home may conflict with acceptance of reasonable pluralism. For example, families might privately endorse strong views on abortion or homosexuality which conflict with the requirements of reasonableness.<sup>519</sup> Importantly, while he argues that, 'To learn to accept the burdens of judgement is not to endorse secular humanism, blanket moral scepticism or any other anti-religious posture,'<sup>520</sup> he acknowledges that:

Future citizens must be taught to think in particular ways about doctrines...they must be critically attuned to the wide range of reasonable political disagreement within the society they inhabit and to the troubling gap between reasonable agreement and the whole moral truth. This will require serious imaginative engagement with rival views about good and evil, right and wrong, and this in turn means that these views must be confronted in their own terms, without the peremptory dismissal they might receive according to whatever doctrine a child learns in the family. The moral authority of the family and the various associations in which the child grows up must be questioned to the extent that society contains reasonable alternatives to whatever that authority prescribes.<sup>521</sup>

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<sup>515</sup> Ibid., p. 28.

<sup>516</sup> John Rawls, *Political Liberalism* (Chichester: Columbia University Press, 1996), pp. 54-57.

<sup>517</sup> Callan, *Creating Citizens*, p. 34.

<sup>518</sup> Ibid., p. 34.

<sup>519</sup> Ibid., pp. 34-35.

<sup>520</sup> Ibid., p. 38.

<sup>521</sup> Ibid., p. 40.

Centrally, Callan acknowledges that this view of the aims of a civic education amounts to a recognisable conception of ethical autonomy and requires that children are prepared to engage in reasoned deliberation with other citizens over the nature of the good and the right in accordance with an acceptance of the burdens of judgement. This is a position which neo-republicans ought to endorse because securing individuals' capacity to engage in reasoned deliberation and teaching them to accept the burdens of judgement will support neo-republican aims. Indeed, as we have already seen in the first chapter, underlying Pettit's account of non-domination is a conception of orthonomy or autonomy which can be undermined when individuals are subject to adaptive preferences. Such an education would help to guard against adaptive preferences by enabling individuals to analyse and then deliberatively endorse or refute comprehensive doctrines. In addition, securing such an education would enable individuals to engage in the deliberation necessary to secure a communal conception of the good which would exert direction on governance and render it democratically legitimate.

Importantly, Callan goes on to note that, 'Induction into the role of citizen and the growth of affective attachment to fellow citizens are essentially tied to the particularity of the polity within which moral learning occurs,'<sup>522</sup> and such induction is essential to the proper functioning of a demos. Indeed, he notes that if trust is weak, then individuals are more likely to interpret disagreement to be an instance of unreasonable pluralism or bad faith, blocking attempts to secure social justice and a well-functioning democracy. He goes on to argue that, 'the reservoir of earned trust that a just society must rely on is necessarily the historical achievement of a particular polity; it cannot be a ready-made moral resource that inheres in the very idea of a liberal democratic constitution.'<sup>523</sup> That is, if we do not 'create' citizens capable of accepting the burdens of judgement, and who are prepared to engage in reasoned, reciprocity-based deliberation, the result is likely to be civic decay. It is here that a civic education has the most important role: it becomes the foundation for mutual trust and enables individuals who endorse different comprehensive doctrines to come together in defence of the liberal polity which secures each individual's capacity to lead their own life. In the absence of such an education, pluralism will likely entail tribalism and sectarianism; if a civic education is pursued properly, citizens will be able to lead their own lives while supporting the institutions and political framework which makes leading these lives possible.<sup>524</sup>

This would require that we pursue a civic education that, 'combines an exacting commitment to reason with a generous susceptibility to those public emotions that bind us to the body politics.'<sup>525</sup> This seems to suggest that Callan's civic education, intended to support the

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<sup>522</sup> Ibid., p. 93.

<sup>523</sup> Ibid., p. 95.

<sup>524</sup> Ibid., pp. 95-97.

<sup>525</sup> Ibid., p. 121.

liberal polity, would be comprised of two elements: the first would be the inculcation of a liberal patriotism premised upon an endorsement of the burdens of judgement and the capacity to engage in reasoned deliberation with others; and second, the promotion of a form of nationalism which emphasises a shared identity and history, and which would facilitate the shared understanding and trust required for individuals to live together. These elements would also be integral to the aim of securing democratic legitimacy beyond the nation-state. That is, we would need a civic education to promote the trans-nationalism outlined in the previous section in order to secure mutual trust and understanding; and we would need to promote the burdens of judgement and the importance of reasoned deliberation to secure democracy beyond the state. If an education could realise these aims, it would enable citizens of transnational polities to see one another as compatriots in an ongoing political project who can be trusted to seek the good of the demos over their other attachments and would create the conditions in which a transnational common good could be derived to exert direction over governance.<sup>526</sup>

### **Cultural Imperialism: The Conflict between Human Rights and Ethical Commitments**

With that said, we do face the issue, noted by Callan, that, ‘efforts in schools or elsewhere to encourage the virtue of reasonableness...will predictably lead to conflict with those whose convictions or interests are thereby imperilled.’<sup>527</sup> That is, we must acknowledge that such an education at both the national and transnational levels would likely come into conflict with the preferences and conceptions of the good of many citizens. Indeed, we might find that religious groups within a national setting believe that such an education would imperil their capacity to

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<sup>526</sup> It is important to note, here, that Colin Macleod argues that some of the aims of a theory of education justice might include: ‘First, education may provide children with various skills and practical knowledge that prepare them for adult life and, more specifically, for participation in the economy and civil society. Second, education can be oriented toward the cultivation of democratic virtues. Students may be taught about the workings of democratic processes and to appreciate the rights and responsibilities of citizens. Relatedly, but more ambitiously, education may foster the disposition to participate actively in democratic self-government and prepare citizens to give and take reasons in mutually respectful public political discourse. Third, education may have a crucial role to play in the facilitation of autonomy in children and in the development of moral reasoning. Fourth, schools can provide sociological and historical knowledge (e.g. about practices and beliefs of different cultures and religions, as well as demographic information about matters such as class, gender or ethnicity) that is deemed important to the social reproduction of either a general societal culture or particular cultural communities within the state.’ Macleod’s view of the aims of an education therefore cohere with Callan’s and my own: an education should aim to equip individuals with the skills, knowledge and capacities necessary for full participation in a democratic community, including the capacity to participate in public deliberation, in order to secure the social foundations for a well-functioning polity. See: Colin M. Macleod, ‘Freedom as Non-Domination and Educational Justice’, *Critical Review of International Social and Political Philosophy* 18 (2015), pp. 456-469 (pp. 458-459).

<sup>527</sup> Callan, *Creating Citizens*, p. 51.



bring their children up as they would like since children may be more critical of their parents' comprehensive doctrines. Beyond the state, we would find similar problems. For example, we might find that staunch nationalists object to the promotion of a shared identity, or object to an endorsement of the burdens of judgement where children would be taught to believe that the preferences of other national communities within the transnational demos are the product of reasonable disagreement rather than an attempt to secure their own best interests.

Indeed, the concern here is that such an education may be experienced as a source of cultural imperialism by those who endorse different ethical, moral, or political traditions. For example, some British Pakistani families, some Christian evangelicals, some staunch Catholics, and so on may be reticent to allow their children to be educated in such a way since the aims of encouraging civic-minded deliberation, which requires that individuals endorse the burdens of judgement, abstract from their private ethical commitments, and engage in norm-governed public deliberation, may be seen to involve the deliberate manipulation of children's views and the undermining of the community's shared values. This may imperil the existence of such communities since children will be more likely to question their parents' values and traditions, leading them to repudiate their families' ethical traditions.

It is important to acknowledge that such parents may be correct that this education will undermine their community's capacity to secure its long-term existence. This is because if their children are taught that their parents' ethical views are but one set amongst many, all of which are entitled to respect, it seems that previously insulated traditions will be subject to a greater degree of criticism than they had hitherto been subject to. Indeed, if children are properly equipped to understand the world around them, and are taught to deliberate with others, then it seems that children's ethical independence will be secured when they become adults: the likely result of such a process is that a great many ethical traditions will be gradually marginalised as they're subject to deliberative scrutiny rather than enjoying unthinking endorsement.

Broadly, then, the concern is that such an education may make it very difficult for some communities to propagate themselves, and members of these communities may claim that Callan's educational proposals are a form of insidious imperialism, designed to manipulate individuals' behaviour and beliefs indirectly, resulting in the gradual marginalisation of a great many ethical traditions. In response to this charge, Callan argues that, 'there can be no oppression in the moulding of a character that would refuse to resort to domination or manipulation in dealing with their fellow citizens.'<sup>528</sup> That is, it is not dominating to aim to create citizens who embrace the burdens of judgement and reasonable pluralism, alongside a belief in a shared identity, if 'crafting' citizens in this way ensures that they eschew oppressing their fellows by striving to enforce their own comprehensive doctrine over them. Additionally, he goes on to argue that,

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<sup>528</sup> *Ibid.*, p. 51.

‘Since children are numerically identical to the adults they will be when they grow up, securing the rights they will acquire as adults requires that we respect their claim to be treated in ways that safeguard the developmental preconditions of adult rights.’<sup>529</sup> As such, it is necessary to ensure that children have a sympathetic understanding of ethical diversity and are protected from what Callan calls ethical servility. Ethical servility is a process whereby parents’ choices shape a child’s character in ways which substitutes the parents’ will for the child’s in later life. For example, if parents teach their children that homosexuality is sinful, this will exert an impact upon the child’s later actions: in this sense, ethical servility seems to be an instance of domination since it enables the parents to invigilate the child’s later choices.<sup>530</sup> It is precisely this kind of servility that Callan’s civic education is intended to guard against, and requires, ‘a level of autonomous development above the mere condition of agency,’<sup>531</sup> such that, ‘each of us must learn to ask the question of how we should live, and that how we answer it can be no servile echo of the answers others have given, even if our thoughts commonly turn out to be substantially the same as those that informed our parents’ lives.’<sup>532</sup> It is important to also note, here, that Harry Brighouse and Matthew Clayton have advanced similar arguments, with the former defending an autonomy-facilitating education which would guard against ethical servility,<sup>533</sup> and the latter emphasising the costs an individual must bear in revising a conception of the good thrust upon them by their parents.<sup>534</sup>

While Callan has a convincing response to the concern that such an education might be experienced as a form of cultural imperialism, it is important to acknowledge that this is but one example of a wider concern with the conflict which may arise between individual rights and some cultural or ethical traditions. The concern is that the set of rights that Pettit has outlined as a necessary foundation for leading a life of one’s own, and which I have argued ought to be reconceptualised as a set of human rights which enjoy global entrenchment and protection, may come into conflict with many ethical traditions and be experienced as a western imposition.<sup>535</sup> Indeed, we might find that in relatively homogenous, religious societies, freedom of religion or freedom of thought and expression would come into conflict with individuals’ cultural traditions. For example, in some Islamic societies non-Muslims are subject to persecution or treated as second-class citizens, and apostasy and blasphemy laws operate to curtail religious criticism. The

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<sup>529</sup> Ibid., p. 147.

<sup>530</sup> Ibid., pp. 152-155.

<sup>531</sup> Ibid., p. 154.

<sup>532</sup> Ibid., pp. 154-155.

<sup>533</sup> Harry Brighouse, ‘Civic Education and Liberal Legitimacy’, *Ethics* 108 (1998), pp. 719-745.

<sup>534</sup> Matthew Clayton, *Justice and Legitimacy in Upbringing* (Oxford: Oxford University Press, 2006), pp. 106-123.

<sup>535</sup> This is not to say that this is the only issue with the set of human rights that I have discussed. For example, we must face the possibility that states may be unable to secure welfare rights for individuals if they lack the infrastructure and resources necessary to provide for individuals. I have tentatively suggested that redistribution across demoi may resolve this issue but it is nonetheless a significant one which will require further research.

concern, then, is that the rights that I have argued ought to enjoy global entrenchment and enforcement do not cohere with the views or beliefs of many cultural or ethical traditions. If these rights were enforced by transnational and global demoi, they would be experienced as a source of cultural imperialism by many communities: in this sense, ‘To pursue human rights...is to be intolerant of non-western practices and forms of life.’<sup>536</sup>

The first response available to us is to follow Simon Caney in acknowledging that, ‘Those who criticise human rights by arguing that they are incompatible with some ethical traditions tend to operate with a dualistic framework, according to which a tradition either affirms a commitment to human rights or it does not and is, therefore, incompatible with human rights,’<sup>537</sup> while maintaining that, ‘This binary approach is, however, too simplistic to be of much use.’<sup>538</sup> After outlining a series of possible relations between human rights and ethical traditions, Caney argues that while there may be some divergence between non-western traditions and human rights, the claim that human rights are in conflict with non-western cultures is too simplistic and, ‘unhelpfully obscure(s) points of agreement.’<sup>539</sup> Indeed, focusing on the compatibility of Theravada Buddhism and human rights, Caney seeks to show that the Buddhist conception of well-being would lead this sect to embrace human rights, evidencing that it is possible to endorse human rights from a non-western perspective. After discussing the central tenets of this doctrine, Caney concludes that the Buddhist account of well-being provides, ‘a cogent non-western teleological or perfectionist vindication of human rights.’<sup>540</sup>

While I have only outlined Caney’s argument in the briefest of terms, we can see that his central argument is two-fold: firstly, he argues that claims of incompatibility between human rights and non-western cultures are overstated; and secondly, he argues that it is possible for non-western cultures to draw on their own traditions to arrive at an endorsement of human rights. Indeed, he acknowledges that ethical traditions are not monolithic blocs which can be deemed compatible or incompatible with human rights, but will be comprised of, ‘different elements, different strands of thought,’<sup>541</sup> which can be drawn upon to endorse human rights (citing that while many maintain that Islam conflicts with liberal values, particularly with regard to apostasy and women, Islamic just-war theory corresponds with western accounts of just war).<sup>542</sup> It is important to note that Amartya Sen has similarly argued that, ‘Not only are the differences on the subject of freedoms and rights that actually exist between different societies often much

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<sup>536</sup> Simon Caney, ‘Human Rights, Compatibility and Diverse Cultures’, in Simon Caney and Peter Jones (eds.), *Human Rights and Global Diversity* (Oxon: Frank Cass Publishers, 2001), pp. 51-76 (p. 51).

<sup>537</sup> *Ibid.*, p. 53

<sup>538</sup> *Ibid.*, p. 53.

<sup>539</sup> *Ibid.*, p. 70.

<sup>540</sup> *Ibid.*, p. 69.

<sup>541</sup> *Ibid.*, p. 58.

<sup>542</sup> *Ibid.*, p. 59.

exaggerated, but also there is, typically, little note taken of substantial variations *within* each local culture.<sup>543</sup> He goes on to suggest elsewhere that it might be possible to draw upon individuals' ethical traditions to support the development of a theory of human rights through, 'an *interactive* process, in particular by examining what would survive in public discussion, given a reasonably free flow of information and uncurbed opportunity to discuss differing points of view.'<sup>544</sup>

Caney and Sen's arguments therefore seem to show that it would be too simplistic to claim that rights and non-western cultures will come into conflict and, more importantly, that non-western cultures can draw upon their own traditions to endorse many components of human rights doctrine and the liberal values which are enshrined in these rights. This seems to suggest that the concern noted above, that human rights might be experienced as a form of cultural imperialism, might be overstated. With that said, it is nonetheless possible to maintain that even if the majority of human rights doctrine can be endorsed by non-western cultures, it is patently clear that not all components of it are going to be compatible with all ethical traditions. For example, the right to religious freedom, which would include the capacity to leave one's religion or convert to another, is prohibited in Islam and it seems unlikely that all Muslims will endorse such a right. As such, critics of human rights might maintain that human rights are, 'an unduly arrogant and insensitive doctrine,'<sup>545</sup> and one which, 'pretends to be a doctrine unique in status and universal in reach, but, in reality, it is no more than local prejudice...a doctrine that is all the more insidious for the way in which it licences its own imposition upon the whole of humanity.'<sup>546</sup>

In response to this concern, Peter Jones has argued that there are two strategies available for reconciling human rights with human diversity. These strategies he calls the continuous and discontinuous strategies. The former, which seems to be Caney's preferred approach, emphasises the need to establish continuity between human rights and ethical traditions, such that individuals are able to draw on their own culture and traditions to endorse human rights. The latter, Jones' preferred strategy, seeks to ground a theory of human rights independently of the doctrines which individuals endorse, and would see human rights operate as a framework within which individuals can lead their lives.<sup>547</sup> Against the continuous strategy, which would seek to identify a set of common values within individuals' diverse traditions to act as human rights, Jones argues that it is unlikely that there are any values which can be endorsed by everyone everywhere and, if we could identify a set of common values, these values would be so denuded of content as to be

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<sup>543</sup> Amartya Sen, 'Human Rights and Capabilities', *Journal of Human Development* 6 (2005), pp. 151-166 (p. 162).

<sup>544</sup> Amartya Sen, 'Elements of a Theory of Human Right', *Philosophy and Public Affairs* 32 (2004), pp. 315-356 (p. 320).

<sup>545</sup> Peter Jones, 'Human Rights and Diverse Cultures: Continuity or Discontinuity?' in Simon Caney and Peter Jones (eds.), *Human Rights and Global Diversity* (Oxon: Frank Cass Publishers, 2001), pp. 27-50 (p. 29).

<sup>546</sup> *Ibid.*, p. 29.

<sup>547</sup> *Ibid.*, p. 34.

unworthy of enjoying a privileged status as rights. He goes on to outline three further reasons why the continuous strategy would be inappropriate. These are that: a theory of human rights would be redundant if other ethical traditions already provide the values which comprise the doctrine; that such an approach would enable all ethical traditions to exercise a veto over the content of human rights doctrine (since if a value cannot be endorsed by all traditions, it cannot be granted a privileged status as a right on the consensual strategy); and, most importantly, he rightly points out that the consensual strategy does not address human diversity so much as avoid it by focusing only on common values.<sup>548</sup>

As such, Jones argues that we shouldn't aim to develop a continuous or consensual account of human rights, but should instead look to developing a theory of human rights as a way to determine, 'how people ought to relate to one another as people with different beliefs.'<sup>549</sup> He goes on to argue that human rights should not seek to compete with other doctrines on how individuals ought to lead their lives, but should instead seek to provide a theory of, 'what people are owed merely in virtue of being human,'<sup>550</sup> and develop an account of, 'the rights that people should enjoy in the context of diversity independently of the doctrines that make up that diversity.'<sup>551</sup> Such a theory of human rights would therefore not be comprehensively neutral between doctrines, since human rights will frustrate the pursuit of some goals or otherwise come into conflict with ethical traditions, but this is not to be lamented. Instead, Jones is clear that, 'human rights must enjoy a special status relative to other doctrines. It should have priority over other doctrines in that it should set the terms upon which people are to act on their beliefs.'<sup>552</sup> In this way, human rights are placed, 'outside and above some disputes and it enables human rights to respond to those disputes impartially.'<sup>553</sup>

On Jones' view, then, human rights form a second order doctrine which provides the framework within which individuals can lead their lives in accordance with their own substantive or comprehensive doctrines. That is, it provides individuals with the requisite resources and powers to lead a life that they have chosen, and enables them to revise their conception of the good if they so choose. Importantly, such an approach mirrors Martha Nussbaum's conception of human rights and the role that they would play within her own theory. Indeed, she suggests that the capabilities that she defends, 'are not just instrumental to further pursuits: they are held to have value in themselves, in making a life fully human.'<sup>554</sup> This is because they, 'support our

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<sup>548</sup> Ibid., pp. 35-36.

<sup>549</sup> Ibid., p. 37.

<sup>550</sup> Ibid., p. 38.

<sup>551</sup> Ibid., p. 39.

<sup>552</sup> Ibid., p. 40.

<sup>553</sup> Ibid., p. 48.

<sup>554</sup> Martha C. Nussbaum, 'Capabilities and Human Rights', *Fordham Law Review* 66 (1997), pp. 273-300 (p. 286).

powers of practical reason and choice, and have a special importance in making any choice of a way of life possible.<sup>555</sup> She goes on to argue, following Robert Nozick, that human rights ought to function as a side constraint upon government activities: that is, we ought to allow governments to, ‘pursue the social good as they conceive it, so long as they do not violate the items on this list...that should be secured to people no matter what else we pursue.’<sup>556</sup>

We have, then, two arguments available to us in response to seeming conflicts between human rights, including to the kind of education that Callan endorses, and cultural or ethical values. The first, following Caney and Sen, would be to argue that such conflicts are not as intractable as critics of human rights might argue, and that individuals can likely draw upon their ethical and cultural traditions to endorse most, if not all, human rights. For those hard cases where consensus is not forthcoming, as might be the case with religious freedom in some societies, we can turn to Jones and Nussbaum’s defence of human rights as a second-order framework. That is, even if there are intractable conflicts, and individuals perceive themselves to be subject to cultural imperialism, rights justifiably act as trumps over cultural or ethical doctrines. This is because human rights secure the basic freedoms, powers, and resources necessary for all individuals to lead lives of their own choosing and secure the pre-requisites of leading a free life.

Callan is therefore right to privilege the right to education when it comes into conflict with individuals’ ethical traditions and cultural commitments, and we can see that a civic education along these lines will be integral to republican polities in four key ways. Firstly, through teaching children about the burdens of judgement and reasonable pluralism, it will secure the preconditions for reciprocal deliberation. That is, inculcating the virtue of reasonableness will enable individuals to deliberate in accordance with the norm of norms, abstracting from their own comprehensive conception of the good, with a view to deriving shared public interests which would secure a common good to exert direction over governance. Secondly, it will guard against the ethical servility that might arise if parents are able to enforce their comprehensive doctrines upon their children. Indeed, it will prevent parents from exerting an invigilating effect upon individuals’ lives as they grow up, such that individuals would be able to make decisions which are truly their own rather than those which have been invaded by the conception of the good thrust upon them by their parents. Thirdly, such an education will combat the problem of adaptive preferences by enabling individuals to assess and analyse the beliefs that they have. Indeed, it would enable them to engage in reasoned deliberation with others, helping them transform their raw preferences into informed preferences and thereby mitigating against the problem of adaptive preferences. Finally, such an education would inculcate the ties of solidarity between individuals, encouraging mutual trust and understanding through emphasising a shared history and

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<sup>555</sup> *Ibid.*, p. 286.

<sup>556</sup> *Ibid.*, p. 300.

commonalities. It would therefore help to provide the foundations on which transnational democracy might emerge by facilitating the emergence of trans- or global nationalisms.

Importantly, while each of these benefits will accrue within national polities, they will also support the emergence of transnational demoi, enabling us to aim at the cosmopolitan framework outlined in the previous chapter. Indeed, such an education would enable us to encourage reasonable pluralism and transnational deliberation, as well as crafting the kind of trans-nationalism outlined above. It would ensure that the peoples which form the transnational demoi see one another as compatriots in a communal project in which each is committed to the good of that community, and would ensure that disagreements would be viewed as the product of the burdens of judgement rather than attempts to free ride or secure good outcomes for each peoples' nation. For example, it would enable the peoples of Europe to see further integration as a communal project for the benefit of all, rather than one which seeks to secure German predominance or markets for its goods. A civic education could, then, provide the foundations for a well-functioning national republic, and for functioning transnational republics.

With that said, however, there is one final issue to which we must turn in our analysis of creating transnational demoi, and that is the role of deliberation. Indeed, we've seen that deliberation is integral to deriving a conception of the common good in national and transnational communities, in encouraging the emergence of trans-nationalism, and in encouraging mutual trust and understanding between peoples. Problematically, however, securing transnational deliberation may be infeasible at present because, as argued by Kymlicka, 'democratic politics is politics in the vernacular.'<sup>557</sup>

### **Politics in the Vernacular and Deliberating across Deep Divides**

Kymlicka argues that Held's cosmopolitanism, and therefore my own account of multi-level governance, is unduly optimistic about the prospects of transnational citizenship, and too pessimistic about the continuation of domestic citizenship.<sup>558</sup> Indeed, he starts by acknowledging that, 'It is certainly true that industrialised nation-states have less elbow room for managing macro-economic policy today than they did before,'<sup>559</sup> but suggests that there are two possible explanations for this. The first, which Held endorses is, that this loss of control is an inherent and now-permanent feature of the globalised world, while the second explanation, which Kymlicka seems inclined to support, is that this loss of macro-economic control is a result of international

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<sup>557</sup> Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (Oxford: Oxford University Press, 2001), pp. 213.

<sup>558</sup> *Ibid.*, p. 317.

<sup>559</sup> *Ibid.*, p. 318.

indebtedness and could, in theory be addressed by domestic decision-making.<sup>560</sup> He goes on to argue against Held's, and my own, view that capital mobility has given rise to a situation in which multinational corporations can impact upon state's capacity to adopt more generous social insurance policies or trade regulation. Indeed, this is because, 'The option of moving overseas is irrelevant for large sectors of the economy – health care, education and training, construction, most retail, most services, agriculture, and so on. The issue of capital mobility is most relevant for mid-to-large manufacturing companies employing low-skilled workers. This is not an insignificant portion of the economy, but it has been a declining percentage for a long time.'<sup>561</sup>

He suggests that these considerations point to the retention of considerable scope for national policy-making, and argues that countries continue to exercise their autonomy in ways which reflect their different political cultures. That is, even if globalisation is putting a strain on national self-determination, states need not, and do not, all respond to these pressures in the same way. As such, he argues that, 'citizens often care deeply about maintaining these national differences in social policy, and they provide considerable motivation for political participation in domestic politics.'<sup>562</sup> This fact, Kymlicka argues, suggests that Held has overstated the extent to which globalisation has undermined the sense that each nation forms a community of fate. Indeed, he argues that while it is true that forces cut across national borders, affecting the lives that individuals can lead, it is not the forces that a community are subject to which determine a community of fate, but how they respond to those forces. That is, 'People belong to the same community of fate if they *care* about each other's fate, and want to *share* each other's fate...people belong to the same community of fate if they feel some sense of responsibility for one another's fate, and so want to deliberate together about how to respond collectively to the challenges facing the community...globalization has not eroded the sense that nation-states form separate communities of fate in this sense.'<sup>563</sup>

As an example, he argues that as a result of the creation of the North American Free Trade Agreement (NAFTA), Canadians, Americans, and Mexicans are now subject to similar economic forces and process. Nonetheless, 'the sense of communal identity and solidarity remains profoundly different, as has the actual policy responses to these forces. Despite being subject to similar forces, citizens of Western democracies are able to respond to these forces in their own distinctive ways.'<sup>564</sup> He argues that this shows that, 'Nation-states still possess considerable autonomy; their citizens still exercise this autonomy in distinctive ways, reflective of their national political cultures; and citizens still want to confront the challenges of globalization as

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<sup>560</sup> Ibid., p. 318.

<sup>561</sup> Ibid., p. 319.

<sup>562</sup> Ibid., p. 319.

<sup>563</sup> Ibid., pp. 319-320.

<sup>564</sup> Ibid., p. 320.



national collectivities, reflective of their historic solidarities, and desire to share each other's fate.<sup>565</sup> Centrally, he argues that whatever dissatisfaction citizens have with citizenship has little to do with globalisation, and in fact predates this phenomena; it is domestic politics which has driven disaffection in voters.<sup>566</sup> He goes on to conclude that, 'Globalization does constrain national legislatures, although the extent of this is often exaggerated. But globalization also enriches national political life, and provides new and valued options by which nations can collectively promote their interests and identities.'<sup>567</sup>

While defending the ongoing relevance and necessity of nations and national citizenship, Kymlicka also questions whether it would be possible to produce a transnational citizenship. Indeed, he argues that democracy is not simply a process of aggregating votes, but is instead a system of collective deliberation and legitimisation: echoing Pettit, he claims that, 'The decisions which result from this deliberation are then legitimated on the grounds that they reflect the considered will and common good of the people as a whole, not just the self-interest or arbitrary whims of the majority.'<sup>568</sup> Centrally, he argues that such a process of deliberation and legitimisation can only occur if the participants understand and trust one another, and mutual trust and understanding require some underlying commonalities or sense of shared identity, as well as a common language.<sup>569</sup>

Kymlicka argues that while deliberative democracies can function without a shared religion, conception of the good, political ideology, or racial/ethnic makeup, 'we find that language is increasingly important in defining the boundaries of political communities, and the identities of political actors.'<sup>570</sup> In the context of multilingual countries, he claims that language has become an increasingly important determinant of the boundaries of political communities (demarcating sub-state communities such as the Basque, Catalans, Quebecois, and Scots from the larger state), with these linguistic communities often describing themselves as nations and organising themselves along nationalistic lines.<sup>571</sup>

The reason for this, Kymlicka argues, is because, 'democratic politics is politics in the vernacular. The average citizen only feels comfortable debating political issues in their own tongue...we can expect – as a general rule – that the more political debate is conducted in the vernacular, the more participatory it will be.'<sup>572</sup> He goes on to argue that the evidence suggests that language is profoundly important in the construction of democratic communities, and that

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<sup>565</sup> *Ibid.*, p. 320.

<sup>566</sup> *Ibid.*, p. 321.

<sup>567</sup> *Ibid.*, p. 323.

<sup>568</sup> *Ibid.*, p. 323.

<sup>569</sup> *Ibid.*, pp. 323-324.

<sup>570</sup> *Ibid.*, p. 212.

<sup>571</sup> *Ibid.*, pp. 212-213.

<sup>572</sup> *Ibid.*, pp. 213-214.

language-demarcated political communities remain the primary forum for political participation. Indeed, he claims that even when nations are members of overlapping institutions such as the EU, debates about democracy are conducted within the nation. That is, if powers are expatriated to a higher level of governance, the legitimacy of such expatriation, ‘is generally seen as dependent on the (ongoing) consent of the national unit,’<sup>573</sup> and, ‘Members of these national collectivities debate amongst themselves, in the vernacular, how much power they wish to devolve upwards or downwards, and periodically reassess, at the national level, whether they wish to reclaim some of these powers.’<sup>574</sup>

Kymlicka concludes that the sort of freedom and equality that individuals care about is freedom and equality within one’s own societal culture, and that people have a deep emotional attachment to the vernacular.<sup>575</sup> As such, he does not think that Held’s cosmopolitan democracy is realistic. Indeed, he argues that the project of promoting cosmopolitan citizenship, and making transnational institutions such as the European Parliament directly accountable to citizens, is infeasible precisely because there is no European demos to deliberate and legitimise decisions: instead, he argues that such institutions should be rendered accountable to national governments, which are themselves held accountable by citizens deliberating in the vernacular.<sup>576</sup>

Kymlicka’s arguments therefore seem to suggest two central issues for transnational democracy. Firstly, a lack of shared language will prevent the emergence of a trans-nationalism because individuals would be unable to discuss their shared identity and common values, mitigating against the emergence of the mutual trust and understanding required for a well-functioning transnational democracy. Secondly, without a shared language, it is unlikely that we would be able to derive a transnational common good to exert direction over governance. As such, political decisions would not enjoy democratic legitimacy and individuals would be subject to *imperium*.

Looking at the EU as a prospective transnational demos, we can see this problem clearly. The EU Commission recognises twenty-four official and working languages, and yet lacks one common language in which individuals can communicate. In the EU Parliament, English is the most commonly spoken language (at least prior to the Brexit vote), and yet any of the other twenty-three languages may be spoken, and language barriers are mitigated against by speeches being translated via headsets for MEP’s to listen to. Indeed, in 2012 this translation service cost around one billion Euros.<sup>577</sup> While the EU institutions have the funds and resources necessary to

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<sup>573</sup> Ibid., p. 214.

<sup>574</sup> Ibid., pp. 214-215.

<sup>575</sup> Ibid., pp. 216-218.

<sup>576</sup> Ibid., pp. 323-325.

<sup>577</sup> Marc Hall, ‘EU Parliament makes Cuts to Translation Budget’, published 22<sup>nd</sup> November 2012 available at <http://www.euractiv.com/section/languages-culture/news/eu-parliament-makes-cuts-to-translation-budget/> (accessed 28/09/2016).

surmount such linguistic barriers (it also being more likely that office holders can speak additional languages), it is going to be impossible to replicate this process across a European demos given the sheer number of individuals involved and the myriad locations in which deliberation will occur. Indeed, the lack of a common language has been levelled as a serious objection against the prospects of cosmopolitanism and global democracy,<sup>578</sup> and would therefore seemingly undermine my account's attempt to realise non-domination.

While this problem will not be resolved in the immediate future, there are reasons to think that it might be overstated. After all, it might be mitigated against by digitising deliberation and utilising translation software to translate other languages into individuals' preferred language. With that said, even if digitising deliberation in this way is infeasible, the problem might be addressed in the long-term through the development of a universal political language, which individuals would be able to use to participate in democratic processes. Though difficult, developing a universal political language is far from the realms of fantasy. Indeed, Esperanto, devised in the late nineteenth century by L. L. Zamenhof, was created with the specific intention of fostering international understanding and harmony, and was designed to be easily-learned. Indeed, Zamenhof, in a letter to a colleague, claimed that 'Russians, Poles, Germans and Jews; each of these spoke their own language and looked on all the others as enemies. In such a town a sensitive nature feels more acutely than elsewhere the misery caused by language division and sees at every step that the diversity of languages is the first, or at least the most influential, basis for the separation of the human family into groups of enemies.'<sup>579</sup> Although Esperanto was, in 2004, only spoken by around two million people,<sup>580</sup> it does evidence that it would be possible to construct a politically neutral language which could be used to facilitate global democracy.

Kymlicka, however, is sceptical about the prospects of developing a universal language. Indeed, he notes that many academics today underestimate, 'the problems that many people have in learning a second language. Even when people understand a second language, they rarely acquire the same facility in it as in their mother-tongue.'<sup>581</sup> Let us assume, then, that the prospects of promoting a universal second political language are, at best, unlikely to be realised in the immediate future. Nonetheless, I do not think that this renders transnational deliberation completely infeasible. Indeed, Habermas and John Dryzek provide us with an account of how deliberation can occur across national boundaries and linguistic communities.

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<sup>578</sup> See, for example: Raymond Converse, *World Government: Utopian Dream or Current Reality* (New York: Algora Publishing, 2010), p. 39; Peter Ives, 'Cosmopolitanism and Global English: Language Politics in Globalisation Debates', *Political Studies* 58 (2010), pp. 516-535.

<sup>579</sup> John Hartley and Jason Potts, *Cultural Science: A Natural History of Stories, Demes, Knowledge and Innovation* (London: Bloomsbury, 2014), p. 170.

<sup>580</sup> Renato Corsetti, Maria Antonietta Pinto and Maria Tolomeo, 'Regularizing the Regular: The Phenomenon of Overregularization in Esperanto-Speaking Children', *Language Problems and Language Planning* 28 (2004), pp. 261-282 (p. 265).

<sup>581</sup> Kymlicka, *Politics in the Vernacular*, p. 217.

Habermas argues, in the context of creating a European demos, that:

Translingual citizenship uniting such a wide variety of different language communities is a novelty. For this, we need a *European* public sphere; however, that does not mean a *new* one. Rather, the already existing infrastructure of the existing national public spheres is sufficient for Europe-wide communication. National arenas only have to be opened up to each other. And the existing national media are sufficient, too, provided they perform a complex task of translation; they must learn to report also on the discussions being conducted in each other's countries about the issues of common concern to all citizens of the Union. Then the trust among citizens that currently exists in the form of a nationally limited civic solidarity can develop into the even more abstract form of trust that reaches across national borders.<sup>582</sup>

We can see, here, that Habermas believes that the Member States' national media can perform an invaluable task in reporting and translating the dispersed deliberation which occurs across the Union, leading to the emergence of the transnational trust and understanding. Importantly, this seems to somewhat mirror the deliberative process that Pettit envisions within nations and which we considered in the second chapter. That is, we saw that citizens do not come together to deliberatively determine the common good or decide on political policies in a plenary assembly.<sup>583</sup> Instead, deliberation is decentralised across a range of political and civic sites, including across the media, in the courts, and civil society, and it is the interaction between these various sites of deliberation which gradually produces a set of shared interests which can exert direction over governance. That being the case, this process could surely be replicated across a transnational demos if the media could be induced to report and translate other states' deliberations impartially.

Indeed, Habermas' comments seem to show that it is not necessary for individuals to directly deliberate with one another to achieve the twin aims of promoting a shared identity and culture and derive a set of shared transnational interests: instead, as happens in multilingual states, it would be possible for communities to deliberate in the vernacular, with these deliberations being reported across the wider demos, and then engaged with by each linguistic community in their own deliberations. With sufficient interaction and feedback between the various national communities of the Union, it would be possible for a shared identity to emerge, promoting transnational civic solidarity and understanding, and facilitating the emergence of a transnational common good.

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<sup>582</sup> Habermas, 'Democracy in Europe', p. 553.

<sup>583</sup> It is important to reiterate, here, that while I have outlined a deliberative institution as a supplement to this process, I have not argued that it ought to replace it: the deliberative institution would merely supplement this process, making it easier for citizens to keep tabs on their government and transform their adaptive preferences, while also making it easier for changes in citizens' shared interests to be more readily articulated and tracked.

Importantly, this process seems to be one that Dryzek has in mind in his account of deliberative global politics. Indeed, he argues, contrary to Kymlicka, that public spheres can be international in scope, and linked to the idea of a transnational or global civil society.<sup>584</sup> He goes on to argue that democracy does not need to be understood solely in terms of elections as, ‘Democracy is about communication as well as voting, about social learning as well as decision-making, and it is the communicative aspects that for the moment can most straightforwardly be pursued in the international system.’<sup>585</sup> He goes on to distinguish between two kinds of deliberative global politics. The former is focused upon formal negotiations between actors. Importantly, he argues that while negotiations between international actors might be deliberative, they may not be especially democratic. This is because, ‘deliberation occurs whenever participants are amenable to changing their minds as a result of reflection induced by non-coercive communication. Deliberation only becomes deliberative *democracy* to the degree it provides opportunities for participation by all of those affected by a decision.’<sup>586</sup> As a result, Dryzek focuses on the elaboration of a theory of transnational discursive democracy premised upon the influence that might be exerted over political decision-making by all of those affected by a given decision. Indeed, he argues that while, ‘deliberation across divided identities ought to be hard,’<sup>587</sup> discursive democracy can handle deep differences, including cultural differences, by, ‘partially decoupling the deliberation and decision aspects of democracy, locating deliberation in the engagement of discourses in the public sphere at a distance from any contest for sovereign authority. The public spheres in question can transcend national boundaries, and their transnational aspects can have an important moderating influence on the clash of identities.’<sup>588</sup> In decoupling decision-making and deliberation, Dryzek suggests that, ‘transnational discursive democracy is a process of democratization,’<sup>589</sup> which, ‘constructs or influences international outcomes.’<sup>590</sup>

Taken together, these comments point us towards a solution to the problem of linguistic barriers to transnational governance. That is, in opening up national public spheres to one another, we can create the conditions in which transnational deliberation can take root, with national media taking a lead role in reporting on the deliberations being undertaken elsewhere within transnational demoi. In decoupling such deliberation from decision-making, as occurs in Pettit’s theory when deliberation produces the common good independently of democratic processes, we could derive a transnational common good from the interaction between the deliberative public

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<sup>584</sup> John S. Dryzek, *Deliberative Global Politics* (Cambridge: Polity Press, 2006), p. 24.

<sup>585</sup> *Ibid.*, p. 25.

<sup>586</sup> *Ibid.*, p. 27.

<sup>587</sup> *Ibid.*, p. 47.

<sup>588</sup> *Ibid.*, p. 47.

<sup>589</sup> *Ibid.*, p. 93.

<sup>590</sup> *Ibid.*, p. 154.

spheres in each nation. As such cross-border deliberation proceeds, we can also hope that a shared identity will further reify (being simultaneously promoted through a civic education), further encouraging transnational deliberation. Indeed, we can imagine further conditions which might facilitate this process. For example, the creation of cross-border special interest groups are likely to encourage deliberation between like-minded individuals, and digitised deliberative fora on the internet, which utilise technology to translate translingual deliberation, could encourage further debate and discussion between members of the transnational or global demos. Finally, the gradual promotion of a lingua franca or increased emphasis on learning additional languages might lead to a situation in which transnational deliberation is as commonplace as national deliberation.

Importantly, as these process become further entrenched, we can see that it would be possible to replicate the republican system that Pettit defends in a national context at a transnational and global level. That is, a civic education, combined with the promotion of a transnationalism, can provide the mutual trust and shared identity necessary for individuals to see themselves as co-members of political communities. In opening up national public spheres to one another, we can create a transnational public sphere in which national debates interact with one another. As such processes proceed, trans-nationalism would become further entrenched, and a set of transnational shared interests would emerge. These shared interests could then be utilised to exert direction over governance, while individuals directly aim to influence transnational institutions through elections. In this way, we could secure democratic legitimacy in transnational communities.

## **Conclusion**

This chapter has argued, contrary to a number of theorists, that transnational democracy is possible in the future, and that the cosmopolitan framework outlined in the previous chapter could secure non-domination if certain conditions are met. These conditions are: the promotion of a trans-nationalism; the propagation of a civic education which supports the promotion of transnationalism and prepares citizens to exercise the basic duties of republican citizenship; and the opening up of national public spheres to one another in order to create a transnational public sphere in which deliberation can occur in the vernacular, across a range of sites, and which will gradually lead to the emergence of a transnational common good.

To that end, the first section outlined Goodin's argument that states are necessary because they are the communities in which the general duties owed to all individuals are effectively discharged, suggesting that cosmopolitanism is either unnecessary or likely to result in a coordination problem. In response, I argued that states' capacity to discharge their duties has been undermined by individualised transnational domination, and that the different levels of governance within a cosmopolitan framework would be responsible for discharging specific

duties over specified people, thereby avoiding the co-ordination problem. I concluded that Goodin's argument seems to support the move towards embedding states within an overarching cosmopolitan framework so that general duties can be properly discharged by agents capable of doing so in a globalised world.

The second section then outlined the 'no-demos' thesis which claims that beyond the state there is no shared identity, mutual trust, or communal understanding sufficient to secure democratic governance. To that end, I focused on Miller's liberal nationalism and his claim that mutual trust and a shared identity are integral to the creation and maintenance of communities committed to social justice, and that democracy itself can only function well when these conditions obtain. This would seem to suggest that since a shared nationality is absent at the supranational level, the requisite degree of trust and understanding would be similarly absent. As such, we would be prevented from deriving a set of shared interests which would direct governance in transnational demoi.

This led me, in the third section, to defend the necessity of promoting trans-nationalism in transnational demoi. I argued, here, that since national identities are constituted by participants' shared beliefs and are subject to creation and reinterpretation, we could surely replicate such processes within transnational communities, emphasising a shared history and ideals with a view to securing mutual trust and shared understanding. After outlining how this process might work within the context of a European transnational demos, I argued that if shared histories and narratives were properly cultivated through the opening up of national public spheres, we might be able to extend the ideal of civic solidarity beyond the nation-state.

In the fourth section, I explored Miller's suggestion of utilising a civic education as a mechanism for securing the underlying conditions for a functioning democratic society. To that end, I argued that a civic education ought to aim to create virtuous citizens capable of abstracting from their particular ends and identifying with their communities' good, such that we can derive a set of shared interests capable of exerting direction over each level of governance. After acknowledging that this might conflict with the requirements of securing non-domination, I explored Callan's discussion of creating virtuous citizens, arguing that a civic education would secure the preconditions for reciprocal deliberation, enabling polities to derive a common good to exert direction over governance; help to secure citizens against ethical servility; combat the problem of adaptive preferences by enabling individuals to assess and analyse the beliefs that they have; and inculcate the ties of solidarity between individuals, encouraging mutual trust and understanding through emphasising a shared history and commonalities.

In the fifth section I outlined the objection that Callan's education might be construed as a form of cultural imperialism, illiberally manipulating the worldview of children and undermining the integrity of some ethical doctrines. After outlining Callan's response to this objection, that it is not dominating to aim to create citizens capable of leading lives of their own

choosing and who will abstain from oppressing their fellows, I argued that this is but one example of a more general problem. This problem is that the human rights outlined in the previous chapter are likely to come into conflict with some cultural or ethical traditions. In response to this concern, I have discussed Caney and Sen's suggestions that human rights may find support in a range of non-western traditions, and argued that even if some rights do not find such support, Jones and Nussbaum are correct to point out that rights secure the basic freedoms, powers, and resources necessary for all individuals to lead lives of their own choosing and can justifiably 'trump' the claims of cultural or ethical doctrines.

The final section outlined Kymlicka's concern that cosmopolitan democracy will be unrealisable because individuals would be unable or disinclined to deliberate with others. After outlining his arguments at some length, I argued that Habermas and Dryzek suggest a means to surmount this objection. That is, through opening up national public spheres to one another, with the media reporting on the deliberations occurring across the transnational demos, we can secure something akin to the dispersed deliberation which Pettit believes occurs within national communities. This will hopefully lead to an interactive transnational public sphere in which a set of shared interests will gradually emerge from the interaction between national communities deliberating about the discussions being undertaken elsewhere in the transnational community, and securing a transnational common good to exert direction over governance.

It therefore seems to be at least theoretically possible that we could create the conditions in which transnational democracy might become a feasible option in the future. Indeed, through utilising a civic education, promoting a global or trans-nationalism, and opening up national and transnational public spheres to one another, we can provide a foundation on which to pursue transnational democracy. If such suggestions could be realised, and we could secure mutual trust and shared understanding across peoples, we would be able to create a multi-level system of democratically shaped constitutional republics in which individuals enjoy non-domination.



## Conclusion

### Overview of the Thesis

My arguments have been developed across six chapters. The introductory chapter focused on outlining the background to this research, the intended impact and rationale for this project, the scope and the methodology, and a statement of the objectives of each chapter, as well as a general guide to how my arguments would be developed across the thesis.

The first chapter, *Domination and Republican Social Justice*, focused upon providing a thorough overview of Pettit's account of individual liberty, thereby providing the foundations for my own suggestions for addressing transnational domination and securing non-domination in later chapters. This chapter started by outlining the historical roots of the concept of non-domination, discussed its gradual eclipse by the non-interference conception of liberty and then outlined Berlin's analysis of the concepts of positive and negative liberty. I then explored the non-frustration and non-interference accounts of liberty, arguing, following Pettit, that both are flawed and that freedom requires that individuals are free from frustration, interference, and domination. This chapter then evidenced that the non-interference account of liberty cannot accommodate the concept of domination, and outlined that being a free person requires that individuals have the room and resources required to pursue their preferred option from a choice-set, regardless of their own or anyone else's preferences over how they choose. I also argued that underlying this account of political liberty is an ideal of personal liberty which sees individuals as capable of engaging in self-rule. I argued that a theory of republican social justice requires that dominating agents are subject to *external* constraint and that the basic liberties are protected and resourced to the point where individuals can satisfy the eyeball test. After doing so, I outlined and responded to the 'critical' challenge to Pettit's republicanism, arguing that domination is a phenomenon that occurs between agents, not agents and background structures, and that Pettit's account can accommodate these concerns. That is, to the extent that racial stigma, prejudice, and bigotry give rise to an invasion or vitiation of choice, domination occurs and would be addressed through protecting and resourcing individual choice. I also outlined that background structures may give rise to the problem of adaptive preferences which can be addressed through deliberation. Finally, I outlined that while structures do not dominate individuals, some corporate entities can. After outlining Pettit's suggestions for guarding against corporate domination, I have argued that these mechanisms will not address the dominating potential of multinational corporate agents which may be able to easily evade attempts to constrain them by national governments.

The second chapter, *Securing Democratically Legitimate Governance*, outlined Pettit's account of democratic legitimacy in detail in order to show that it is possible to secure political control without giving rise to *imperium*, while also arguing that Pettit's account requires a minor

amendment to address the problem of adaptive preferences. To that end, I outlined Pettit's account of democratic legitimacy, in which legitimacy is secured when citizens exercise influence and direction over governance, and Pettit's argument that citizens' influence over government is secured through an electoral democracy supplemented by constitutional and quasi-constitutional mechanisms. I also focused on discussing Pettit's accounts of the cooperatively-admissible considerations and norm of norms as mechanisms for deriving the common good which would act as a constraint on government action and secure an equally acceptable direction on governance. I then considered two counter-arguments to Pettit's account of democratic legitimacy, and turned to the issue of how we might specify the common good. I considered Elster's arguments against tracking individuals' expressed preferences at length, and endorsed his and Pettit's suggestion that we determine the common good deliberatively. I have outlined Pettit's account of deriving a set of shared interests which cohere with the norm of norms from dispersed deliberative interactions between citizens at a range of political and civil sites. I then outlined a digital deliberative assembly as a supplement to Pettit's account of the state which would serve as a means for addressing the problem of adaptive preferences through enabling citizens to transform their raw preferences into informed preferences. Finally, I argued that even if a society secured the basic liberties and met the requirements for democratic legitimacy, thereby securing social and political justice, its citizens might still be subject to domination. This is because external agents, such as multinational corporations, other nations, and supranational institutions may be able to interfere with just states.

The third chapter, *The Problem of Transnational Domination*, then turned to an analysis of the twin problems of transnational domination and individualised transnational domination, and an examination of Pettit and Bohman's suggestions for addressing these problems. My aim, here, was to highlight that while neither theorist's account is able to secure international justice, their conceptions of transnational domination are equally problematic and must be addressed simultaneously. To that end, I started by outlining Pettit's account of transnational domination which sees transnational domination as a problem in which states are subject to interference (or the threat of interference) by other transnational agents, and the problem of individualised transnational domination, in which control bypasses the state and interferes in the lives of individuals. I then turned to an analysis of Pettit's accounts of global non-domination in *A Republican Law of Peoples* and *Just Freedom*. I argued, here, that both of Pettit's accounts are problematic because they represent strategies that Pettit himself rejects: the former, which emphasises states combining into blocs to combat others' power, amounts to a defence of the strategy of reciprocal power which will undermine the range of unvitiated choice available to agents; and the latter, premised upon multilateralism and state-centred governance, is problematic because it relies on all states acting virtuously and does not secure the external constraints necessary to remove the option of interference from agents' choice-sets. I then outlined Bohman's

suggestions for addressing the problem of individualised transnational domination, arguing that it would be infeasible to create democratic institutions capable of responding to continually fluctuating *demoi* and that there would seem to be no way to clearly define each *demoi*'s scope, powers, and competencies in relation to other *demoi*. I finally argued that in order to develop an account of international justice, it will be necessary to acknowledge that control can be exerted across borders, affecting many identifiable but unspecifiable individuals, while retaining a focus on the necessity of securing states' capacity to secure social and political justice, as well as securing democratic legitimacy beyond the state. This insight, I argued, should lead us to pursue Pettit's earlier suggestions of replicating the strategy of constitutional provision at a global level.

The fourth chapter, *A Framework for Transnational Republican Governance*, aimed to offer a solution to the twin forms of transnational domination by outlining a framework within which individuals can enjoy social, political, and international justice. To that end, I started by outlining the 'the boundary problem,' arguing that it is necessary to redraw democratic boundaries in order to ensure that all of those subject to control are able to influence and direct it, and thereby render it non-dominating. As such, I argued that *demoi* must be constituted on the basis of who can be deemed to be *possibly affected* by a given issue, while taking into account real world constraints and thereby supplementing the principle of affectedness with a principle of subsidiarity. After outlining this approach to constituting *demoi*, I considered two accounts of transnational governance as possible means for pursuing the aims of neo-republican governance. After outlining and rejecting experimentalist governance and Gould's interactive democracy as suitable accounts of transnational governance, I offered an extended analysis of Held's global social democracy and argued that his approach, with some elaboration and refinement, would enable us to realise each of the requirements of neo-republican governance. I then turned to an analysis of the role to be played by human rights within such a framework. Here, I argued that that Pettit's fundamental basic liberties and welfare rights, which guard against dependence, should be seen to be a set of human rights which must be globally entrenched and enforced, the contravention of which would justify intervention by the transnational and global community. Finally, I turned to the issue of resolving jurisdictional disputes which might arise when attempting to determine the correct level for decision-making and, after indicating that Held has tentatively suggested that it would be possible to create boundary courts as a means for resolving such disputes, I outlined such a model. I argued that it is important to ensure that the principles of affectedness and subsidiarity are upheld *within* states as well as at a transnational level. I concluded by noting that, though seemingly capable of addressing the problem of transnational domination, it may be infeasible or undesirable to create *demoi* beyond the nation-state because there are deeply irreconcilable differences between peoples who lack a shared culture, language or history.

The fifth chapter, *Securing the Conditions for Transnational Republicanism*, argued that we could secure democracy beyond the nation-state, and therefore realise international justice, through the promotion of a trans-nationalism, the propagation of a civic education, and the opening up of national public spheres to one another in order to create transnational public spheres. To that end, I considered and responded to a series of objections to transnational democracy, starting with Goodin's arguments to the effect that transnational democracy might be unnecessary because states are the communities in which the general duties owed to all individuals are effectively discharged. In response, I argued that states' capacity to discharge their duties has been undermined by globalisation and individualised transnational domination, and that it is necessary to embed states within an overarching cosmopolitan framework so that general duties can be properly discharged by agents capable of doing so in a globalised world. I then considered Miller's argument that mutual trust and a shared identity are integral to the creation and maintenance of communities committed to social justice and to securing a well-functioning democracy, and his claim that these conditions are absent beyond the state. If correct, Miller's argument would seem to suggest that we would be unable to derive a set of shared interests which would direct governance in transnational demoi. In response, I argued that we could promote a 'thinner' trans-nationalism, emphasising a shared history and ideals with a view to securing mutual trust and shared understanding in transnational demoi. I then turned to a discussion of Callan's account of civic education, arguing that a civic education would support the aim of creating transnational demoi by encouraging reciprocal deliberation and encouraging mutual trust and understanding through emphasising a shared history and commonalities. I also acknowledged the objection that Callan's education might be construed as a form of cultural imperialism and argued that this is but one example of a more general problem. This problem is that human rights may come into conflict with some cultural or ethical traditions. In response, I noted that human rights may find support in a range of non-western traditions and argued that even if they do not, rights secure the basic freedoms, powers, and resources necessary for all individuals to lead lives of their own choosing and can justifiably 'trump' the claims of cultural or ethical doctrines. Finally, I considered Kymlicka's argument that cosmopolitan democracy will be unrealisable because individuals would be unable or disinclined to deliberate with others. In response, I argued, following Habermas and Dryzek, that if we open up national public spheres to one another we can secure something akin to the dispersed deliberation which Pettit believes occurs within national communities. This would facilitate the emergence of an interactive transnational public sphere in which a set of shared interests will gradually emerge from dispersed deliberation across transnational demoi, securing a set of shared interests to direct governance.

It seems possible, then, to secure social, political, and international justice within a cosmopolitan democratic framework in which states' capacity to secure social and political justice is protected; transnational agents are subject to external constraints in the form of an independent,

overarching system of democratically shaped constitutionalism; and in which individuals are able to influence and direct the control that they're subject to at each level of governance. In this way, we can address the twin forms of transnational domination and secure non-domination.

### **Original Contributions of the Thesis**

This thesis has aimed to make two significant contributions to the literature. The first of these contributions has been to outline a coherent and defensible conception of transnational domination which combines Pettit and Bohman's accounts of transnational domination. Indeed, I have argued that there are two forms of transnational domination which must be addressed simultaneously in order to secure international justice. The first form of transnational domination occurs when transnational agents interfere, or threaten to interfere, with states. This is because, as argued by Pettit, any restrictions at the level of the state will correlatively restrict the lives of individuals living within that community. The second form of transnational domination, what I have called individualised transnational domination, occurs when control bypasses the state and interferes in the lives of individuals. The second significant contribution has been to argue that addressing the two forms of transnational domination should lead us to seek to replicate the strategy of constitutional provision at a global level. Doing so, I argued, would require the creation of a multi-level system of governance within which: states would be able to secure social and political justice; transnational agents, including multinational corporations, would be subject to constitutional constraints; and individuals would be able to influence and direct the governance that they're subject to.

In making these contributions, I have broadly endorsed Pettit's accounts of social and political justice, with important amendments to his attempts to address the problems of *dominium* and *imperium*. As such, I have argued that adaptive preferences count as *personal* vitiating factors which ought to be mitigated against, and that guarding against them requires the creation of a formal deliberative institution which would support the transformation of raw preferences into informed preferences. In addition, I have argued that such an institution would support Pettit's aims by making it easier to track changes in the common good; empowering citizens to fully participate in their society and contest their government if it fails to act in accordance with the common good; and secure citizens' capacity to exercise eternal vigilance over their government and thereby safeguard their liberty.

Despite endorsing Pettit's accounts of social and political justice, I argued that his accounts of international justice do not realise their aims. To that end, I outlined that, in *A Republican Law of Peoples*, Pettit argues that it would be necessary to develop a set of global regulatory norms or rules, which would discipline international agents and constrain their actions, and that weaker states would need to coalesce into blocs to counterbalance the power of stronger

states. This strategy has been shown to be problematic and unable to secure non-domination because each state's range of unvitiated freedom is reduced by the need to combat potential interference, and may entail a war of all against all since states would be continually seeking to bolster their position relative to other states. As such, this strategy may secure non-interference (if states are able to successfully project their power so that other states forgo attempts at interfere with them), but not non-domination since the option to interfere with others is not removed from states' choice-sets. In addition, I have argued that the necessity of seeing off external threats will likely give rise to a correlative reduction of internal social and political justice since states may need to organise themselves as though in a state of permanent war.

I have also shown that his most recent account of international justice, as outlined in *Just Freedom*, requires that states support and uphold the global infrastructure which would secure non-domination, and this is a strategy that Pettit has himself rejected. Indeed, I have shown that when considering how the problem of domination might be addressed between individuals, Pettit acknowledges that, 'Even if I form the view that it is wrong to interfere with you, it remains the case that I may prefer to practice interference, whether out of weakness of will, out of malice, or out of a will for evil; the option continues to lie within my capacity,'<sup>591</sup> and concludes that, 'My power of interference in your choice, and my domination over you, can only be contained by external checks that remove or replace the interference option or put it cognitively off the menu.'<sup>592</sup> I have argued that just as individuals cannot be relied upon to always forbear from interfering with others, and must therefore be subject to external constraints which would remove the option of interference from their grasp, states similarly cannot be relied upon to uphold an international order when it is not in their interests to do so, and will also need to be subject to external constraints which put the option of interference out of reach. As long as individuals or states retain the capacity to interfere with one another, all are dependent on others' forbearance and goodwill and therefore subject to domination.

While each of these accounts of international justice fail on their own terms to secure non-domination, the further issue is that Pettit does not address the problem of individualised transnational domination, wherein control bypasses the state and interferes in the lives of individuals. I have argued that the twin forms of transnational domination must therefore be addressed simultaneously, such that socially and politically just states are protected from external interference, and that individuals are able to influence and direct the control that they're subject to by transnational institutions. Doing so, I have argued, warrants a return to Pettit's suggestions in *Republicanism: A Theory of Freedom and Government* and the replication of the strategy of constitutional provision at a global level.

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<sup>591</sup> Pettit, *On the People's Terms*, p. 63.

<sup>592</sup> *Ibid.*, p. 63.

In order to realise these aims, I considered the affectedness problem at length. This was necessary because securing democratic legitimacy requires that political control is ‘forced to track the interests and ideas of *the person suffering the interference* (my emphasis),<sup>593</sup> and yet the discussion of individualised transnational domination suggested that political control is not territorially confined, necessitating a re-examination of democratic boundaries. To that end, I argued, following Goodin, that the principle of ‘all possibly affected interests’ is the most suitable way to determine the demos who ought to be able to determine political decisions, while also arguing that surmounting the problem of overinclusion requires that this principle be supplemented by a principle of subsidiarity. I then argued that Held’s framework of cosmopolitan democracy would be an appropriate means for realising our aims since it would secure states from external interference; enable us to replicate Pettit’s democratically shaped constitutionalism at each level of governance and ensure that individuals are able to influence and direct the decisions that they’re subject to; and ensure that transnational agents, such as multinational corporations, are subject to constraints which would mitigate against their capacity to interfere with states or individuals. I also argued that a series of boundary courts would be able to determine the most appropriate location for democratic decision-making, and that Pettit’s account of the fundamental basic liberties and welfare rights, which guard against dependence, ought to be reconceptualised as a set of human rights which would need to be globally entrenched and enforced. This is because these items secure the conditions in which individuals are able to plan and lead lives of their own choosing. Finally, I considered a series of objections to the multi-level system of governance, arguing that while the conditions for functioning democracies beyond the state are largely absent at present, it would be possible to create these conditions through the promotion of transnationalisms, utilising a civic education, and opening up national public spheres to one another and thereby creating transnational and global public spheres. Doing so, I argued, would enable us to derive a common good in transnational demoi which would render transnational governance democratically legitimate.

In addition to these two central contributions, I have made five further contributions. Firstly, I hope to have shown that the concerns of the ‘critical’ republicans, including Thompson, Coffee, and Krause, can be accommodated by Pettit’s theory, albeit in a slightly amended form. That is, while Pettit is right to insist that domination is a phenomenon that occurs between agents rather than between agents and structures, the deleterious effects of racial stigma, prejudice, and bigotry ought to be viewed as an invasion or vitiation of choice and should be addressed through the resourcing and protection of individuals’ choices. Importantly, I have further shown that while the background structures themselves do not dominate individuals, they can give rise to adaptive preferences which will undermine individuals’ freedom of opportunity.

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<sup>593</sup> Pettit, *Republicanism*, p. 55.

As such, and secondly, I have shown that Pettit's theory can accommodate the problem of adaptive preferences without deviating from its essential principles. That is, Pettit's account of democratic institutions could be expanded to include a formal deliberative institution which would facilitate the transformation of individuals' raw preferences into informed preferences. In addition, such an institution would further support Pettit's account of social and political justice by making it easier for democratic institutions to track any changes in citizens' shared norms; and by enhancing citizens' contestatory role, enabling them to keep tabs on their government and contest any decisions that they believe are incompatible with the common good.

Thirdly, I hope to have shown that not only is neo-republicanism compatible with cosmopolitan democracy, but that securing non-domination requires that republics are embedded within an overarching framework of democratically shaped constitutionalism. Indeed, I hope to have evidenced that protecting states' capacity to secure social and political justice requires the replication of the strategy of constitutional provision at a global level, such that the option of interference can be removed from transnational agents' choice-sets in like-manner to the way in which states remove the option from individuals' choice-sets. In addition, I hope to have convincingly shown that the problem of individualised transnational domination requires that we rethink the boundaries of democratic communities, such that individuals are able to influence and direct all of the decisions that they're subject to.

Fourthly, I hope to have offered a novel solution to the boundary problem, one which follows Goodin's principle of 'all possibly affected interests', while also acknowledging the problem of overinclusion. Indeed, I argued that rendering control non-arbitrary requires that it is those individuals suffering interference who must direct and influence it, and that an overinclusive approach to specifying demoi will undermine this requirement by permitting myriad of individuals who are free from interference to determine control for others. As such, I hope to have shown that avoiding overinclusion ought to be of particular concern to neo-republicans, and that it can be addressed through embracing the principle of subsidiarity. I also hope to have shown that a system of boundary courts would be able to resolve jurisdictional disputes.

Finally, I have shown that such a political framework and transnational democracy could be realisable in the future. Indeed, I have argued that it would be possible to promote a transnationalism which emphasises a shared history, a common identity, and set of shared values, each of which will contribute to the emergence of mutual trust and understanding in transnational demoi. Additionally, I have shown that a civic education can support this aim by creating 'virtuous' citizens, and have argued that the cultural imperialism objection need not lead us to eschew educating citizens in the requisite way since such an education, as well as a range of other human rights, are necessary for securing individuals' capacity to lead lives of their own. I have also shown that a central component of the emergence of transnational demoi will be the opening



up national public spheres in order to facilitate the emergence of a transnational public sphere out of which a transnational common good can materialise.

### **Limitations and Avenues for Future Research**

With that said, there are also some limitations to this thesis which are suggestive of fruitful avenues for future research. Broadly, these limitations can be categorised into three groups. First, I have not considered what amendments would be need to be made to this ideal theory in order to render it applicable to the non-ideal world; second, I haven't offered an in-depth analysis of institutional design or outlined fine-grained blueprints for the realisation of some components of this theory; and third, I have not extensively explored the possibility of responding to the problem of domination through civil society.

As discussed in the introduction, this thesis has focused upon considering the concept of domination in an ideal context. As such, this theory has been built upon a number of assumptions, including, for example: that states can be organised such that social and political justice can be realised internally; that states have the capacity to provide the basic liberties and welfare rights to their citizens; that states could be induced to devolve and expatriate powers to sub-state and transnational levels of governance; and that states could provide the kind of civic education outlined by Callan even if this runs contrary to the interests of some of their citizens. While I have outlined and defended a series of considerations which justify the desirability of each of these measures, we must acknowledge that in the real world such requirements may be difficult to achieve or face serious opposition.

I have not considered such issues since, as noted in the introduction, my aim has been to outline what securing non-domination would ideally require, with the aim of providing guidance to others who might be concerned with analysing how we might move towards a world in which domination is prevented or largely mitigated against. While my conclusions are therefore limited by focusing on the development of an ideal theory, I do not think that this is overly problematic. This is because in order to know what states of the world we actually want to aim at, it is necessary to firstly consider whether such states are desirable in and of themselves. I hope to have shown that it is desirable to develop a cosmopolitan democratic framework in which social, political, and international justice can be realised, and it is therefore the task of political scientists and non-ideal theorists to look to adapt this theory for application in the real world. As such, areas of focus for future research would include, but are not limited to, the following topics. Firstly, it would be necessary to explore how developing states might provide the requisite resources for their citizens to plan and lead lives of their own choosing and consider whether this would necessitate redistribution of resources and wealth across states. Secondly, it would be important to analyse what initial steps might need to be taken to facilitate the fusion of the existing state-system into a

multi-level system of governance. Thirdly, it would be imperative to consider how individuals' objections to a civic education or other rights might be overcome in the real world, and look at what steps would need to be taken to mitigate against their objections. Indeed, while I have argued that rights can justifiably trump cultural or other ethical considerations, in the real world this issue would need to be treated with considerable delicacy and diplomacy. While these suggestions are only indicative of the kinds of issues which would need to be considered from a non-ideal perspective, they do highlight that it would be both useful and necessary for future research to consider exactly how this theory might be implemented in the real world.

The second way in which this thesis is limited is by the decision not to engage in an in-depth analysis of how we might design the various institutions, constitutional and quasi-constitutional mechanisms, electoral systems, and educational proposals which would characterise the multi-level framework. While it would have been interesting to consider and develop such blueprints, doing so would have been to depart from the principal aims of this thesis. Indeed, I do not think the decision not to engage in such an analysis is overly problematic since my theory does not prescribe any one set of specific institutions and, indeed, would be compatible with a wide-range of proposals.

For example, I haven't considered the actual mechanisms by which transnational agents might be constrained, instead simply outlining the framework within which such constraints could be determined. That is, constraining multinational corporations might require the democratisation of these agents, the issuing of charters which specify how they might conduct their business, or the creation of binding global legislation. It seems likely that preventing such agents from exerting domination would require a combination of each of these suggestions but explicating the exact mechanisms has been beyond the scope of this thesis. With that said, the multi-level framework that I have outlined would enable individuals to co-determine the global response to the depredations of corporations, ensuring that they're able to direct democratic institutions to safeguard their freedom. Similarly, I haven't specified what institutions would need to be created at each level of governance in order to secure influence and direction beyond the state, instead suggesting that we aim to replicate the mechanisms that Pettit defends within national communities. I therefore haven't considered what form of democracy would be most appropriate at a transnational or global level, nor indicated exactly which constitutional and quasi-constitutional mechanisms would be most appropriate for securing non-domination.

These and many other institutional questions are beyond the scope of this thesis but they offer an interesting and fruitful avenue for further research. Indeed, there would be a need to outline whether, for example, states would have representatives sitting in transnational or global legislatures, or whether representatives would be selected directly by the respective demos. Similarly, it would be interesting to explore how democratically shaped constitutionalism can be combined with boundary courts to secure democratic legitimacy beyond the state.

The third limitation to this thesis has been the decision to focus on a political response to the problem of domination rather than considering the less formal mechanisms that might achieve or supplement the same ends. Indeed, it is possible that there may have been additional conclusions to be drawn had I focused upon the role of civil society in guarding against domination. For example, in discussing the problem of adaptive preferences, I have focused upon how this issue might be resolved politically through the creation of a deliberative institution which would enable individuals to discard such preferences. Nonetheless, it seems clear that addressing the causes of such preferences, including racism, homophobia, and sexism, would require significant changes within civil society that would go beyond formal legislation which prohibits overt forms of discrimination. Likewise, I have argued that a civic education would be required to support the emergence of transnational and global nationalisms, as well as ensuring that individuals are empowered to participate in political processes in the requisite way, but it may be the case that more far reaching changes would be required. That is, we might have to look beyond the education of children and consider less formal ways of educating citizens, including adults, and explore the role which might be played by civil society in achieving the desired ends.

While my conclusions are therefore limited by the decision to focus upon the political response to domination, I think that exploring what changes might be required within civil society represents a fruitful and necessary avenue for future research. Indeed, it would be important to consider, for example, how we might facilitate changes within civil society and individuals' attitudes in order to address some of the sources of adaptive preferences. Likewise, it would be necessary to explore whether formal schooling is sufficient to craft civic-minded citizens, or whether more significant changes would be required within civil society. Finally, it would also be useful to explore what additional changes would need be necessary within civil society to support the emergence of a more cosmopolitan attitude amongst citizens. While these suggestions are far from exhaustive, they nonetheless do offer an indication of avenues for future research which would address some of the limitations in my own research and contribute meaningfully to the neo-republican literature.

## **Conclusion**

In conclusion, this thesis has provided a coherent and defensible conception of transnational domination, and an account of how this problem might be addressed. I have argued that transnational domination can come in two distinct forms: when control is exerted over a state and when control bypasses the state and interferes in the lives of individuals. Addressing the two forms of transnational domination, I have argued, should lead us to pursue a new account of international justice, one which is premised upon the strategy of constitutional provision. Securing non-domination, I have argued, requires the creation of a cosmopolitan democratic multi-level

system of governance within which states would be able to secure internal social and political justice; transnational agents, including multinational corporations, would be subject to constitutional constraints; and individuals would be able to influence and direct the governance that they're subject to, rendering it democratically legitimate. This thesis therefore shows that it is possible to secure social, political, and international justice without giving rise to a global Leviathan, and points us in the direction of a neo-republican cosmopolitan future.

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