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Claremont McKenna College

Republicanism's Globalist Problem: How the Inevitability of International Engagement
Undermines States' Capacity for Self-Governance

submitted to

Professor Andrew Schroeder

by

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Abstract

This thesis examines the difficulties philosophical theories have in adapting to international issues. This work primarily focuses on the philosophical theory of government known as “Republicanism”. According to republicanism, the government’s overarching goal is to promote freedom, which republicans understand as the ability to pursue choices without being under the arbitrary power of others. After establishing its merits, I lay out the core principles of republicanism as are most clearly articulated in Phillip Pettit’s work, *Republicanism: A Theory of Freedom and Government*. The second chapter then examines how Pettit applies his own view to analyze the state of Republican freedom in Prime Minister Luis Zapatero’s Spain. Drawing from his treatment of the Catalonian secession movement, I argue that Pettit seems to overlook certain crucial international dynamics at play in his analysis. From here, the third chapter applies Pettit’s framework to analyze the status of the rule of law in Northern Kosovo, where high levels of distrust and the entrenchment of international actors pose unique problems for Pettit’s framework. Crucially, the case of Kosovo reveals that the establishment of freedom, in republican terms, sometimes requires the paternalistic involvement of an international, impartial actor. Despite its necessity, the sort of interference appears arbitrary and in tension with republicanism’s core principles. In my view, this tension leaves Republicanism ill-equipped to adapt to the novel types of dominating relationships that exist in international cases.

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Chapter I: Phillip Pettit’s Republicanism as a Solution to Liberal Democracy’s “Conflicting Value” Problem

Liberal Democracy’s “Conflicting Value” Problem

Modern political debates are often framed as on the conflicting axes of liberty and equality, where a shift towards one principle results in a perceived tradeoff on the other. Consider the contemporary debate surrounding universal healthcare coverage in the United States. On the one hand, Republicans critique universal health care plans for their infringement on citizens’ liberty, with New Hampshire State Representative Bill O’Brien calling the Affordable Care Act (ACA) “as destructive to personal and individual liberties as the Fugitive Slave Act.”¹ Conversely, Democrats like Senator Bernie Sanders ground arguments for universal healthcare through appeals for equality, claiming that “Americans are entitled to go to the doctor when they’re sick and not go bankrupt after staying in the hospital.”² Moreover, the debate around school choice in many American cities is resolved along similar axes. On the one hand, many people support parents having the ability to choose which public school their children should attend given they pay taxes and therefore have the right to select the education their child receives. Conversely, many people oppose school choice given it exacerbates already high levels of inequality which manifests in underfunded and segregated schools in minority communities.

While policies incrementally change depending on which party is in control, these debates are unable to be resolved with moral clarity as each debate occurs on fundamentally different moral axes. Under this view, the gridlock emerges because, reasonably, both parties are unwilling to make compromises on a fundamental value like freedom and equality. In fact, these

¹“Why Republicans Hate Obamacare,” The Economist (The Economist Newspaper), accessed April 10, 2020, <https://www.economist.com/the-economist-explains/2016/12/11/why-republicans-hate-obamacare>

²“Medicare for All,” berniesanders.com, accessed March 4, 2020, <https://berniesanders.com/issues/medicare-for-all/>

both seem like reasonable, but distinct goals for the state. Thus, the fundamental disagreement and ensuing gridlock may even seem noble, or virtuous of a true deliberative democratic process.

However, even if these disagreements are sincere, the framing of liberty and equality on conflicting but equally legitimate moral axes nonetheless tends to create and exacerbate divisions within society. Indeed, most ideological divides in modern politics are broken down along these conflicting axes. Importantly, given these policy debates are infused with the moral values of freedom and inequality— one’s opinion on government policy becomes tantamount with their morality. Thus, under this system where policy debates are framed to either advance freedom or equality— disagreements carry significant moral weight and consequences. Instead of disagreeing over the means, this framework creates the perception between citizens that they are disagreeing over society’s ends. Crucially, this weakens a democracy’s capacity for self-governance as it leads to polarization and a diminishing democratic consensus.

While disagreement will likely always exist in democracies, it is important to note that the state of gridlock and polarization described above is not endemic to liberal democracy. Rather, it is the result of an intentional choice in how these value clashes are framed. This chapter therefore aims to provide an alternative solution to democracy’s conflict value problem. Structurally, this chapter begins by outlining the political philosophy that influences the framing of modern debates and its role in creating democracy’s conflicting value problem. From there, I propose Phillip Pettit’s republicanism as an alternative that better manages liberal democracy’s conflicting value problem.

Understanding Berlin's "Freedom as Non-Interference" and its Role in Creating Liberal Democracy's Conflicting Value Problem

Although examples of the tension between liberty and equality within democracies have existed for millenia, its framing as an inevitable tradeoff is recent. Indeed, Isaiah Berlin's 1958 famous lecture on "The Two Concepts of Liberty " cogently and influentially establishes the distinction between freedom as non-interference, and other foundational democratic virtues such as justice and equality. In this work Berlin outlines two mutually exclusive conceptions of liberty: positive liberty, which defines liberty as self-mastery, and negative liberty, which defines liberty as non-interference.³ Specifically, Berlin discounts positive conceptions of liberty primarily out of concerns that it lends itself to authoritarianism. While it can exist at the individual level, Berlin argues that providing the government the authority to interfere with one's life in advancement of some collective good risks abuse by an authoritarian majority. Instead, Berlin advocates for an account of liberty that is negative, which considers individuals "free to the degree to which no man or body of men interferes with [one's] activity."⁴ For example, imagine if my landlord banned me from leaving my apartment, and would physically restrain me every time I attempted to leave my room. In this case, the landlord actively is interfering with my freedom of movement, and therefore would clearly violate my negative freedom.

While Berlin concedes that democracies should uphold other foundational values, he rejects arguments for conceptions of freedom that exceed non-interference. Indeed, he argues that "individual freedom is not everyone's primary need. For freedom is not the mere absence of frustration of whatever kind; this would inflate the meaning of the word until it meant too much

³ Isaiah Berlin, "Two Concepts of Liberty," *Four Essays On Liberty*, (Oxford, England: Oxford University Press, 1969), p. 118-172.

⁴ Berlin, "Two Concepts of Liberty," 121.

or too little.”⁵ In turn, Berlin argues that the chief task of Western liberal regimes is to balance concerns of “glaring inequality or wide spread misery ... [by] sacrific[ing] some, or all, of [one’s] freedom” — resulting in an inevitable tradeoff between values in policy making decisions.⁶ Through this framing, Berlin places freedom and alternative values such as justice and equality on mutually exclusive axes, wherein a regime’s goal is to manage tradeoffs between these values in implementing policy decisions.

It should now be clear that the aforementioned example of the healthcare debate in the United States seems to be carried out in Berlinian terms. In fact, support for “Medicare-for-all” seems to be justified on the grounds of equality, while support for a privatized healthcare system seems to be rooted in Berlinian claims to freedom as non-interference. As Berlin himself notes, “it is a confusion of values to say that although my ‘liberal’, individual freedom may go by the board, some other kind of freedom— ‘social’ or ‘economic’--is increased.”⁷ Indeed, Berlin’s framework seems responsible for placing each side of the debate at conflicting moral axes due to his strict conception of freedom as non-interference. Therefore, liberal democracy’s conflicting value problem largely seems exacerbated by his framework.

Motivation for an Alternative Approach

As noted at the beginning of this Chapter, Berlin’s approach creates divisions in society that limits a state’s capacity for democratic deliberation. Moreover, Berlin’s approach to resolving clashing values faces significant practical difficulties. Indeed, quantifying a tradeoff between equality and freedom seems difficult to empirically implement. Specifically, quantifying any material loss in freedom, and then evaluating its commensurate payoff for equality, or vice

⁵ Berlin, “Two Concepts of Liberty,” 122.

⁶ Berlin, “Two Concepts of Liberty,” 123.

⁷ Ibid.

versa, seems difficult to do on an individual basis, let alone at a societal level wherein different groups experience these tradeoffs in different magnitudes. Moreover, as freedom and equality are different in kind for every person and group, one cannot assume a direct transfer from one group's freedom to the other's equality. Reconsider the above healthcare example. According to a study conducted by the Kaiser Family Foundation, the Affordable Care Act benefited minorities significantly more than whites.⁸ Conversely, the Affordable Care Act materially harmed many small business owners and over 5 million Americans who had to pay a tax penalty to keep their private insurance.⁹ Importantly, these groups have different, but powerful, claims to their respective rights to freedom and equality. On the one hand, minority groups achieving equal access to healthcare seems like an important and powerful step towards progress. On the other hand, many Americans conceptualize health benefits as interconnected with their employment, and decoupling it from employment status will lead to significant economic and social costs. Indeed, it is unclear which group's claims should be given preference in government policy. Moreover, by framing the discussion as a tradeoff between two values, Berlin's approach hinders the ability for debates to achieve finality, as working out the empirical tradeoffs are extremely challenging, and individuals could always just agree to disagree about value judgements.¹⁰ As such, wrestling with these questions through a Berlinian framework seems challenging and oftentimes hopeless.

⁸Samantha Artiga, Kendal Orgera, and Anthony Damico, "Changes in Health Coverage by Race and Ethnicity since the ACA, 2010-2018," The Henry J. Kaiser Family Foundation, March 5, 2020, <https://www.kff.org/disparities-policy/issue-brief/changes-in-health-coverage-by-race-and-ethnicity-since-the-aca-2010-2018/>

⁹ Jessica Banthin and Paul Jacobs, "The Effects of the Affordable Care Act on Employment-Based Health Insurance," Congressional Budget Office, March 15, 2012, <https://www.cbo.gov/publication/43090>.

¹⁰ Berlin, "Two Concepts of Liberty," 122.

Similarly, Berlin's negative freedom offers minimal guidance, nor is it a sufficiently ambitious aspiration for nascent democracies, particularly those that are engaged in post-conflict reconciliation. Surely, ensuring that all individuals are free from interference is an important first-step towards creating a democratic polity. Yet, it is unclear that freedom as non-interference serves as a substantial precondition to inculcate a robust civic culture with a fledgling democracy. Firstly, as explained below, de jure protection from interference does not go far enough to protect marginalized and powerless groups. Secondly, even if laws sufficiently protected an individual's freedom, they would not be followed without something more substantial holding society together. Practically speaking, the mere existence of laws preventing non-interference will not be upheld without some sort of civic fabric pushing individuals to abide by the laws. In turn, Berlin's approach yields uncertain results both in its aspirational content and ability to guide budding democracies.

In response to these criticisms, Berlin could argue that freedom as non-interference should not be conceptualized as the primary value held in a democratic society, but rather alongside alternative foundational values in guiding government policy. Indeed, the inclusion of alternative values such as equality would likely provide fledgling democracies sufficient aspirational content to guide their democratization, as it would ensure that the de jure requirements for non-interference are bolstered by societal commitments to equality. However, even if you accept this argument, it still fails to rectify the core problem in Berlin's framework—its difficulty in managing tradeoffs between these values. Despite the existence of alternative values, Berlin's approach still seems to struggle to provide its citizenry the conceptual framework and vocabulary required to resolve many important issues that exist along different

moral axes. Although tradeoffs are difficult to manage along a single moral value, evaluating a policy's ramifications to a single value is likely much clearer than Berlin's package of values alternative.

Therefore, I propose Phillip Pettit's republican theory of government as an alternative approach. In the next section, I will lay out the core claims of Phillip Pettit's republican theory of government and demonstrate that Pettit's conception of freedom as non-domination succeeds in simplifying value clashes by framing them along a specific axis, making it a preferred alternative to Berlin-styled approaches. While certainly imperfect, I contend that Pettit's republicanism provides a clearer, richer, and more applicable conception of freedom for fledgling democracies. Crucially, I argue that these factors make it appear better-suited to apply to real world dynamics

Phillip Pettit's Republican Alternative: Freedom as Non-domination

Alternatively, Philip Pettit's republican approach proposes "freedom as non-domination" as a single, unified, metric that can orient and evaluate governments. In his work, *Republicanism: A Theory of Freedom and Government*, Phillip Pettit presents freedom as non-domination as an alternative to freedom as non-interference, which is the primary purpose of government.¹¹ Similarly to proponents of positive freedom, Pettit argues that freedom of interference does not sufficiently ensure that individuals are able to act freely. Rather, to be free in republican terms, one must be free from arbitrary alien control. Crucially, Pettit's freedom as non-domination relies on the classification between arbitrary and non-arbitrary forms of interference to delineate between situations wherein interference and coercion can exist permissibly in a republican society, and situations where it undermines one's republican

¹¹ Philip Pettit, *Republicanism: a Theory of Freedom and Government* (Oxford: Oxford University Press, 1997).

freedom. Arbitrary interference, Pettit argues, occurs when others “have the power of interfering with them in an arbitrary way— that is, in a way that they themselves do not control.”¹²

Importantly, an agent can still exert arbitrary control without actively interfering in another’s affairs. For example, imagine a case where a restaurant owner, Bob, threatens to withhold pay to his busboy Dave for a week if Dave takes a day off from work. In this case, Bob may never follow through on his threat to withhold Dave’s pay, and by extension will never directly interfere with Dave’s freedom. Nonetheless, the spectre of Bob's interference would certainly undermine Dave’s ability to act freely.

Conversely, non-arbitrary interference requires active consent and affirmation. Crucially, Pettit argues that non-arbitrary manner interference can actually strengthen one’s ability to act freely. For example, consider the image of Ulysses and the Sirens present in Homer's *The Odyssey*.¹³ In this example, Ulyses commands his crew to seal their ears with wax and physically restrain him to their ship’s mast, enabling him to experience the beauty of the Sirens’ songs whilst protecting him and his crew from being lured by the Sirens. As is revealed by Ulysses’s departure from the encounter unscathed, Ulyses’s bondage strengthened his ability to act freely.

Another crucial component of Pettit’s republicanism is the role of the government. Pettit’s justification for government interference is on similar grounds to the Ulysses case. Indeed, Pettit argues that government interference is legitimate so long as the people have equal authority over its administration. Unlike pluralistic value approaches, republican governments are solely focused ensuring that each citizen possesses the power required to resist the domination and arbitrary interference of others. Specifically, Pettit defines a person’s power “to include all

¹² José Martí and Phillip Pettit, *A Political Philosophy in Public Life: Civic Republicanism in Zapateros Spain* (New Jersey: Princeton University Press, 2012), 35.

¹³ Martí and Pettit, *Civic Republicanism in Zapatero’s Spain*, 36.

those factors that are liable to affect political, legal, financial and social clout” which enables them to resist arbitrary interference from others, with the caveat that it is relative, meaning that it is a function of “the powers at disposal of others” in society.¹⁴ Therefore, republican governments can eliminate arbitrary forms of interference that create domination through utilizing non-arbitrary laws and policies to increase the power of dominated groups.

Identifying Domination Without Interference

While it is clear how a state can increase the intensity of non-domination for dominated groups, it is unclear how the state should identify dominating relationships without the presence of interference. Similarly to the case of Bob, Pettit's account of freedom considers numerous other instances wherein alien control might be exerted in ways that limit one's freedom, even without interference present. Therefore, it is crucial to identify alternative instances of domination to strengthen our understanding of how domination can exist without interference in order to be able to apply it to non-ideal situations. Specifically, this section considers how domination can exist without interference via intimidation and invigilation. Given these instances are less intuitive to identify and crucial to the government role in Pettit's framework, I will outline an example of each case below.

Domination via Invigilation

To demonstrate how an agent can dominate another without interference, reconsider the above case of an employer threatening to withhold an employee's pay if they take sick leave. In the example elaborated above, Dave could restrict Bob's freedom via “invigilation,” where the dominating party “economize[s] on interference, resorting to it on a need-for-action basis.”¹⁵

¹⁴ Pettit, *Republicanism: a Theory of Freedom and Government*, 63-65.

¹⁵ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 36-37.

After docking his pay once in response to Bob taking a sick day, Dave is able to restrict Bob's freedom by the sheer presence and positionality of "being able to effect" Bob's employment status— while in actuality only interfering and penalizing Bob for some of his absences.¹⁶

Consequently, the ability for those to dominate others through invigilation demonstrates that conventional conceptions of freedom as non-interference fall short from encapsulating all threats to freedom in society.

Domination via Intimidation

In a similar vein, Pettit describes circumstances wherein agents can also dominate others through intimidation. Reconsider the above case of Bob, the restaurant owner, and Dave, the waiter— except imagine that Dave is a poor, undocumented worker who does not speak English. Similarly to the invigilation example, Bob threatens to fire Dave unless he agrees to an hourly rate well below the minimum wage. Moreover, Bob intentionally lies to Dave, falsely telling him there are no paths for recourse, as undocumented workers are not entitled to free legal counsel nor protected by labor laws. As Dave does not speak English, he is unable to explain the situation to outsiders and is ashamed to approach the owner to verify Bob's claims. Dave eventually decides that it is not worth securing private counsel for what he believes is an unjust, yet frivolous lawsuit. Even without the history of interference required in the invigilation case, Dave's threats likely would still restrict Bob's freedom and willingness to take a sick day.

Perhaps most perniciously, Pettit argues that agents may even exercise control without active interference or the credibility to follow through on their threatened invigilation. In such cases, although agents "do not have the alleged capacity to interfere that they purport to make

¹⁶ Ibid.

obvious” they “are capable of misleading [one] on those counts: they can make me believe that they have the alleged capacity and are conducting the associated invigilation.”¹⁷ Again, consider the case of Dave, the waiter— except imagine that Dave leaves Bob’s restaurant after experiencing the intimidation described above and gets a job at another restaurant managed by Steve. Unlike at Bob’s restaurant, at the outset of Dave’s employment, Steve makes clear that Dave is entitled to equitable pay and benefits, and provides Dave access to resources in the case that he ever needs support while working at the restaurant. However, despite these reassurances, Dave continues to forgo taking sick days or ask for vacation time due to the perception that Steve is being untruthful, and will behave like Bob and punish him for utilizing any benefits. Importantly, in this case, the source of Dave’s domination is a false perception based on his prior experience at Bob’s restaurant, and exists despite Steve’s genuine commitment to refrain from invigilation or intimidation.

Pettit vs. Berlin

These cases make clear that Pettit's account of freedom as non-interference differs from Berlin’s notion of freedom as non-interference in many crucial respects. Indeed, Pettit’s approach adds nuance to Berlin’s treatment of interference as categorically in conflict with one’s ability to exercise their freedom. As demonstrated in the Ulysses case, non-arbitrary interference can actually strengthen one’s ability to act freely. Furthermore, the analysis of domination via intimidation and invigilation demonstrate that domination often exists without active interference, making them difficult to resolve under Berlin’s framework and highlighting some of the flaws his approach would have in identifying dynamics in non-ideal contexts.

¹⁷ Marti and Pettit, *Civic Republicanism in Zapatero’s Spain*, 38.

Furthermore, as seen in the final case, domination that exists without any acts of invigilation or intimidation are extremely difficult to analyze through a Berlinian lens, due to the fact that they rely on perceptions, and are derived from power dynamics external to time slice analysis utilized in Berlinian approaches. Indeed, even if Berlin were to argue that Dave was being interfered with mentally in his new job, his theory does not possess the adequate tools to unpack how his prior experience at Bob's restaurant impacts his current state of domination.

In addition to mitigating liberal democracy's conflicting value problem, the above cases of domination without the presence of interference demonstrates Pettit's framework is better-suited to consider power dynamics in society. For example, consider the relationship between the black community and law enforcement in America. While blacks and police officers are theoretically provided equal protection under the law, both sides certainly do not possess equally intense non-domination. On the one hand, many members of the black community perceive police officers as the embodiment of institutional racism, thinking about the countless murders of unarmed blacks, which manifests in them feeling dominated, afraid, and resentful towards law enforcement. Conversely, many police officers' are unable to view black communities equally due to systemic racial bias, fears of retaliation from black communities, or guilt which leads them to pity blacks. Furthermore, implementing policies to bolster freedom as non-interference oftentimes does not create, or even reform, a society to be free from domination. Indeed, many policies that could theoretically strengthen marginalized groups' Berlinian freedom, such as contract buying, and the census, further exacerbated their domination within society. As a result, Pettit's conception of freedom as non-domination provides a more salient and applicable alternative to construct a free society.

Pettit's Republicanism in Practice

Yet, while Pettit's abstract ideal for a republican state is helpful in identifying problematic power dynamics in society, it alone is insufficient to guide policymakers to implement policies that foster non-domination. As such, this paper turns to consider the practical steps governments can take to reach Pettit's ideal. In turn, Pettit argues that the "infrastructure of non-domination" is an important prerequisite for any republican state.¹⁸ Specifically, the infrastructure of non-domination guarantees citizens access to equitable legal and economic institutions such as a flourishing economy, a reliable rule of law, an inclusive knowledge system, a sound health system, and a sustainable environment.¹⁹²⁰

Here is an example of a non-dominating infrastructure to consider before turning to applications of Pettit's theory. For example, the Skandinavian healthcare system serves as an exemplar for republican infrastructure against non-domination, as it provides all individuals excellent healthcare regardless of their financial status. In that system, individuals' status as equals is not undermined by the fact that some would not seek medical care due to financial limitations. Similarly, these institutions provide an important foundation for inculcating an active civic culture that is equally accessible for all citizens, as non-domination in the public and private sectors is abated with those structural constraints.

¹⁸ Marti and Pettit, *A Political Philosophy in Public Life: Civic Republicanism in Zapatero's Spain*, 75.

¹⁹ *Ibid.*

²⁰ Pettit argues that the environment offers humans sustenance, their place in nature, and their sense of belonging in life, creating many significant linkages between people and the environment. As a result of this symbiotic relationship between humans and their environment, wanton destruction of the environment "may affect our collective chances of survival, our individual prospects of a long and healthy life, or our opportunities for affirming our connaturality with other species, and for identifying with the planet that we share with them." Even if the destruction does not impact the "current representatives of our species in those ways, you may well affect future generations of human beings, including the future citizens of the society and state that we constitute." As such, he argues that environmental destruction constitutes "an assault on at least the range of our undominated choice," and a government's goal should be ensuring that it is sustainable (Pettit *Republicanism* 137).

In contrast with the above infrastructure of non-domination, informal property rights systems are an example of dominating infrastructure. Similar to the phenomenon described in Hernando de Soto Polar's *The Mystery of Capital*, economic systems with informal property rights overwhelmingly penalize marginalized groups and are an example of dominating economic infrastructure.²¹ As de Soto recounts, formalized property rights enable individuals to derive equity from their homes, receive financing due to being able to declare their property as assets, and effectively develop areas. The lack of these rights therefore demonstrates an institutional barrier that leads to the domination of the powerless in society.

Looking Ahead: Final Questions Before Turning to Spain

This section aimed to demonstrate that Republicanism's conception of freedom as non-domination is a preferable alternative to Berlinian approaches for resolving liberal democracy's conflicting value problem. In addition to orienting public debates around one axis, Pettit's identification of dominating relationships that exist without active interference seem to make it preferable for practical applications. Nonetheless, republicanism's application to real world situations will likely be messy and imperfect.

Despite its success in simplifying liberal democracy's conflicting value problem to one axis, republican approaches still must make difficult tradeoffs in prioritizing different group's competing claims of non-domination. Indeed, the latter portion of Chapter II largely focuses on how republican states should navigate such situations. While these tradeoffs are not between different foundational values like in the Berlin case, they nonetheless are difficult and crucial determinants of republicanism's viability in real world situations.

²¹ Soto, Hernando de, 1941-. *The Mystery of Capital : Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York :Basic Books, 2000.

Chapter II: Republicanism in Practice: Pettit's Analysis of Zapatero's Spain

The Spanish Context

Before turning to Zapatero's Spain, it is important to provide some background on the various historical factors that have influenced the unique challenges Spain faces in the 21st century. Indeed, it is important to note that Spanish democracy is rather fragile and nascent, and its status as a unified nation state is tenuous. In fact, for most of the 20th century, Spain was ruled by Francisco Franco's nationalist, authoritarian, and fascist regime, and before that it was predominantly a monarchical state.²² Similarly, perhaps the most important dimension of Spain's political context is the unique relationship between its autonomous regions and its central government in Madrid. Stemming from both its imperial history and el Franquismo, the status of Spain's autonomous provinces has consistently been a source of tension in its politics. Thus, despite Spain's remarkable democratization, the vestiges of its anti-democratic history still complicate its politics. Therefore, both its previous anti-democratic governance and regional pluralism require further examination in order to contextualize Pettit's analysis.

A Tenuous Peace: Relations between the Federal Government and Autonomous Communities before Franco (1492-1939)

Unlike many states with imperialist foundations, the cultural, linguistic, and administrative institutions of conquered territories were permitted to co-exist with the federal Spanish authority for much of the country's history. Specifically, instead of creating a unitary, homogeneous nation-state, the Spanish Crown provided significant autonomy to its conquered territories, oftentimes allowing territories "to retain their prior institutional existence."²³ As a

²² Josep Maria Reniu, *Sistema Político Español*, 2nd ed. (Barcelona, Spain: Huygens Editorial, 2018).

²³ Moreno, Luis. (2007). *Federalization in multinational Spain*. 10.4324/9780203964514.

result, with the exception of religion, many autonomous regions in Spain maintained distinct customs, languages, and norms. In fact, as recognized in the Spanish Constitution, the Basque Country, Catalonia, and Galicia, are considered “historic nationalities,” which were granted expedited processes in integration and greater regional autonomy than other provinces due to their long standing presence as a distinct group within Spain.²⁴ Importantly, prior to Franco’s rule, these autonomous communities received relatively unprecedented levels of autonomy and recognition for subnational entities, which entailed having their own distinct languages, customs, and public services.

Certainly, the relationship between the Spanish Crown and Spain’s autonomous regions also contained hostility. Beginning in “La Reconquista” when the Castillians dispelled the Muslim south and throughout its history, the marginalization of groups on the basis of religion created resentment between the national government and many regional entities. For example, the southern region of Andalusia experienced decades worth of violence as the central government forcefully converted its population to Catholicism and rooted out Muslim influence. Despite Spain’s relatively remarkable preservation of pluralism throughout its history, the Spanish government’s efforts to forcefully spread Catholicism laid an important foundation for the hostile relations between the federal government and the autonomous regions in Spain. Nonetheless, the Crown’s tacit allowance of individuals to practice alternative religions, and broad federalism largely held the nation together until the ascendance of Francisco Franco in the early 20th century.

²⁴ Josep Maria Reniu, *Sistema Político Español*, 2nd ed. (Barcelona, Spain: Huygens Editorial, 2018).

The Seeds of Discontent: El Franquismo and the Unraveling of Spanish Federalism (1939-1975)

Unlike the Crown's more lenient approach to pluralism, Franco's regime exacerbated the tensions between autonomous regions and the Spanish federal government. Spain's history under Franco is consequential to its current political situation for a variety of reasons, predominantly due to his treatment of marginalized groups and his forceful creation of a homogenous Spanish identity, which was Catholic, Castilian-speaking, and federalist. In addition to further oppressing religious minorities, Franco's government expanded those on society's margins to include entire regions and economic classes of people. Specifically, Franco's regime persecuted any person or group whose existence conflicted with his new vision of the Spanish national identity. Indeed, during the Spanish Civil War and the first nine years of Franco's rule, dubbed by historians as the "White Terror," Franco's government killed, raped, and brutalized over 500,000 members in opposition groups, many of whom were members of Catalanian and Basque nationalist groups.²⁵ In addition to acts of violence, Franco revoked the autonomous status of Spain's subregions, banned the instruction and use of languages besides Castilian, and censored any cultural activity or media that exceeded his vision of Spanish identity.²⁶ Furthermore, Franco's regime utilized the Catholic church to exert cultural pressure to comply with his edicts, imposing severe social costs on groups that did not mold into Franco's vision for Spain.

In addition to these direct attempts at marginalization, the Franco administration's corruption and nepotism exacerbated economic disparities between regions in Spain. Under

²⁵ Josep Maria Reniu, *Sistema Político Español*, 2nd ed. (Barcelona, Spain: Huygens Editorial, 2018).

²⁶ Unlike Franco's support of Catholicism, Castilian (the spoken language in Madrid), and a centralized Spanish state, his vision for Spanish culture was much more arbitrarily derived and erratically enforced. For example, Franco believed that Bullfighting and Flamenco were integral parts of Spain's new cultural identity, despite the fact that they originated in the Basque country, and Andalusia, respectively. Nonetheless, Franco's regime similarly censored any custom or cultural expression that deviated from his conception of the Spanish identity.

Franco's regime, resources were dispensed arbitrarily and on a whim, without any structural mechanism for distribution. As a result, regions that complied with Franco's nationalist agenda, and those which were historically economically prosperous received more resources, while regions that resisted his authority were left behind.

In response to Franco's policies, many opposition groups formed which would become influential in modern Spanish politics. Most notably, both violent and nonviolent regional separatists groups gained popularity due to Franco's persecutory policies. From proto-socialist, pro-union advocacy organizations, to the Basque armed separatist group Euskadi Ta Askatasuna (ETA), many organizations that would influence Spain's ensuing democratization formed in response to life under Franco's rule. Therefore, when Franco's regime collapsed after his death in 1975, and Spain's King Juan Carlos voluntarily ceded his power to a civilian government, the provisional government's primary task was bringing such disaffected groups back into the fold to create a unified democratic polity.

Steps Towards Normalizing Relations: Spain's Democratization to Zapatero's Inauguration (1975-2004)

In turn, Spain's constitution and initial Prime Ministers took important steps in allaying the divisions stoked under Franco's rule. As mentioned previously, the Constitution provided greater autonomy for regional governments, and codified a robust, and equitable rule of law for all citizens regardless of their economic, political, or social status. However, despite the success of the constitution and previous governments, the vestiges of el Franquismo and its imperial history continue to complicate Zapatero's Spain. Specifically, due to the lack of equitable development during Francoist Spain, poorer areas of Spain are not financially self-sufficient, and

more affluent areas such as Catalonia complain that they are not a part of a fair economic arrangement. Furthermore, violent separatist groups like the Basque Country's ETA remain active and unsatisfied with the post-constitutional order. Indeed, while historically marginalized groups such as Basques continue to face injustice in the federal system, historically dominating groups such as the Catholic Church retain unfair advantages in society.

Pettit's Republican Analysis of Zapatero's Spain

Within this rich historical context, Pettit's *A Political Philosophy in Public Life* identifies how some of the more abstract Republican ideals operate in the case of José Luis Rodríguez Zapatero's Spain. Structurally, Pettit methodologically breaks down his analysis of Zapatero's governance by outlining the republican principles Zapatero espouses, then analyzing their effectiveness at guarding against private and public domination. The first principle Zapatero emphasizes is that of civicism, which through "empowered citizenship" aims to create "a civic body that rules itself."²⁷ Indeed, Zapatero's civicism is a crucial prerequisite for ensuring that government interference is conducted in a non-arbitrary manner. Similarly, the second principle Zapatero has endorsed repeatedly is the espousal of freedom as non-domination as the ultimate form of government. In the following section, I will recapitulate Pettit's analysis of the Zapatero administration's success in upholding those principles to limit private and public domination.

From Republican Principles to Institutional Design: The Infrastructure of Non-domination

As we saw in the first chapter, Pettit argues that robust infrastructures of non-domination are crucial for the existence of freedom of non-domination in society. Specifically, Pettit identifies six key elements of a nation's public and private institutions which ensure that

²⁷ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 72.

individuals are free from domination. In the private sphere, Pettit identifies a flourishing economy, a reliable rule of law, and an inclusive knowledge system to be paramount. In the public sphere, Pettit argues that transparency, accountability, and responsiveness.²⁸ However, similarly to my criticism levied against Berlinian approaches in post-conflict situations, the strict existence of the aforementioned infrastructure is insufficient to ensure that citizens enjoy equally intense non-domination. In addition to the baseline of promoting an infrastructure of non-domination, republican governments must also empower the disadvantaged and restrain the strong. As Pettit notes, “unless the government does something to rectify ... inequalities of advantage and power, the weaker will not be able to stand tall with the stronger.”²⁹ Nonetheless, I contend that it is helpful to first consider whether a state’s institutions cultivate freedom as non-domination, then analyze how the government girdles those institutions to ensure citizens can enjoy them with equal intensity. Therefore, in the following section, I will first briefly outline the importance of each element in preventing private domination and its corollary in Zapatero’s Spain, before turning to more complex cases where Zapatero’s governments must make difficult tradeoffs to ensure the freedom of non-domination it cultivates is enjoyed with equal intensity by all citizens.

Guarding Against Private Power

A Flourishing Economy

As significant poverty severely inhibits an individual’s ability to resist domination, Pettit argues that a flourishing economy is crucial for any republican state. While strict material equality is not compulsory for a republican government, the economy must be sufficiently robust

²⁸ Marti and Pettit, *Civic Republicanism in Zapatero’s Spain*, 75.

²⁹ Marti and Pettit, *Civic Republicanism in Zapatero’s Spain*, 79.

and inclusive to prevent private domination. Indeed, it is easy to imagine how either an exclusive economy, or one that is stagnant, is positioned for private domination. As seen in Francoist Spain, preventing unionization and wealth creation outside of the government sponsored labor syndicate left a majority of the population economically, and politically, powerless. Therefore, Pettit first focuses on the health of the economy under Prime Minister Zapatero's administration in his analysis.

From an economic perspective, Pettit argues that general positive trends in GDP growth and employment rates indicate that Zapatero's government has been reasonably successful in promoting a flourishing economy. However, there are certain economic metrics where Zapatero's government has been less successful. Specifically, Pettit notes that a significant long-term concern is "the low level of research and development and the comparatively low level of productivity" in Spain's economy.³⁰ Indeed, a lack of research and development and low productivity levels cast doubt on the ability of Spain's economy to innovate and create future jobs. Nonetheless, Pettit commended the Zapatero administration for implementing policies that have led to widespread growth such as increasing investment into research and development. For example, Pettit references the Zapatero administration's commitment to increase research and development spending by 125% and pledge to increase its percentage of that funding to lotteries for research grants as positive steps to cultivating a flourishing economy.³¹ However, this metric of analysis could be strengthened by analyzing how that growth is distributed along demographic lines. As one of the metrics of a republican society is empowering the disadvantaged, legislation and legal protections for disabled groups to eradicate de jure barriers is insufficient. In turn,

³⁰ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 76.

³¹ *Ibid.*

Pettit's analysis of economic mobility for society at large should also consider that such growth is distributed equitably.

A Reliable Rule of Law

Secondly, Pettit argues that a crucial component in a republican society is a reliable rule of law. As mentioned earlier, the 24th amendment in the Spanish constitution provides “every person ... the right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests, and in no case may he go undefended.”³² As any other Republican regime, this provision enables individuals to receive legal services and equal protection in front of the law, regardless of their financial circumstances. Nonetheless, Pettit identifies both formal and practical limitations that prevent Spain from achieving that ideal. For example, before the Zapatero administration, there was not specific legislation to prevent domestic violence, nor legislation pertaining to those with disabilities and their caretakers. Despite general de jure equality in the eyes of the law, the lack of specific measures for legal recourse for marginalized groups prevented them from enjoying equally intense non-domination in society. In response to these problems, Zapatero's government passed sweeping legislation to legally empower the disadvantaged. Specifically, the Zapatero administration passed The Law of Homosexual Marriage to enable same sex couples the same marital rights as heterosexual couples.³³ Moreover, his administration passed The Law against Gender Violence and The Law of Dependency to strengthen the standing of domestic violence victims and those with disabilities.³⁴

³² Art. 24 Spanish Constitution

³³ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 76.

³⁴ *Ibid.*

Furthermore, Zapatero responded to many practical limitations that hindered the reliability of Spain's legal system. In addition to codifying protections for marginalized groups, the Zapatero administration took proactive measures to combat systemic inequalities that extend beyond the law in Spanish society. Most notably, Zapatero's administration passed The Law of Equality, which aims to eliminate systemic sexism and promote gender equality through obliging "political parties to have at least 40% women on their electoral lists... [and requiring] companies employing more than 250 people to introduce equality plans aimed at eliminating discrimination against women in pay, promotion, and benefits."³⁵ Indeed, this unprecedented legislation demonstrates an important first step in practically empowering the powerless in Spanish society. Beyond de jure protection in the eyes of the law, The Law of Equality strives to provide women de facto power and equal recognition in society.

An Inclusive Knowledge System

Thirdly, Pettit argues that an inclusive knowledge system is essential for providing individuals the resources to engage in robust republican self-government. Indeed, Pettit argues that it "essential for the widespread enjoyment of non-domination that citizens understands and are informed about their society and polity, having the know-how required for a full, engaged life."³⁶ Unlike the aforementioned levels of analysis, Pettit notes that Spain's educational system still faces significant challenges. For example, according to a 2004 study by the Organization for Economic Cooperation and Development (OECD), "30% of students in Spain dropped out of secondary education, against an OECD average of 12%; and Spain's public spending was twenty-eighth out of thirty countries."³⁷ While the Zapatero administration inherited a flawed

³⁵ Ibid.

³⁶ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 76.

³⁷ Ibid.

educational system, Pettit notes that recent legislation leaves room for optimism. In response to this crisis, the Zapatero government has implemented education reform to reduce administrative waste and decrease truancy, as well as pledged to increase education funding. Perhaps most significantly, Pettit lauds the Zapatero administration's introduction of civic education courses throughout the nation, through which "children will be introduced to the issues of government in a pluralist society, to the different viewpoints on those issues, and to the means whereby they can be resolved in democratic dialogue without secularist belligerent or religious righteousness."³⁸ In fact, implementing such civic education courses is an important first-step in cultivating a society that is practically capable of engaging in robust, republican self-governance.

Guarding Against Public Power

On the flip side, Pettit argues that accountability, transparency, and responsiveness are crucial elements of Republican governments. As mentioned in the introduction, Pettit's republicanism also strives to guard against public domination, specifically through ensuring that governments are transparent, accountable, and responsive. Structurally, Pettit argues that the first step in preventing public domination is through a mixed constitution, wherein the powers of government are separated and diffuse throughout the citizens in society. Indeed, the "officials and bodies [empowered in a mixed constitution] constrain one another so that any legislation or policy that passed challenges on all sides would be more or less bound to reflect what was thought of as the common good."³⁹ On that count, Pettit argues that Spain scores relatively well as a parliamentary government with ample separation of powers, protections for individual

³⁸ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 87.

³⁹ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 86.

rights, and electoral integrity. Furthermore, Pettit argues that Zapatero's administration took additional steps to guard against public domination.

Government Responsiveness

In order to strengthen the Spanish government's responsiveness, Zapatero made efforts to reform Spain's campaign finance system. As Pettit notes, Spain's campaign finance laws enable special interests groups to amass overwhelming influence over policy, leading those interests to dominate those of other groups. In response to these concerns, Pettit lauds Zapatero's efforts to establish a limit for campaign finance contributions. This policy ensures that no individual can have disproportionate influence over the political process, and strengthens the government's ability to be responsive to its citizens.

Government Transparency

To increase government transparency, Zapatero's government took bold action by banning federal funds being spent on party propaganda. Previously, the government was permitted to spend public funds on advocacy campaigns that acted as party propaganda for reelection. In response to this, Zapatero's government passed the "law of institutional publicity," which restricts government spending on propaganda, and only allows expenditure on "clear matters of public interest and utility."⁴⁰ Similarly, Pettit lauds the Zapatero administration's efforts to strengthen the independence of the national television station. Specifically, Zapatero's government ensured that the national television broadcaster (RTVE) is independent and autonomous of both private and public influence by making it appointed by 2/3 of parliament, and empowering that body to select its director general.⁴¹ As Pettit notes, this provides the

⁴⁰ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 87.

⁴¹ *Ibid.*

substantive benefits of having an impartial commenter on the government's behavior without private biases, but also provides the polity symbolic benefits by demonstrating that the party in power is not a dictatorship— and provides the public the maximum resources to monitor government affairs.⁴²

Government Accountability

Regarding accountability, a central political cleavage contextualizing Zapatero's administration was the previous government's decision to enter the Iraq War, despite low public approval and protests against the action. In order to prevent future governments from behaving similarly, Zapatero's government worked to ensure that the powers of the central government, specifically its war powers, were more accountable to the public. In that vein, Zapatero's government introduced a law "whereby parliament is required to approve the sending of Spanish troops on active duty abroad."⁴³ Acts like these work to strengthen the government's transparency, accountability, and responsiveness in accordance with Pettit's republican ideal.

The Ultimate Test: Republican Guidance for Balancing the State's Competing Obligations

While providing substantive guidance in certain areas, many could contend that, up to this point, Pettit's analysis of Zapatero's Spain tends to avoid instances where the state must balance the non-domination of multiple stakeholders in crafting policy. Although providing an important baseline, Zapatero's laudable efforts to pass legislation providing legal recourse for domestic violence victims is largely uncontroversial in these terms, as it almost universally strengthens the intensity of non-domination for all Spaniards. However, the situation would look quite different if a policy were to strengthen one group's non-domination at the cost of another

⁴² Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 88.

⁴³ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 87.

group's. Indeed, it is important to note that this is an important challenge republicanism faces more broadly. As I noted at the end of Chapter I, while simplifying political disputes by framing them along one moral axis— freedom as non-domination— republicanism brings with it a familiar problem; namely, how the state should evaluate and prioritize competing claims of domination by constituent groups. Indeed, government remedies for domination cannot always universally increase all citizens' intensity of non-domination. In fact, in many instances the government is required to make difficult tradeoffs between regions, NGOs, and the broad populus to ensure that they all can experience non-domination with equal intensity.

Fortunately, Zapatero's relationship with the Catholic Church, the ETA separatist group, and the Catalanian regional government provides guidance for how a state should wrestle with its competing obligations to different groups under a republican framework. These specific cases serve as important examples of how to apply republican values beyond isolated cases, to more complex dynamics, where the non-domination of many stakeholders must be taken into account in creating policy solutions to cultivate freedom as non-domination for all citizens. In analyzing these cases, I will first lay out the competing claims of non-domination that could be made by different groups in republican terms, then demonstrate how these different claims reasonably lead to divergent policy prescriptions for the Spanish government. In managing relations with the Catholic Church, Zapatero's administration must balance the competing considerations of the faith community and the general population. In evaluating whether to negotiate with ETA, Zapatero's government must reconcile the Basque country's claims for greater autonomy with its obligation to protect the Spanish citizenry from acts of violence. Finally, in response to the Catalanian independence movement, the Spanish government must manage its obligations to

respect Catalanian self-determination with its duty to preserve the integrity of the Spanish federal state.

Similarly to Berlin's approach to conflicting values, it is important to recognize that solutions in these cases are not black and white. Indeed, as Pettit moves from the case of the Catholic Church to Catalanian secession, it becomes increasingly difficult to manage the tradeoffs between stakeholders, and the compromises reached are often imperfect in republican terms. While imperfect, through delving into Zapatero's response to these three crises, Pettit demonstrates that the republican conception of freedom as non-domination provides strong guidance nonetheless for complex real world dynamics.

Case Study #1: The Spanish Government's Relationship with The Catholic Church

The first case that exhibits the state wrestling with competing claims of non-domination is seen in Zapatero's Spain treatment of the Catholic Church. In this case, Zapatero's government must balance its obligations to prevent the Catholic faith community from domination with its obligations to prevent the general population from being dominated by a state recognized religion. To briefly recapitulate, Catholicism has been Spain's primary religion through its imperial history and el Franquismo, resulting in the Catholic Church's widespread influence in Spanish society. Moreover, the Church's significant influence has manifested through nearly Spain's population being overwhelmingly Catholic. As a result, there is significant debate surrounding the extent to which the state should recognize Catholicism's long-standing influence in Spain's culture and national identity through granting the Church special privileges such as federal funding and tax benefits.

Understanding the Competing Claims of Domination

There are two primary arguments Catholics could marshal for the Church being granted special treatment in society. Firstly, as a majority, Catholics could argue that the state has an obligation to provide an institution enjoyed by a majority of its population with special recognition. Secondly, and more persuasively, the Catholic community in Spain could argue that the Church's central role in forming Spain's culture and national identity makes it more than simply a religious institution, but rather one that provides distinct and valuable social and cultural goods. In addition to providing services for the practicing Catholic faith community, Catholics could argue that the church provides tangible assistance through providing counseling and assistance to the needy, and serves as a moral foundation for secular Spaniards. Following that logic, Catholics could argue that funding the Catholic church also benefits non-Catholics and ought to be considered the same as funding a national endowment of the arts, for instance, given the Church produces significant culture and social goods that contribute to Spain's broader national identity. Indeed, supporters of the church could argue that without federal funding and recognition, the Church would likely have to reduce the quantity and quality of its services, adversely impacting its followers and Spanish culture as a whole. In addition to the material costs for Catholics and non-Catholics, they could argue that the declining influence of the Catholic Church could increase domination in society, as many of its cultural ramifications on civic life in Spain would disappear. For these reasons, the Catholic Church and its followers have reasonable claims to argue that the state is obligated to provide the Catholic Church federal funding to prevent from being dominated. While many instinctively balk at the idea of providing

the Catholic Church formal privileges, it is important to first consider how the Catholic Church could make a republican claim for federal support.

On the other hand, republican arguments against providing special recognition for the Catholic Church, even if democratically legitimated, are rooted in its potential to dominate marginalized groups and corrode its political institutions. Throughout Spain's history, the dangers of elevating Catholicism to a privileged position in society are well documented. Indeed, publically sanctioning any religious group coerces individuals to conform to the faith and erects social costs for non-believers— both of which restrict freedom as non-domination of non-believers. As seen in the Spanish Inquisition, it is easy to see how the state forcefully mandating its populus to conform to one religion causes domination. However, the state need not forcefully ensure compliance to dominate non-believers, simply the existence of a publicly endorsed religion threatens non-believers' freedom as non-domination. To illustrate this point, imagine living in a society which provides its citizens the freedom to practice whatever religion they'd like, whilst also allowing a specific religion to be taught in public schools. In order to recille its commitments to the specific religion and religious freedom broadly, the state allows students to opt-out of class sessions in which the religion is being taught. Initially, one may consider this arrangement equitable under a republican framework, as those who do not practice the sponsored religion are seemingly permitted to do so freely. Yet, despite not explicitly targeting non-believers, this arrangement is clearly problematic in republican terms under further examination. As Cass Sunstein notes in his work *Nudge*, psychological studies consistently find

that defaults in choice architectures are likely to be conformed to be members of society, and those that diverge from this shared societal trait are likely to experience marginalization.⁴⁴

Secondly, the Catholic Church's retainment of special privileges and funding poses significant harm to Spain's democratic process.⁴⁵ Specifically, despite assurances in the Constitution that the church would begin self-financing after six years, Pettit notes that the church "continued to obtain massive state subsidies; these have been provided, presumably, for fear that the church would mobilize opposition to any party that did not continue to provide financial support."⁴⁶ In turn, as the current arrangement requires the citizenry to fund a specific religious organization, republicans could argue that this relationship dominates those in the minority who are not Catholic to fund an institution that they do not believe in. Secondly, the church's special status in Spain strengthens its ability to pressure politicians, limiting the government's ability to be responsive to the needs of *all* citizens. Indeed, precisely this sort of preferential treatment allows the Catholic church to dominate citizens and effectively eliminate other religious and social organizations from establishing themselves in Spain.

Pettit's Guidance and Zapatero's Response

As demonstrated above, Zapatero's administration is forced to reconcile its obligation to support the Catholic Church and its followers' identity and freedom of association with its obligation to non-believers and the integrity of its political institutions. Upon first glance, it is clear that the state's republican obligations to marginalized groups and the populus supersede its commitment to the Catholic Church. While refusing to fund the church certainly poses financial

⁴⁴Richard Thaler and Cass R. Sunstein. 2009. *Nudge: Improving Decisions About Health, Wealth, and Happiness*. New York: Penguin Books.

⁴⁵ Indeed, as Pettit notes, "it is important that [the considerations of government] are not statistically dominated, for example, by members of one religion." Pettit, *Republicanism: a Theory of Freedom and Government*, 198.

⁴⁶ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 84-85.

disadvantages, private individuals would still be permitted to fund the church and voice their Catholic ideals publically. In exchange for that disadvantage, non-believers' intensity of non-domination is strengthened and Spain's political institutions are freer from the Church's grasp.

Nonetheless, some members of the Catholic Church would likely be frustrated with this conclusion. In these instances when a group and the government conflict over a policy due to its divergent implications on the group's self-interest and the societal communal good, Pettit argues that if "the judgement is made according to their ideas about proper procedures and that it is dictated, ultimately, by an interest that they share with others" they will ultimately understand and support the decision.⁴⁷ Moreover, he continues, "they may bitterly regret the fact that the judgement disadvantages them, but under the assurance described they can look on that disadvantage as a misfortune on a par with a natural accident; they don't have to see it as a token of domination by the state or by other groups within the state."⁴⁸ This sort of concession is seen in the Catholic Church's case. While the government's refrain from publicly endorsing a religion would personally disadvantage Catholics, Pettit contends that they would nonetheless accept the policy given it was determined through a process they deem legitimate. Indeed, Pettit argues that their personal sacrifice would come palatable in exchange for the communal increase in freedom as non-domination afforded to all Spaniards, by preventing religions from having special influence over public life.

While noting that the relationship between the church and the federal government remains imperfect, Pettit identifies numerous policies that the Zapatero administration took to

⁴⁷ Pettit, *Republicanism: A Theory of Freedom and Government*, 198.

⁴⁸ *Ibid.*

make their arrangement more equitable. Specifically, the government will no longer serve as a backstop if the church's yearly expenditures exceed their yearly revenues. Moreover, Pettit commends the Zapatero administration for "reach[ing] an accommodation with the church over the teaching of religion in schools."⁴⁹ Together, these policies aim to restrict the Church's influence over Spanish society. However, this progress has come at a notable cost. In exchange for the Church's acceptance of these reforms, the Spanish government agreed to increase the amount an individual can earmark for the Catholic church in their taxes by 0.5%, with the caveat that church publicizes its yearly expenditures.⁵⁰ While many would likely object to the fact that any tax dollars go to a religious institution, the proviso requiring transparency at least strengthens the public's accountability over church spending.

Key Takeaways

This compromise is important for two reasons. Firstly, it demonstrates that republicanism, for all of its reliance on civic engagement and direct democracy, often requires caution towards populist and majoritarian impulses. Indeed, this case demonstrates that regardless of the fact that the Catholic Church's objections were voiced through legitimate republican mechanisms, the basis of all claims are not equal. Secondly, and more importantly, it demonstrates that historical contexts often entrench time slice analyses of clashing values—requiring in-depth historical analyses and imperfect trade-offs to rectify dominating relationships. This works both ways. Despite its republican legitimacy as a voluntary association, the Catholic Church's role in both directly and indirectly marginalized minority groups and undermining Spanish democracy prevents it from superceding the state's obligation to all its

⁴⁹ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 85.

⁵⁰ *Ibid.*

citizens. Yet, at the same time, its ubiquity in Spanish society makes it impossible to simply discard—resulting in the compromise reached by Zapatero’s government.

Case Study #2: The Spanish Government’s Relationship with ETA

The Zapatero administration’s treatment of the Basque separatist group ETA provides further guidance for how the state should resolve competing republican obligations. However, this second example turns out to be more challenging for Pettit given the state must reconcile obligations levied by two public groups: the Basques and the general Spanish populus.

However, it differs in that both obligations are being levied by public groups, with equally valid republican bases for contestation.

Understanding the Competing Claims of Domination

On the one hand, above all, the government has the clear republican obligation to protect its citizenry from extrajudicial acts of violence. However, on the other hand, the government has the duty to hear ETA’s grievances and ensure that they are not being dominated by the Spanish government. Indeed, it is important to note that ETA and the Basque People have been persecuted throughout Spain’s history, and that it was originally subsumed into the Spanish polity by force resulting in long-standing resentment. Moreover, although many Basque people may disapprove of their violent means, many of ETA’s grievances against federal domination are echoed by its regional population. Thus, while the state’s obligation to protect its citizenry is paramount, it is important to not discredit the broader movement underpinning ETA’s actions.

Pettit’s Guidance and Zapatero’s Response

That being said, it would be a mistake to classify these competing claims as equally compelling. Despite equally legitimate grievances, the violent method through which ETA acts

upon their agenda lowers its merit as a republican claim for two reasons. Firstly, as a republican state's primary goal is to protect its citizens—ETA's violent acts ensure that their message, however valid, is secondary to the state's obligation to prevent harm. Moreover, granting ETA's demands would not necessarily ensure that the violence would subside. Indeed, according to Pettit, republican rule of law requires that the transgressor recognizes their crime, provides reparations for the victims, and gives reassurance that the transgression will not happen again.⁵¹ While hypothetically a peace settlement could include recognition and reparations at the time of signing, the time inconsistency problem prevents the state from being assured that ETA would not act violently again if further demands were not met. Secondly, ETA's decision to catalyze political change outside the republican mechanism of engagement in the democratic process undermines Spain's republican institutions. Indeed, launching terrorist attacks on civilians both polarizes the general surrounding the issue and erects barriers to republican discourse. Furthermore, if those violent acts occur without reprieve, they will incentivize other groups to do the same to catalyze change, resulting in stunning blows to the state's republican institutions. As seen in the case of the Catholic Church, the government's choice to prioritize the rule of law and protect the citizenry also strengthens all citizens' freedom from violence— even those in the Basque country from acts of retaliation.

As such, Pettit commends the Zapatero administration for balancing ETA's concerns for greater autonomy and historical injustice with the safety of its populus through holding a series of negotiations with the group. Although Zapatero's government could not yield to ETA's

⁵¹ Pettit, *Republicanism: Theory of Freedom and Government*, 156.

violence with concessions without undermining the rule of law, it still fulfilled its republican duty of engaging in dialogue with a concerned republican subregion.

Key Takeaways

This case demonstrates another important consideration for states evaluating competing republican claims: the manner through which they are articulated. Unlike the previous case of the Catholic Church, the content of ETA's grievances are equally valid in republican terms. However, unlike the Church cases where the contestation was voiced through democratic institutions and processes, ETA's use of violence to communicate its grievances made its grievances subservient to the state's competing obligation to protect the citizenry.

Case Study #3: The Spanish Government's Relationship to Catalonia

Finally, the status of Catalonia presents the most complex challenge for Pettit's republicanism present in Zapatero's Spain. Unlike the case of the ETA, the Catalonian secession movement has largely refrained from acts of violence and voiced their grievances through democratic instruments. Additionally, unlike the case of the Catholic Church, it is difficult to discern whether the Catalonian secession movement or Spanish Unionists have a stronger republican basis for accusing the other of domination. Moreover, this case differs in that both sides have a fundamentally different conception of the common interests—making the republican claims of Catalonian secessionists and the Spanish government equal in kind.

Understanding the Competing Claims of Domination

In this case, Spain's federal government must reconcile its obligation to those living in Catalonia with its broader obligation to Spain's less developed regions. Economically, Catalonian secessionists argue that they put out more than they receive in taxes and are being

compelled to financially support the rest of Spain. Culturally, Catalanian nationalists argue their unique language, culture, and history inhibits integration into the Spanish state and makes the region better-suited to be an independent country.

Conversely, Spanish Unionists contend that Catalan's departure would pose significant harm to lesser developed regions that rely on public services financed by its economic output. Moreover, Spanish Unionists argue that Catalan's current high economic productivity results from significant investment by the Spanish federal government such as the government's investment plan in anticipation of the 1992 Olympic Games in Barcelona.⁵² In response to Catalan's cultural objections, Spanish Unionists argue that Catalan's unique identity fits well within Spain's multicultural framework, and that providing further autonomy risks a balkanization that endangers the entire Spanish polity. The argument against Balkanization is one of the more powerful and effective arguments levied by Spanish Unionists. Referencing the dissolution of Yugoslavia in the late 1990s, Spanish Unionists argue that increasing the autonomy of regions like Catalonia risks a similar balkanization of Spain. As numerous semi-autonomous regions exist in Spain, they contend that increasing autonomy in Catalonia could catalyze many other regions in Spain to call for similar accommodations— ultimately leading to the dissolution of Spain. Importantly, this dissolution would yield substantive harms to Spain's lesser developed regions that are not self-sustaining, which require the economic output of regions like Catalonia to subsist. Moreover, Spanish Unionists argue that balkanization would diminish the state's capacity to provide crucial public goods such as the national defense— given the state could no longer rely on the resources of seceded regions.

⁵² Adam Taylor, "How The Olympic Games Changed Barcelona Forever," Business Insider, July 26, 2012, <https://www.businessinsider.com/how-the-olympic-games-changed-barcelona-forever-2012-7>.

Pettit's Guidance and Zapatero's Response

Fortunately, in these instances where there is strong disagreement surrounding the common interests of the state, Pettit's republicanism provides guidance. While acknowledging that these intense moments of disagreements can lead towards secession, Pettit argues that there are a variety of ways "to boost the freedom as non-domination of radical dissenters" before resorting to secession.⁵³ Specifically, Pettit argues that on the basis of this "conscientious procedural objection," a republican society can provide for "dissenting individuals and groups to claim special treatment under the law" so long as that "special treatment does not create the possibility of some individuals exploiting others."⁵⁴ The case of Catalonia is one of those cases—wherein a subgroup's vision of the common good clashes with the state's— and conscientious procedural objection is the primary tool through which the parties' different conceptions can be reconciled under Pettit's framework. As stated previously, Spain's recognition of Catalonia as one of the three historical nationalities entitled to expedited integration in its constitution demonstrates that conscientious procedural objection has historically been used to accommodate Catalonian sentiments. While an important first step, the persistence of the disagreement between Catalonia and the Spanish government regarding the polity's common interest illustrates that they desire more than simply special privileges.

In turn, Pettit lauds Zapatero for providing greater regional autonomy to Catalonia while ensuring that incentives remain in place to keep it integrated within the Spanish Federal system. Specifically, Zapatero's government provided Catalonia and other autonomous communities greater authority over the administration of public services, empowering them to craft their own

⁵³ Pettit, *Republicanism: a Theory of Freedom and Government*, 198.

⁵⁴ Pettit, *Republicanism: a Theory of Freedom and Government*, 200.

curriculums and conduct classes in local dialects. Pettit justifies his support for Zapatero's empowerment of regional communities through appealing to the doctrine of separation of powers, arguing that "if a community is governed in some areas by two centers of power, with different forums of accountability, then the chance increases that no one will be dominated by government decisions; special factional or sectional interests will balance and help check one another."⁵⁵ As such, Pettit argues that Zapatero's efforts strengthen the intensity of non-domination for Catalonians through decentralizing authority which restrains each source of government's ability to dominate another.

Key Takeaways

While supporting greater decentralization in Spain, Pettit concedes that measures must also be taken to preserve the cohesion of the unified Spanish state. Indeed, there are practical concerns that arise if certain sections are allowed to secede without a legitimate republican basis. As noted above, many unionists argue that providing greater autonomy for Catalonia risks "Balkanizing" Spain, wherein the precedent would motivate other autonomous communities to seek similar accommodations leading to the unravelling of the Spanish state. In response to these concerns, Pettit argues that it is incorrect to assume that greater regional autonomy would necessarily lead to secession, and that forcefully compelling states to remain within a union is the antithesis to republican freedom. Indeed, Pettit recounts that "Spanish democracy cannot hold together unless all parts can think of themselves as incorporating voluntarily in 'a project'... the stability of Spain has to be dynamic in nature, not static; it has to emerge from an ongoing, mutually respectful project of building a life in common."⁵⁶ On the contrary to creating greater

⁵⁵ Marti and Pettit, *Civic Republicanism in Zapatero's Spain*, 89.

⁵⁶ *Ibid.*

national unity, Pettit reasons, any active policy choice besides providing greater regional autonomy risks further alienating Catalonia from the Spanish federal government.

However, it is important to note that there are still tacit forces tethering autonomous communities like Catalan within the Spanish federal system. As Pettit notes, “the historical linkages of the communities, and the benefits derived from the project of incorporation in a single country— particularly in the view of Spain’s membership in the European Union— should make the prospect of breakup extremely unlikely. Those benefits are salient enough to ensure mainstream, democratic support for Spanish affiliation in the more independent of the communities, as opinion polls continue to show.”⁵⁷ Importantly, Pettit demonstrates that the Spanish political system provides Catalonians certain economic and political benefits that they would not receive if they left Spain, and argues that those benefits would eventually cause many Catalonians to reconsider secession. If one accepts this argument, Zapatero’s decision to provide greater autonomy for Catalonia seems to clearly increase the intensity of non-domination for those in Catalonia without risking balkanization.

Two Key Questions

While Pettit’s republican prescriptions for Spain’s relationship with Catalonia seemed to have success in the early 2000s, they nonetheless struck me as optimistic and worthy of further consideration. Indeed, the Catalonia case elicits two important objections that are crucial to consider as we continue to think about how the state should wrestle with its competing obligations to various subgroups.

⁵⁷ Marti and Pettit, *Civic Republicanism in Zapatero’s Spain*, 90.

Does Republicanism Require the Assumption Rational Self-Interest?

Firstly, many could object to Pettit's analysis that the pressure exerted by the EU on Catalonia is an effective check on balkanization. Specifically, many could argue that the effectiveness of such forces assumes a populus free from disinformation that prioritizes economic considerations above all others. As Pettit himself recognizes, the effectiveness of the EU's pressure on Catalonia to remain in Spain relies on the assumptions that Catalonians prioritize the economic benefits of EU membership above all others, and that they are capable of recognizing the benefits of EU membership. While ostensibly reasonable, recent trends in politics and psychology cast significant doubt on those assumptions. Theoretically, Cass Sunstein's work on libertarian paternalism demonstrates repeatedly that the manner through which choices are presented and inertia oftentimes determine one's behavior.⁵⁸ Furthermore, Sunstein's research demonstrates that individuals are significantly more likely to base their decisions off of group preferences— indicating that cultural considerations likely also influence political behavior.⁵⁹

Indeed, as seen in Britain's secession from the European Union, citizenries often make choices that are explicitly not in their rational self-interest in economic terms; rather, they are often motivated by cultural or alternative considerations as well as misinformation as to what is in their personal and communal best interests. This could manifest in the cases of post-conflict zones, where hatred of another party forces both sides to subordinate their economic and political best interests out of spite. For example, consider Japan's continued participation in World War II long after their allies surrendered. Certainly, continuing to fight a lost war that consumed

⁵⁸ Richard Thaler and Cass R. Sunstein. 2009. *Nudge: Improving Decisions About Health, Wealth, and Happiness*. New York: Penguin Books.

⁵⁹ *Ibid.*

significant economic and political resources seems like quintessence of irrationality in economic terms. On the contrary, Japan's decision to remain in the war was completely rational when considering the immense value pride and shame had in Japanese culture. Indeed, it took the nuclear bombing of two cities and Russia's commitment to rejoin the war to finally convince Japan to surrender a losing war that was already against their economic self-interest—demonstrating that powerful alternative motivations often drive state behavior.

Similarly, irrational behavior and misinformation manifest in the case of Brexit of the 2016 US Presidential election— where rampant misinformation campaigns likely had a significant impact on the electoral outcomes. Instead of media outlets supporting republican civicism in discourse, the advent of the information economy economizes on division within society. As such, even if the region's membership within a federal or international is in its best interest, it would be incorrect to assume that that factor alone serves as an adequate constraint on balkanization.

While some could contend that, regardless of a populus's capacity for rationality, democratically reached decisions should be respected— and I am one of them— decisions dictated by irrational considerations and misinformation can often pose substantive harms in republican terms for the most vulnerable and are worth further consideration.

Can Republicanism Adequately Consider International Dynamics?

Secondly, many could argue that Pettit's analysis fails to consider how international issues can lead to domination. In the Catalonia case many could argue that the economic and political pressure exerted by the EU, and exploited by Spain, dominates Catalonians.

Specifically, Pettit argues that pressure from Brussels and its leverage of EU membership “ensures the continued unity of Spain as a national and international identity.”⁶⁰ To best see how the EU accession process exerts pressure on Catalonia which could be exploited by Spain, consider the processes a seceded Catalonian state would have to take to join the European Union. According to the EU’s charter, a state that has seceded from an EU member state does not retain its EU membership— meaning that if Catalonia were to secede, its accession to the organization would require unanimous approval by EU countries.⁶¹ In this case, Pettit notes that “[Spain] would certainly be disposed to exercise a veto. And, equally certainly, it would be joined by other nations in doing so,” effectively “banish[ing concerns of Catalonia secession] from previous discussion.”⁶² Therefore, despite the fact that nearly all polls indicate overwhelming support in Catalonia for EU membership, any seceded Catalonian state would be effectively blocked from accession due to the self-interest of Spain and other EU countries.

In addition to the symbolic cost of overruling the democratic wishes of Catalonians, the extreme economic and political costs of being barred from the EU makes secession untenable. Specifically, if Catalonia were to secede without EU membership, those holding Catalonian passports would lose the right to freedom of movement, goods and services could no longer move freely to and from Catalonia, and their use of the Euro would “be suspect, like Kosovo which uses the euro with no legal power to do so; [meaning] there would be no common agricultural policy money for Catalonia.”⁶³ Given the EU is crucial to Catalonia’s economic and

⁶⁰ Marti and Pettit, *Civic Republicanism in Zapatero’s Spain*, 96.

⁶¹ *Ibid.*

⁶² *Ibid.*

⁶³ Ashish Kumar Sen, “EU Membership on the Line: Independence Would Prove Costly for Catalonia,” *Atlantic Council*, October 2, 2017, <https://www.atlanticcouncil.org/blogs/new-atlanticist/eu-membership-on-the-line-independence-would-prove-costly-for-catalonia/>.

political vitality, Spain and the EU's pressure to keep the seceded state out of the organization renders secession infeasible. While it certainly could be argued whether or not this sort of pressure is coercive, Pettit's unequivocal characterization of that force as legitimate in republican terms is puzzling. In fact, many could reasonably argue that the spectre of Spain's veto exemplifies a form of arbitrary control over the newly seceded Catalanian state.

These sorts of problematic dynamics are not unique to Catalonia and appear frequently when international organizations and foreign actors influence domestic political dynamics. Indeed, Pettit's point that member states are generally likely to veto seceded countries accession to international organizations is a general phenomenon, and one that creates insurmountable practical constraints that restrict any region's right to republican self-determination. Certainly, it would be unfair to characterize the economic and political pressure exerted by the EU and other international organizations as categorically dominating—Pettit himself notes that any voluntary association is entitled to have membership requirements and a primary purpose of association is to provide members benefits. However, it is clear that Spain utilizes the EU's pressure in a seemingly dominating fashion to assure against Catalanian self-determination. In response to this objection, it would be most consistent with his republicanism for Pettit to recognize that the threat of a veto seen in the Catalanian case is problematic. However, it is unclear to me whether he would characterize the threat as unequivocally dominating or whether he would view it as an unfortunate practical constraint that occurs in all international relationships that must be accepted and worked around. While the former rationale seems most faithful to republicanism—it seems to render core tenets of republicanism at odds with modern globalism. Regardless of Pettit's

potential response, there are two substantive changes that the EU can implement to reduce its potential for domination of seceded states.

Policy Prescriptions

Firstly, the EU should mandate that the original member state recuse itself from votes on membership applications of its seceded territories and lower the standard for membership accession to 4/5. The reasoning for mandating recusal for the original member state is intuitive—any original member state voting on a seceded territory's membership application clearly has a conflict of interest between their own self-interest and that of the body. Given their ability to effectively veto any accession application, they could railroad otherwise excellent applicants with impunity and force regions to remain in situations where they are dominated. The decrease in the standard for approval stems from the same rationale, albeit it is certainly more controversial. Even without a vote themselves, the original state can still lobby its allies and bargain with other members of the organization to vote against the seceded states application. Moreover, many states have a self-interest to veto any accession application to disincentivize regions within their country from seceding. For these reasons, it seems likely that at least one member state will still consistently oppose a seceded state's application regardless of the actual content of the application. Thus, it is clear that decreasing the standard required to approve a membership application ensures that the accession process is insulated from such dominating veto practices and more likely to be guided by the content of each application. While I settled on 4/5, the specific threshold reduction can be reasonably debated: the organization must balance the benefits a lower threshold has in alleviating this specific dominating relationship present during secession with the benefits a higher threshold has in preventing EU over-enlargement.

Secondly, the EU should provisionally provide the same benefits afforded to members to the seceded state while their application is being evaluated. It is important to note that these amendments to the voting protocol surrounding EU membership will likely lengthen an already gradual accession process, which still leaves seceded states susceptible to domination in the interim. While the first reforms surrounding the voting procedure ensure that states will get a fairer evaluation process, the economic and political impact of being outside the EU during that transition still works as a powerful incentive against secession. Indeed, imagine if a state had completely legitimate claims for secession and under this reformed system has a strong chance of accession to the EU. However, as is to be expected with nascent states, their economic and political institutions initially struggle without the benefits of EU membership. Additionally, while being unable to veto their membership application, the original member state can seek to elongate the process as much as possible, forcing the seceded state to endure financial and political hardship in their pursuit of republican self-determination. Therefore, the EU should provide the seceded state the benefits of membership to ensure that the transition process is not exploited by member states to disincentivize secession.

While helpful, the point of this objection is not to illustrate a unique difficulty republicanism faces in the Catalanian case and offer specific policy prescriptions— rather, it seeks to demonstrate that international issues require more prominence in republican analyses. In an increasingly globalized world— relationships with international actors and organizations are crucial determinants of a state's viability. As such, they cannot simply be ignored, and must be considered when conducting traditional republican analyses. Importantly, this reality complicates the already difficult work republican states do to reconcile their competing obligations. In

addition to all the domestic obligations outlined in this chapter, the modern state must also both be wary of international actors dominating their populus, but also cognisant that they hold obligations to those organizations. However, as I will discuss at the end of this chapter, it is worth noting that Pettit's prescriptions for Catalonia were successful despite being primarily based on a domestic leveled analysis. Nonetheless, this objection demonstrates that the manner through which international considerations complicate traditional republican analyses merits further analysis.

Pettit's Response

While these objections highlight general obstacles for Pettit's republicanism, it is important to note that they do not significantly undermine his specific prescriptions for the Catalonian case. Before proceeding, it is important to respond to objections citing Catalonia's recent vote to secede as evidence that Pettit's analysis is problematic. To be sure, as I demonstrate above, the optimism of his initial analysis would certainly be tempered by further incorporating international dynamics and reconsidering the assumption that economic concerns are the primary determinants of political behavior. While I have outlined steps the EU could take to minimize its domination over Catalonia, it is unlikely that this specific situation would have been avoided had they been implemented.

Instead, Catalonia's vote to secede was likely in response to the Spanish government's attempts to increase centralization at the expense of Catalonian domination— which Pettit forewarns in his initial analysis. Almost prophetically, Pettit explicitly warns that “the only danger is that the fear of balkanization, and the associated distrust of communities, may nurture an aggressive centralism... [such a] confrontational path could prove to be the high road to the

very balkanization it is supposed to avoid.”⁶⁴ Upon analyzing the years preceding the 2017 independence vote, it is clear that Spanish politicians should have heeded Pettit’s warning. Specifically, Catalonia’s independence referendum began in response to the Constitutional Court of Spain’s 2010 decision to rule that Zapatero’s 2006 Statute of Autonomy, which provided Catalonia greater self-determination, was unconstitutional.⁶⁵ While recognizing room for growth in Pettit’s approach, I am inclined to believe that Pettit’s analysis was sound given it explicitly forewarned that the government’s decision to revoke regional autonomy would lead to balkanization. Therefore, we will have to look elsewhere to further explore the ramifications international dynamics present for republicanism.

⁶⁴ Marti and Pettit, *Civic Republicanism in Zapatero’s Spain*, 90.

⁶⁵ Josep Maria Reniu, *Sistema Político Español*, 2nd ed. (Barcelona, Spain: Huygens Editorial, 2018).

Chapter III: Applying Lessons from Zapatero's Spain to Kosovo

While Pettit's framework ultimately proves useful in navigating the Catalonian case, it remains unclear whether a republican state can successfully navigate its competing obligations in cases with extensive international involvement and irrational actors. Therefore, this chapter aims to further examine this ambiguity within Pettit's republicanism by applying it to the case of Kosovo. As I will outline below, I selected Kosovo as an alternative case study because it contains important similarities to the Spanish case which render the comparison appropriate, while containing unique differences that bring Republicanism's viability in international cases to the forefront of the analysis. After establishing Kosovo's relevance to Pettit's Catalonian analysis, this chapter evaluates whether the lessons from Pettit's analysis of Catalonia are in fact generalizable to a broad array of international situations. Indeed, this chapter examines whether Pettit's conclusions in the Catalonian case are the exception, or the standard, for how republican states should navigate competing claims of non domination in international cases.

Demonstrating a Basis for Comparison: The Kosovar Context

Before turning to more complex analyses, it is crucial to demonstrate to the reader that Kosovo's dynamics are both relevant and applicable comparisons to Pettit's analysis of Catalonia. Without establishing the substantial relevance and applicability between the Spain and Kosovo cases, many could contend that my later analysis is inappropriate. In turn, this chapter begins by outlining the similarities between Kosovo and Spain in order to develop a strong basis for engaging Pettit's theory.

For republican purposes, the primary division in Kosovo's society is between Kosovo's Albanian and Serb populations. To best understand the tensions between the groups, it is

important to provide some historical context. Unlike in the Spanish case where Castellians have consistently dominated the Spanish federal structure, rule of Kosovo has been consistently contested by Kosovo's Albanian and Serb population. This dynamic has led to heightened tension and animosity between the sides, with the group in power oftentimes persecuting the minority group. However, Josip Broz Tito's formation of a Yugoslav national identity in the mid-20th century largely kept these competing groups in check.⁶⁶ Interestingly, unlike Franco's framing of Spanish culture primarily around Castilian customs, Tito's vision from Yugoslavia was pan-slavic which, for a short time, kept peace between the two groups.

Tito's Death and the War in Kosovo (1980-2000)

Nonetheless, the stability provided by Tito's governance was unsustainable. Indeed, Tito's death in 1980 brought with it the death of the pan-Yugoslav vision that held Kosovo's various ethnic groups together. To make matters worse, in the years following Tito's death the Serbian government attempted to further establish itself supreme over the other states in the former Yugoslavia, which further exacerbated ethnic tensions in Kosovo. Unlike the other states that seceded after Yugoslavia's dissolution, Kosovo remained a province in Serbia through the 1990s. Importantly, Kosovo was predominantly populated with ethnic Albanian Muslims, which differed starkly from the rest of Serbia which was Christian Orthodox and Serb. Unfortunately, these differences heightened tensions between the sides raised the stakes of the political dispute. More than a simple territorial dispute, the question of Kosovo neatly packaged all the long-standing resentment and animosity of both groups into a single political crisis. Therefore, when Kosovo rebelled due to claims that they were being dominated by the Serbian federal

⁶⁶ Miranda Vickers, *Between Serb and Albanian: A History of Kosovo* (New York: Columbia University Press, 1998).

government, the Serbian federal government responded in-kind, arguing that their historical occupation of the territory and its importance in Serbian Orthodox Christianity justified its control over the region.⁶⁷

These competing claims of domination led to the outbreak of the War in Kosovo in 1999. The belligerents in the conflict were the Serb-backed Serbian government and Albanian-backed Kosovo Liberation Army. The war was one of the most violent towards civilians in modern history, and resulted in over 12,500 fatalities for both sides, over 10,000 missing Kosovar Albanians, and the displacement of over 90% of the Albanian population in Kosovo.⁶⁸ While Kosovar Albanians certainly suffered greater casualties during the conflict, it is important to note that both sides committed reprehensible acts during the war. Moreover, the International Criminal Tribunal of the Former Yugoslavia has convicted both Serbian and Kosovar military leaders for ethnic cleansing, wartime sexual violence, and the wanton desecration of heritage sites. These atrocities were likely to continue unabated until NATO initiated a bombing of Serbia to end the war, making both sides skeptical about the other's commitment to honoring the ensuing peace. Indeed, Kosovar Serbs have continued to be victims of organized violence by the Albanian-majority state after the War's formal conclusion in June 1999. For example, in the 2004 unrest dubbed by Serbs as "the March Pogrom," hundreds of Serbs in Northern Mitrovica were injured and at least 14 were killed in response to fake news articles reporting that a Serb gang drowned a Muslim Albanian in a local river.⁶⁹ Therefore, although it may be tempting to

⁶⁷ Ibid.

⁶⁸ Crisis Group ECA Analyst, "Snap Makes a Bet on the Cultural Supremacy of the Camera," International Crisis Group, November 2, 1999, <https://www.crisisgroup.org/europe-central-asia/balkans/kosovo/whos-killing-whom-kosovo>.

⁶⁹ Andrew Hescher, *Violence Taking Place: The Architecture of the Kosovo Conflict* (Stanford University Press, 2010).

categorically tilt the legal system to the advantage of one group, Kosovo's violent history has manifested in deep distrust between its Serbs and Albanian communities.

Kosovo Independence and Steps Towards Normalization: (2000-Present)

Despite these challenges, the decade since the war's conclusion has been marked with notable progress. While Serbia has not formally recognized Kosovo's independence, the negotiation of the 2013 Brussels Agreement laid the foundations for integrating Serb majority regions into the Kosovar Federal Authority.⁷⁰ Specifically, in exchange for assurances that the District Court in Northern Kosovo is predominantly administered by Serbs, Serbia agreed to permit the Kosovo police force to operate in Serb populated areas. Moreover, the Agreement finally resolved the long-standing disputes surrounding Kosovo's right to an independent ITU country code (it previously had to rely on the codes of Monaco, Macedonia, and Serbia). Moreover, ethnic violence has been steadily decreasing since the 2004 incident. However, despite Kosovo's remarkable democratic progress, the conflict's effects persist subtly today. Indeed, most Kosovar Serbs and Kosovar Albanians live in geographically isolated communities, and many of Kosovo's institutions remain segregated along ethnic lines. Therefore, the remainder of this chapter aims to apply Pettit's lessons from the Catalanian case to derive guidance for the case of Kosovo.

As the above section notes, there are numerous important similarities between the Kosovo and Spanish cases. While certainly differing in size, the political dynamics in Kosovo share certain important similarities with the Catalanian case. Like Spain, Kosovo is a fledgling parliamentary democracy governed by a mixed constitution. Furthermore, as in Spain, tensions

⁷⁰Michael Rossi, "Brussels Agreement Remains Kosovo's and Serbia's Best Hope," *Balkan Insight*, April 19, 2018, <https://balkaninsight.com/2018/04/19/brussels-agreement-remains-kosovo-s-and-serbia-s-best-hope-04-16-2018/>.

between competing ethnic, linguistic, and religious sub identities are responsible for a majority of Kosovo's current political strife. Similarly to the EU's role in the Catalanian case, international organizations and actors play a crucial role in Kosovo's politics. From the NATO-led bombing of Serbia to end the war, international engagement has been crucial to Kosovo's viability since its inception. Indeed, Kosovo relies on international organizations in administering the rule of law, and the EU's threats of blocking either side's accession to the organization is an important incentive for reconciliation. Therefore, applying Pettit's analysis of Catalonia to this dynamic provides us another opportunity to wrestle with republicanism's struggles in international cases.

Complicating Pettit's Catalanian Analysis

The remainder of this chapter applies Pettit's framework to analyze the reliability of the rule of law in Kosovo. I decided to focus on the reliability of the rule of law due to its role in cultivating civility, which is the scarcest republican resource in post-conflict nations like Kosovo. It is important to recall the importance civility has in republicanism, particularly for cases like Kosovo. As outlined at the end of Chapter I, norms cultivating civic engagement and trust in the society's institutions are crucial in a republican state's pursuit of equally intense freedom as non-domination. Moreover, as a prerequisite for passing the republican eye test, civility ensures that adequate standards of respect in public debate exist to girdle democratic deliberation. Practically, civility provides the necessary stability to ensure democratic continuity in the face of disagreement. It is helpful to recall Pettit's discussion of contestation in the case of the Catholic Church in Chapter II, where Pettit argues that parties are more likely to accept a policy decision they disagree with if "the judgement is made according to their ideas about

proper procedures and that it is dictated, ultimately, by an interest that they share with others.”⁷¹

In post-conflict countries like Kosovo where deep distrust exists between groups and towards public institutions, strengthening the reliability of the rule of law will create the civility needed to ensure the democratic continuity seen in the Catholic Church case. Without civility and public trust in institutions, disagreements on policy questions are more likely to be perceived as acts of domination by disaffected groups, creating a feedback loop of distrust and violent conflict. For these reasons, I think it is most pressing to focus on the reliability of the rule of law in Kosovo given its impact in replenishing the civility required for republican self-government.

The case studies at the heart of my analysis will be the general corruption in Kosovo and the dysfunction present in Northern Kosovo’s court system. I selected these specific cases because Pettit addresses analogues at length in his analysis of Zapatero’s Spain, enabling me to pull from that baseline as I conduct my analysis. Moreover, the structure of this analysis follows the progression of Chapter II, beginning with a more straight-forward case before turning to a case where the state must wrestle with competing obligations to numerous groups. In addition to structural consistency, the rationale for starting with a baseline case to establish republicanism’s viability in Kosovo strengthens our ability to conduct the latter, more complex, case of the rule of the law in Northern Kosovo. Therefore, like Chapter II’s case studies, these cases will begin with a brief situational overview and identify the dominating relationships before turning to policy prescriptions.

⁷¹ Pettit, *Republicanism: a Theory of Freedom and Government*, 200.

Case Study #4: Corruption in Kosovo

The first case we will consider is the dominating impact corruption in Kosovo has on its population. Similarly to the Spanish case, Kosovo's government is riddled with corruption. According to a 2013 Report on the Rule of Law in Kosovo, "allegations of corrupt behaviour in the judiciary continue. The limited independence and impartiality of the judiciary in practice is a serious impediment to strengthening the rule of law... The Councils and other Kosovo institutions need to address the reluctance of Kosovo prosecutors and judges to prosecute and try politically sensitive or high-profile cases against influential defendants."⁷² Indeed, it is commonplace for Kosovars to bribe judges and public officials for preferential treatment in judicial proceedings. Specifically, Transparency International's Corruption perception index ranks Kosovo 101 out of 180 countries.⁷³ Indeed, and perhaps more perniciously, this statistic demonstrates that the public perceives the judiciary and political system as extremely corrupt institutions, resulting in very low public confidence in its democratic institutions.

Understanding the Dominating Relationships

The extent of corruption in Kosovo poses significant harms to freedom as non-domination in two specific ways. Firstly, the existence of corruption permits powerful groups to dominate others with impunity given the legal system is unreliable. Secondly, the high perceptions of corruption in the government and judiciary decrease public trust in government institutions, violating the republican principle of responsiveness. The dangers of both of these consequences are readily apparent. As seen in the 2014 report on the status of the rule of law in

⁷² Dick Marty, Report to the Council of Europe Committee on Legal Affairs and Human Rights: "Inhuman treatment of people and illicit trafficking in human organs in Kosovo," (Switzerland: 2011), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12608&lang=en>.

⁷³ Transparency International, Corruption Perception Index 2019, <https://www.transparency.org/country/KOS>.

Kosovo, those who currently hold political power or did previously during the war are significantly less likely to be held accountable for their crimes.⁷⁴ This lack of judicial accountability prevents disadvantaged groups from seeking recourse through the legal system, effectively enabling powerful groups to continue dominating others with impunity. Similarly, widespread corruption demonstrates a failure to uphold the republican principle of responsiveness, which results in the erosion of public trust and civility. Instead of being responsive to the interest of the people, the crafting of policy based on the interests of the powerful further enables the domination of the disadvantaged.

Pettit's Guidance and Policy Prescriptions

Fortunately, since corruption was also prevalent in Zapatero's Spain, Pettit's analysis provides helpful guidance. Borrowing from the Zapatero administration's response to corruption, the Kosovar government could pass legislation similar to the Law of Prevention of Fiscal Fraud which mandated transparency in land transactions in order to ensure public accountability in property transactions.⁷⁵ Similarly, the Kosovar government could create a special intelligence taskforce dedicated to curbing organized crime, based upon Zapatero's creation of the Center for Intelligence against Organized Crime. Finally, according to a European Commission Report, much of Kosovo's corruption is concentrated in regional hotbeds and specific municipalities. In turn, if the aforementioned general strategies fail to curb corruption due to lack of regional or local cooperation, Zapatero's Spain provides further guidance to strengthen government transparency and accountability. Namely, the Kosovar government could dissolve or sanction

⁷⁴ Report by the Directorate-General for EU Enlargement: "Kosovo under UNSCR 1244/99 2009 progress report," Publications Office of the EU, June 2014
<https://op.europa.eu/en/publication-detail/-/publication/acf700b7-0c73-40e0-9808-cd2cb1952fe5/language-en/forma-t-PDF/source-114550319>.

⁷⁵ Marti and Pettit, Civic Republicanism in Zapatero's Spain, 82.

particular townships convicted of malfeasance like the Zapatero administration did to Marbella after “the mayor and three town counselors were imprisoned on charges of corruption and profiteering.”⁷⁶ Together, these policies would likely be helpful in decreasing corruption and reestablishing public trust in its institutions. Therefore, the initial application of Pettit’s republicanism to the case of corruption in Kosovo seems successful.

Key Takeaways

Having established that Pettit’s republicanism provides useful guidance in Kosovo, I will now delve into the more complicated case of the judicial system in Northern Kosovo. After attempting a simple analysis, it becomes clear that the case of the courts in Northern Kosovo is more complex given it requires the state to reconcile its competing obligations to various groups— many of which are international. Following Pettit’s methodology of Spain’s relationship to Catalonia, I will identify the various groups’ claims of domination before attempting to apply lessons from Pettit’s earlier analysis. Ultimately, however, Pettit’s analysis of Catalonia provides insufficient guidance in this case, which merits further reflection.

Case Study #5: Rule of Law in Northern Kosovo

Similarly to those that could critique Pettit’s initial analysis of Spain as being too simplistic, many could argue that the case of corruption is insulated from the central conflict between Kosovar Serbs and Kosovar Albanians. In response to this criticism, consider an alternative case surrounding the rule of law that brings that tension to the forefront of the analysis: the court system in Northern Kosovo. Importantly, this case is another analogue to the Spanish case, enabling us to directly draw from Pettit’s analysis.

⁷⁶ Ibid.

Like in Spain, Kosovo's rule of law suffers from a shortage of judges and other legal personnel. Specifically, a report by the European Commission declares that "the number of judges [in Kosovo] is currently insufficient... efforts are needed to finalise the selection process for judges and prosecutors by filling in the remaining vacant positions."⁷⁷ This shortage has resulted in similar problems seen in Zapatero's Spain such as significant congestion and delays for court proceedings. Following the Spanish model, the Kosovar government could increase investment in the judicial system and create a special judicial office aimed at "streamlining and fast tracking the operation of the courts."⁷⁸ Theoretically, this would mark an important first-step in strengthening the Kosovar judiciary. Yet, Pettit's domestic analysis overlooks other crucial dynamics which cause inefficiencies in Kosovo's legal system.

Similarly to the Catalanian case, the dysfunction of the court system in Northern Kosovo is characterized by a variety of interests, many of which are international. According to a 2013 European Commission's report on the Rule of Law in Kosovo, the judicial system in Northern Kosovo relies on a complex assortment of domestic and international actors. Specifically, the report notes that the District Court, the predominant authority in Northern Kosovo, is staffed by international judges and prosecutors from the European Union Rule of Law Mission in Kosovo (EULEX) and is the sole law enforcement mechanism for criminal offenses in the region. However, the report also notes that parallel Serb municipal courts primarily handle all the civil cases in the region. Importantly, though, the report notes that "the Serb community in the north does not accept local judges in the Court[s]," indicating that the Courts sanctioned by the

⁷⁷ Commission Communication on a Feasibility Study for a Stabilisation and Association Agreement between the European Union and Kosovo* 2012, p 9.

⁷⁸ Marti and Pettit, Civic Republicanism in Zapatero's Spain, 76-77.

Kosovar national authority in the north exist but have little functioning value.⁷⁹ Therefore, unlike the case of corruption, this case requires that we lay out the competing claims of domination the various parties have for contesting the judicial institutions in Northern Kosovo before turning to policy prescriptions.

Understanding the Competing Claims of Non-Domination

This report reveals numerous layers of legal authority with competing republican claims to jurisdiction in Kosovo's justice system in Northern Mitrovica. To reiterate, parallel Serbian courts, the International EULEX Court, and the Kosovar judiciary all have courts in the region. At a basic level, the existence of three distinct judicial entities with the same purview, but different republican mandates, poses problems for republicanism's reliable rule of law constraint. As courts with courts are bound to contradict upon certain issues, the lack of coordination between the systems will lead to inconsistencies. Despite these difficulties, each system can be justified as both dominating for some, and liberating for others, in republican terms. Therefore, it is crucial to outline the competing claims of domination at the root of each system.

The Regional Approach: Serb Parallel Courts

Firstly, proponents of the parallel Serbian court system could argue that it is required because the alternative judicial systems dominate Serbs. As seen in the previous case study, it is documented that Kosovar political institutions, particularly the judiciary, are able to be exploited to target the disadvantaged. Moreover, according to UNDP official Atdhe Hetemia, polling consistently reveals that an overwhelming number of Serbs feel unsafe in public, with some polls

⁷⁹ Report by the Directorate-General for EU Enlargement: "Kosovo under UNSCR 1244/99 2009 progress report," Publications Office of the EU, June 2014
<https://op.europa.eu/en/publication-detail/-/publication/acf700b7-0c73-40e0-9808-cd2cb1952fe5/language-en/forma-t-PDF/source-114550319>.

finding that figure to be above 90 percent.⁸⁰ Moreover, even if Kosovo's federal system administered law impartially, many Kosovar Serbs could nonetheless argue that the system is arbitrary and dominating. It is worth recalling the final iteration case of Bob, the waiter, from Chapter I. To briefly summarize, despite not being actively interfered with or threatened at his current job, Bob is nonetheless dominated due to his experience at a previous restaurant. Similarly to the case of Bob, the NATO bombing of campaign and persecution of Serbs after the war could reasonably lead many Serbs to distrust and perceive any alternative court system as dominating and justifying for a Serb parallel court.

Conversely, many could object to the Serbian parallel court because it has no legal authority from the Kosovar federal government, making its judicial authority over non-Serbs arbitrary. Indeed, critics could argue that its existence can be exploited to dominate Kosovar Albanians. For example, imagine if a Kosovar Albanian from Pristina, the capital, were to be charged with a crime in Northern Mitrovica, the largest Serb city in Kosovo. Like the claims that Albanian-dominated courts would yield impartial justice for Serbs, Kosovar Albanians could reasonably argue the converse. Moreover, even if these Serb courts ruled impartially, opponents could argue that because this system is legitimated by their government and is inconsistent with the rest of the polity it is arbitrary. While Serbs in the North may approve of the Serb parallel court system, those living elsewhere did not consent to its judicial authority— making any authority it has over them arbitrary.

⁸⁰N1 RS. "UNDP Report Highlights Biggest Problems in Kosovo." N1 Srbija. N1 RS, July 3, 2018. <http://rs.n1info.com/English/NEWS/a401086/UNDP-report-highlights-biggest-problems-in-Kosovo.html>.

The Domestic Approach: Kosovo's Federal Court System

The dynamics at play in the case of the Kosovar federal court system are largely flipped around. Importantly, proponents of the Kosovar courts supremacy in Northern Kosovo cite constitutional legitimacy and the reliability that comes with a uniform legal system. On the other hand, local Serbs refusal to utilize them renders them practically worthless, but also illuminates their illegitimacy in republican terms. Indeed, the refusal of Serbs to participate in a judicial system illustrates that they distrust Kosovar courts' ability to be impartial and apolitical—a crucial component of rule of law in a republican society.

The International Approach: EULEX Court System

The final legal system in Northern Kosovo is the EULEX district court. Supporters argue that the reliance of both the Serb community and the Kosovar government on the EULEX District Court demonstrate that it is the least dominating option. Indeed, the willingness of both sides to accept the rulings of the court demonstrates its reliability and legitimacy. Nonetheless, Kosovar Serbs and Kosovar Albanians alike could claim that the EULEX court's authority is dominating given the international organization is democratically illegitimate. Moreover, republicanism is clear that courts should be composed by a nation's citizens from a variety of diverse perspectives. Indeed, if a nation itself cannot establish a rule of law—it can hardly be considered republican. Therefore, despite its merits, the EULEX court cannot be considered more than a temporary solution.

To recapitulate: the general ills of this dysfunctional system are two-fold. Firstly, the operation of three different legal entities with differing claims for republican legitimacy creates

inconsistencies within the legal system. Secondly, each system has the potential to be exploited to dominate another group.

Applying Pettit's Analysis from the Catalan Case

Fortunately, one could turn to Pettit's prescriptions for the Catalan for assistance in navigating these various dynamics present in Northern Kosovo's judicial system. Applying the lessons of the Catalan case, one could deduce that the dysfunction in Northern Kosovo's rule of law is rooted in competing visions of the state's common interest. Indeed, the conflict in this case largely stems from Kosovar Serbs and Kosovar Albanians having competing conceptions about which judicial system best increases their intensity of non-domination. Following Pettit's logic in these cases, one could conclude that Kosovo should first recognize the northern Serb communities' claim to contest federal policies through conscientious procedural objection and afford them special privileges to increase their non-domination. If that fails to allay claims of domination from northern Serb communities, the Kosovar federal government should then consider how secession in the North would impact other portions of the country. If Pettit's logic holds true, those two policies should work to strengthen the non-domination for Serbs in Northern Kosovo.

And Its Discontents . . .

However, a brief reconsideration of Kosovo's political and historical context immediately casts doubt on the effectiveness of Pettit's prescriptions. Crucially, the Kosovar government has repeatedly attempted to implement some of Pettit's solutions, and has made significant efforts to provide the Serb minority special privileges on the basis of conscientious procedural objection. As is revealed in the Catalan case, the presence of members of one's own subnational identity

group within political institutions should cultivate civility and trust between those minority groups and public institutions. Therefore, special provisions within Kosovo's constitution such as the requirement that 10% of its legislative seats are reserved for Serbs should increase the intensity of non-dominations experienced in Serb communities.⁸¹ Indeed, if Pettit's Catalanian analysis were to hold, these sorts of provisions should result in a more reliable rule of law in Kosovo. Why, then, has the opposite manifested in Kosovo?

In fact, these efforts to accommodate Serb communities have failed to substantially improve the intensity of non-domination for Serbs. Despite having reserved representation in Kosovo's political institutions, Kosovo's Serb communities have repeatedly refused to claim these seats. As seen in the 2013 report on the rule of law in Kosovo, majority-Serb regions are replete with judicial vacancies, oftentimes for seats that are reserved for ethnic Serbs. This dynamic casts doubt on the effectiveness providing special privileges on the basis of conscientious procedural objection.

The alternative approach outlined in Pettit's analysis of Catalonia is for Kosovo to consider the secession of Northern Kosovo. However, this is undesirable given it would certainly ignite large-scale conflict. Indeed, recent calls by the Serbian government for the partition of Northern Kosovo has been met with staunch opposition by Kosovo, the EU, and the United States, meaning that any secession would almost certainly lead to regional conflict. Even without the spectre of conflict, succession also faces practical challenges that render it infeasible. As all the highly populated Serb regions of Northern Kosovo are nested in pockets surrounded by majority Albanian areas, all potential partitions would have to contain substantial portions of

⁸¹ Dick Marty, Report to the Council of Europe Committee on Legal Affairs and Human Rights: "Inhuman treatment of people and illicit trafficking in human organs in Kosovo," (Switzerland: 2011), <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=12608&lang=en>.

Kosovar Albanian territory. Moreover, any land bridge connecting Serbia with Northern Mitrovica would certainly be rejected by the Kosovar government given it would compromise their security apparatus. Therefore, Pettit's primary suggestions from Catalonian fail to provide guidance in this case.

Having deeming special recognition ineffective and secession unfeasible, this case of Kosovo's courts in Northern Mitrovica presents an important challenge for Pettit's republicanism: how should a state proceed if both secession and the special privileges afforded on the basis of conscientious procedural objection fail to increase non-domination for certain groups in society.

In that vein, it is important to consider why Pettit's prescriptions seem to fail in the case of Kosovo. Importantly, I argue that it is because this case is characterized by the two tensions examined in the Catalonian case: the assumption of rational economic self-interest and the role of international actors in domestic republican analyses. Firstly, some could argue that Kosovo's violent history and its recency complicate traditional considerations. Instead of making choices in their self-interests, the distrust and resentment between ethnic Serbs and Albanians is an alternative determinant of decision making not accounted for in rational economic self-interest. Moreover, the operation of these spite-based politics also make it difficult to cultivate the republican norms and mores for self-governance. While I think there is some truth to view, and Pettit himself acknowledges that the development of civility is gradual, Kosovo's violent history alone should not render Pettit's approach ineffective. Indeed, despite Spain's autonomous communities being marginalized by the federal government for centuries, they were nonetheless able to be brought into the fold in Zapatero's Spain through abiding by republican principles.

Thus, in addition to this complication, republicanism's difficulties in analyzing the Kosovo case also seem to stem from its failure to consider international dynamics. Indeed, this hypothesis argues that while the cooperation of various extranational stakeholders are required to establish the rule of law in Kosovo, their involvement also brings negative consequences for the polity. For example, the Serbian authority has often undermined the attempts of the Kosovar government to establish rule of law in Serb majority areas. Moreover, despite the best of intentions, international involvement by the EULEX could evolve to become a parasitic crutch used by both sides to avoid creating a reliable Kosovar legal system. Indeed, the pressures exerted by these international actors likely undermine the ability for special recognition to develop public trust and republican mores in Serbian communities.

Indeed, as demonstrated in the Catalonia case, international dynamics are often crucial in identifying dominating relationships at the domestic level. In fact, there are certain important differences between the Kosovo and Spanish cases that increase the importance of international forces. Specifically, the semi-autonomous regions in Kosovo are not isolated entities like in the case of Spain. Rather, they are bolstered and operating as arms of the Serbian government. Consider the corollary argument in the Spanish case— except instead of the Basque country seeking to become independent, it sought to join the French Basque country and form a supra-basque state. As a result, the french Basque state would supply the Basque resistance movement and interfere with Spanish attempts to establish republican infrastructure of non-domination and cultivate a civic culture. In this instance, it would be irresponsible to craft policy solutions without considering the international dynamics influencing Spain's relationship

with the Basque country. Similarly, the dominating relationships present in Kosovo cannot be fully understood through a domestic-styled republican analysis.

Rehabilitating Pettit's Analysis: Adapting Republicanism to International Issues

Indeed, solutions to the case of Kosovo are both international and domestic. Moreover, until republican mores have had sufficient time to flourish in Kosovo, the various stakeholders must cooperate to ensure that republican principles can be abided by until that moment. Thus, Pettit's framework must be rehabilitated to ensure it can harness the competing obligations of the various stakeholders present to create a solution.

Clarifying the State's Republican Obligations

Before considering what specific steps these competing stakeholders could take in strengthening Kosovar democratization, it's important to clearly delineate the different bases that the domestic and international actors have in contesting the federal government's policy choices. Thus, the following subsections will demonstrate the republican obligations parties have at the domestic and international level and identify their analogue in the case of Kosovo.

Domestic Claims to Contestation

In this reconceptualized framework, the first groups that can contest private or public domination are domestic organizations. As demonstrated in Chapter II, both private and public groups can make legitimate republican claims against domination at the domestic level. It is helpful to recall the Catholic Church, ETA, and Catalonia cases that were discussed in Chapter II, as they provide a blueprint for how a state should handle cases where it must balance competing claims of domination made by domestic groups. To summarize, in these cases, the state evaluates claims based upon their republican basis, and determines policy responses based

upon their potential impact upon society's intensity of non-domination. To provide an example in the case of Kosovo: the two groups that draw their bases for contestation from this subsection are its ethnic Albanian and Serb populations.

International Claims to Contestation

In addition to domestic considerations, international actors also play a crucial role in Kosovo's democratization and require further analysis. While Pettit's framework largely refrains from providing specific guidance for how republican states should handle international cases, we can nonetheless derive guidelines for international engagement from republicanism's core principles. Indeed, many of republicanism's expectations for citizens at the domestic level translate well for states in the international arena. In turn, this subsection distinguishes the different republican bases international organizations have in intervening in another state's domestic politics.

International Organizations

The first types of international actors present in the case of Kosovo are international organizations. Pettit outlines that international organizations' primary republican obligations are to support the democratization of illiberal regimes and ensure that freedom as non-domination exists between states.⁸² However, the manner through which international organizations pursue these goals is largely unclear. As has been demonstrated in both Spain and Kosovo, the interference of international institutions in local issues has the potential to both liberate or dominate a country's citizens. Therefore, it is important to clarify when an international

⁸² Phillip Pettit, "Legitimate International Institutions: a Neo-Republican Perspective," *The Philosophy of International Law*, (2010): 139-162.

organization has a republican basis for interfering with a state's domestic affairs in pursuit of its republican obligations.

Importantly, as Chapter II's analysis of Catalonia demonstrates, it is acceptable for international organizations to apply economic and political pressure on member states in certain circumstances. Borrowing from Pettit's domestic analysis, interference by an international organization is "legitimate to the extent that it is subjected to the effective, equally shared control of its members."⁸³ This type of institutional legitimacy is seen in the capital control mechanisms present in Eurozone countries. In exchange for receiving the benefits of being in the Eurozone, individual countries forfeit certain fiscal policy decisions to the EU. While any state within the question sacrifices certain fiscal authorities to the EU, the EU's interference is non-arbitrary because the state grants this authority to the body as a condition for its membership. Similarly to how the government is permitted to imprison murderers to protect its citizens, international organizations can justify certain invasive policies in republican terms if it is approved of by the relevant populus.

Importantly, though, instances international organizations can intervene are strictly defined and constantly reviewed. While international organizations can exert pressure over their member states, states have the right to contest their behavior within the structures of the institution, and reserve the right to leave the union if they determine that the relationship is inequitable. Thus, despite having a legitimate republican basis for involvement in member states, international organization's claims for intervention are still ultimately secondary to the considerations of national governments.

⁸³ Pettit, "Legitimate International Institutions: a Neo-Republican Perspective," 151.

Foreign States

The final category of international actors present in the Kosovo case are foreign governments. Theoretically speaking, foreign governments are generally more constrained than international institutions given they have no republican authority over other states. Even if a foreign government were to enter a domestic situation at the behest of the local population—there is no mechanism to ensure that the foreign government does not overstay their mandate with impunity. As demonstrated by United States foreign policy in the Middle East, third-party interventions, even if initially successful, often have long-term destabilizing effects. Indeed, as foreign governments are not accountable to the relevant populus, their interference is driven by their domestic political considerations— oftentimes leading to the domination of relevant populations.

Foreign States with Legitimate Republican Claims

However, it is important to make a clear distinction between a foreign state that is a third-party actor, and a foreign state that has a legitimate republican link to a state. This distinction is most clearly seen in the competing claims that the US and Serbia could make for engagement in Kosovo. Despite the debatable benefits US intervention would provide Kosovo, the US has little republican justification for involving itself in another sovereign nation's affairs in republican terms. Conversely, the Serbian government can reasonably cite the domination of Serbian citizens in Kosovo as the basis for contesting Kosovar governmental policy. Moreover, Serbia could make the claim that the broader Serb ethnic community in Kosovo further justify Serbian involvement. While Serbia's legitimate republican interest certainly supersedes one that

is leveraged by a third-party, they both ultimately must respect the ultimate authority of the Kosovar state.

Importantly, for foreign states and international organizations, the means and forum for contesting a government's policy choices are unclear. Although Pettit himself does not clearly delineate the processes, I think there are a few assumptions one could draw from his domestic framework and discussion of international obligations. Specifically, there should be a higher bar for intervention and deference toward domestic governments as they ought to be best positioned to listen to the claims of the people and change should ideally be generated within the state. When states and international organizations determine that international action is necessary, the action should be approved by its domestic populace in the form of a UN verified referendum, and an impartial UN commission should evaluate the validity of the state's republican basis for the intervention after the fact to prevent wanton escalations.

Concrete Policy Recommendations for All Parties

As demonstrated in the previous section, a coordinated effort between these various actors is required to strengthen the rule of law in Northern Kosovo. Here are a few steps the various stakeholders could take in order to strengthen the intensity of non-domination for Kosovo's citizens.

The Kosovar Federal Government

While the Kosovar federal government has the greatest basis for interfering with the citizens of Kosovo, it nonetheless has the obligation to reduce the court system's domination of Kosovar Serbs. In turn, despite the positive steps taken to provide special privileges for ethnic Serbs, the government should make government and legal documents available in Serbian. The

accessibility of government documents in Serbian would increase the trust Serb communities have in public institutions and increase their access to comprehensible legal documents, work, consumer rights, health protection, education and social services— all important resources required to resist public and private domination.

While linguistic accessibility is an important step towards fostering trust between the sides, further action by the Kosovar government is needed to reassure Serbs that they will be treated equitably in Kosovo's judicial system. Indeed, an important first step would be for Kosovar Serbs to allow the security of Serb dominated areas to be administered by both groups and strengthen Serbs's trust in Kosovo's legal system.

The Serbian Federal Government

As seen in the competing claims of domination subsection, many Kosovar Albanians reasonably argue that the existence of parallel Serb courts impede Kosovo's democratization and dominate non-Serbs. While it is understandable that Serbia desires equitable legal protection for Serbs and is entitled to advocate for them, creating a parallel court system undermines the domestic legitimacy of Kosovo's federal court system and creates inconsistencies in the legal system that harms all Kosovars. Therefore, the Serbian government needs to refrain from undermining Kosovar rule of law and supporting parallel legal structures in Northern Kosovo.

Instead, Serbia should build upon the 2013 Brussels agreement which reserves judicial seats in Northern Kosovo for Kosovar Serbs, and leverage its influence in majority Serb communities to legitimize Kosovo's legal system. An important first step in this direction would be for the Serbian parliament to formally pass the 2013 Brussels Agreement. Despite its immense political value, the agreement contains no legal authority without being passed by the

Serbian parliament. The status of the agreement enables Serbia to claim to international organizations that they are committed to the reconciliation process, whilst also signalling to Serbs in Kosovo that the document is no more than a formality. Passing the agreement would demonstrate their broader commitment to the reconciliation process and illustrate to Kosovar Serbs that the agreement is a serious step towards more equitable legal treatment.

Secondly, Serbia needs to allow Kosovars living in Serbia to freely vote absentee. As it stands, there are widespread reports that the Serbian government rigs absentee ballots in favor of pro-Serbia parties in Kosovo. These practices undermine the integrity of Kosovo's democratic process, but also exacerbate the disconnect between Kosovo's federal government and its Serb population. Indeed, supplanting the genuine sentiments of Kosovar Serbs living abroad for the political positions of the Serbian government will render Kosovo's government unable to assess the real preferences of Kosovar Serbs and will further polarize the issue and prevent the growth of republican civility. In addition to increasing the intensity of non-domination for Kosovar Albanians, these steps ensure that above efforts taken by the Kosovar government are effective in reducing the domination of ethnic Serbs in Kosovo.

The EU and Other International Organizations

Broadly, international organizations should ensure that both sides follow through with the above policy changes. As the administration of the rule of law in Northern Kosovo dominates both Kosovar Serbs and Kosovar Albanians, international organizations have the obligation to support Kosovo's citizens to be free from domination. In that vein, the EU should pressure Serbia to formally ratify the 2013 Brussels agreement and continue predicating EU accession for either nation on commitment to resolving the dispute. Importantly, this sort of pressure is not

dominating given the EU is entitled to establishing certain membership requirements for accession. As neither side is a member of the organization, they are not entitled to its benefits unless they are willing to meet its membership standards. Moreover, unlike the Catalanian case, the exertion of this pressure will be uniform to both Serbs and Albanians, making it unable to be utilized by one party to dominate the other.

Further, until these aforementioned efforts are effective, the EULEX and other international organizations should continue to operate in Northern Kosovo. Unlike previous prescriptions, this recommendation is problematic in republican terms. Indeed, I concede that extending the EULEX court's mandate will likely dominate Kosovar Serbs. Despite their reliance on the system, many likely still perceive it as a form of arbitrary control. Nonetheless, it is the only court system that both the ethnic Serbs and the federal government recognize. Thus, while imperfect, the EULEX is the only actor presently capable of establishing a rule of law capable of stabilizing the situation until Kosovo is eventually able to reassume control of the judicial system. Together, the cooperation of Serbia, Kosovo, and the EU on these fronts should hopefully stabilize Kosovo's politics until a unified civic culture is created and the country is capable of self-governance.

Conclusion: International Paternalism as a Barrier to Freedom as Non-domination

The necessity of EULEX involvement in cultivating republican rule of law in Kosovo revives concerns surrounding the viability of Pettit's framework in international cases. In turn, the remainder of this paper will address this tension and conclude by assessing its implications on the viability of Pettit's republicanism in the modern world. While EULEX should continue to operate until the Kosovar court system can reestablish itself, the lack of clarity in the court's mandate nonetheless poses significant problems for the long-term viability of republican rule of law in Kosovo. As I discussed earlier in Chapter III, Kosovo's reliance on international justice delegitimizes its capacity for self-governance and weakens public trust in its institutions. Indeed, many could claim that EULEX's central role in establishing the rule of law empowers an unaccountable actor with the polity's most crucial functions— seemingly in contradiction with the core republican value of self-governance. Defenders of Pettit's view could respond to these concerns by arguing that EULEX's presence constitutes a non-arbitrary form of interference that is reconcilable with Pettit's framework. Citing the Ulysses case discussed in Chapter I, they could argue that the EULEX court is ultimately accountable to and responsive to the Kosovar state, and therefore legitimate in republican terms. However, two crucial constraints must be present for the EULEX case to truly mirror the Ulysses case.

Firstly, interference by a third-party is only non-arbitrary if it has the consent of the person being interfered with. At the international level, as noted at the end of Chapter III, international interference is only legitimate if it is administered and actively consented to by the domestic population. While some defenders of Pettit's view could argue that Kosovo's population retains republican legitimacy, the evidence is largely to the contrary. According to a

survey conducted by the National Endowment of Democracy, 54% of Kosovar respondents stated they do not trust the institution.⁸⁴ Importantly, this source surveyed both Kosovar Serbs and Albanians— demonstrating that both groups with claims to domination are unsatisfied with the EULEX. Domestic political sentiments mirror these sentiments. Indeed, according to Albin Kurti, the leader of the leftwing opposition Vetevendosje party, many Kosovars feel that the “the international community has very low ambitions for us, and is focused on short-term political stability and crisis management.”⁸⁵

Secondly, for interference to qualify as non-dominating it must be temporary, and with a specific and limited purview. Even in the Ulysses case, his crewmate’s authority to restrain him was temporary, and was only limited to that specific encounter with the Sirens. Thus, for the EU’s interference to qualify as a corollary for the Ulysses case, its authority must be temporary and restricted. At first glance, EULEX largely is faithful to this constraint, as the court’s mandate is set to expire in 2020 and its authority is limited to Northern Kosovo. Yet, it seems more likely that the international interference present in the case of Kosovo is dominating. Indeed, if one takes a step back, one realizes that international actors have interfered in Kosovo’s affairs broadly for the past 20 years. Despite the end of EULEX’s mandate, many other international organizations are operating in perpetuity in Kosovo, and surely, all of them cannot be faithful corollaries for the Ulysses case, casting doubt on this dynamics reconcilability with a republican approach.

⁸⁴ Harvard ILJ, “Home,” Harvard International Law Journal, April 21, 2020, <https://harvardilj.org/2019/08/is-eulex-a-step-back-for-international-rule-of-law-missions/>).

⁸⁵Mitrovica and Decani Andrew MacDowall in Pristina, “Kosovo at 10: Challenges Overshadow Independence Celebrations,” The Guardian (Guardian News and Media, February 16, 2018), <https://www.theguardian.com/world/2018/feb/16/kosovo-at-10-challenges-overshadow-independence-celebrations>).

The alternative, then, is that Pettit's republicanism faces a fundamental difficulty in applying to international issues. From the outset, Republicanism struggled to provide clear guidance for how states should manage its competing republican obligations to different actors. This realization first occurred in Pettit's analysis of Catalonia, and was further confirmed by the complications present in the case of Kosovo. Indeed, the need for paternalism in the case of Kosovo casts doubt on the achievability of freedom as non-domination in a globalized world. In addition to the foreign states, relevant third-parties, and international organizations discussed here, it is likely that other entities whose influence transcend borders such as multinational corporations, social media conglomerates, and non-state actors will further complicate the applicability of Pettit's framework.

Perhaps in 1860 Pettit's domestic approach could avoid these sorts of complications, as international actors were nowhere near as ubiquitous as they are today. But in a globalized world— it is no longer viable for political philosophies to relegate themselves away from international considerations. Indeed, the computers we use, the clothes we wear, and the cars we drive are the products of supply chains spanning the corners of the globe. And of particular concern for Pettit and other republicans, the transmission of these goods and services will bring with them novel types of dominating relationships. Yet, Kosovo's reliance on arbitrary international interference to cultivate freedom as non-domination illustrates the difficulties such approach has in international issues. Unless it is clarified how republicanism can adapt to these circumstances— I am left doubtful of its ability to rise to the challenge.

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