



*Political Participation in Philip Pettit's Republic: A
Critical Response*

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"The Shah," said Khashdrahr, "he would like, please, to know who owns these slaves we see all the way up from New York City".

"Not slaves," said Halyard, chuckling patronizingly. "Citizens, employed by government. They have same rights as other citizens - free speech, freedom of worship, the right to vote".

(Kurt Vonnegut, "Player Piano")

INTRODUCTION

The modern republican theory developed by Philip Pettit is an influential and widely discussed contemporary political theory. The significance of Pettit's contribution to modern political philosophy is sometimes explained by the fact that Pettit has made a successful attempt to provide republicanism with an explicit normative basis that this tradition historically had been lacking (Richardson, 2006, p. 176). That is relevant but not the only reason for the considerable interest in Pettit's works and the appreciation of their significance. Pettit's approach challenges the classical dichotomy of positive and negative freedom and attempts to overcome it. Pettit tries to extend the list of possible understandings of freedom by introducing a third type of freedom: republican freedom or freedom as non-domination. This concept is the cornerstone of Pettit's theory and underlies all its aspects.

Another reason for the significance of Pettit's modern republicanism is its universal relevance: on the one hand, Pettit locates his theory within a framework of classical sources, while on the other, he replies to a number of modern thinkers, thus finding his place in contemporary political philosophy. Pettit tracks the development of the republican tradition from its Roman roots to the present. He speaks of Cicero, Machiavelli, Harrington, Locke and Montesquieu as its representatives (Pettit, 1997, pp. 5, 38, 40). By appealing to these thinkers and this rich philosophical heritage, Pettit gives his theory a reliable contextual background. At the same time, he joins the modern discussion on distributive justice, started by Rawls and continued by a number of significant authors including Nozick, Dworkin, Cohen, Nussbaum, and Sen. Pettit has something to say to all of these thinkers (Pettit, 2012, pp. 78-82, 184-186; Pettit, 1997, pp. 170-171).

The range and foundations of Pettit's political thought is another reason for the huge and ongoing interest in the modern republican project. Pettit's theory covers ontological, ethical, institutional, and economical aspects. The aim of Pettit's philosophical work is to build up a foundational theory that explains the true ends of political life and redesigns social-political

institutions accordingly. Familiar entities and structures get new meanings and functions within Pettit's framework, which allows for a rethinking of the whole picture of human coexistence.

Although Pettit's republicanism is recognized as a valuable part of modern political philosophy, it also became the subject of heavy criticism. Due to the complexity and diversity of this criticism it is useful to discuss its *main lines*.

The cornerstone of Pettit's theory is his conception of *freedom as non-domination* and there is nothing surprising that the most fundamental critical responses to Pettit deal precisely with this idea. Pettit's claim that his understanding of freedom can be reduced neither to the negative nor to the positive conception of freedom has faced explicit resistance. While Larmore (2001) claims that Pettit's republican freedom shares certain basic mechanisms with the liberal approach (and, therefore, is not successfully separated from the negative conception of freedom), Harbour (2011) and Markell (2008) argue that Pettit's understanding of freedom significantly overlaps with the positive one. The proponents of pure negative freedom – Carter (2008) and Kramer (2008) – address the idea that certain improvements of the negative approach can make Pettit's criticism irrelevant, while the pure negative conception can serve as a more informative and effective perspective than the republican one. Pettit's position on freedom is also criticized by Brennan and Lomasky (2006). They claim that within Pettit's framework the people, who face a large-scale restriction of their preferred modes of behavior, remain being formally free. Paradoxically one might become *freer* in the republican sense, while the number of options available for the one is *reducing*.

The second line of criticism focuses on Pettit's conception of contestatory democracy and the heavy reliance on civil participation, which it implies. The democratic aspect of Pettit's theory is challenged from quite different angles. Shapiro (2012) argues that the conditions of democratic process, designed by Pettit, do not prevent domination. Thus, the mechanisms of republican decision-making might result in the outcomes opposite to the purposes they were expected to serve. Celicates (2014) criticizes Pettit for a too mediated character of contestatory practices and the governmental control over them. At the same time, Brennan and Lomasky (2006) claim that what is called "political apathy" (Pettit, 2012, p. 227) by Pettit might be an absolutely rational and predictable choice of an average citizen. This challenges the feasibility of contestatory democracy due to the fact that large-scale active participation (which is opposite to political apathy) is one of its essential conditions.

Claims against the ontological elements of Pettit's theory form *the third line* of criticism. Vatter (2015) questions Pettit's fundamental discursive structures and highlights the lack of recognition

mechanisms behind them. Røstboll (2014) compares Pettit's views on human coexistence with Arendt's and in the light of this comparison Pettit's disregard of the recognition issues articulates itself even more distinctly.

In this paper I will make an attempt to elaborate all of these critical lines and enrich them with independent arguments. I will mostly focus on the problem of participation and argue that the framework of Pettit's modern republican project turns the citizens' *right* to participation into *necessity*. My hypothesis is that under republican conditions certain groups and individuals (who have a strong reason not to participate in political processes) find themselves in a disadvantaged and dominated position. Since the most fundamental purpose of the system of republican institutions and procedures is the provision of freedom as non-domination, the dominated position of certain groups which is determined by the conditions of Pettit's republic, challenges the success of the whole project. In order to examine this hypothesis I address the following research question: *what are the perspectives of deliberate non-participants within Pettit's republican framework and to what extent they are consistent with the ideal of non-domination?* (by deliberate non-participants I mean the people, whose views or beliefs do not let them perform any political participation).

My work is divided in four sections. In the first section I will briefly describe Pettit's project and reconstruct the most essential lines of reasoning. In the second section I will examine republican freedom as non-domination in the light of existing criticism and formulate some additional objections. In the third section I will challenge the democratic aspect of Pettit's theory. I will discuss certain well-known objections to democratic participation and address an independent thought experiment inspired by the pure negativist response to Pettit. In the fourth chapter I will examine the discursive ontological structures designed by Pettit and elaborate certain critical feedback to the republican ontology.

Chapter One: Pettit's Modern Republican Theory Reconstructed

1.1. Freedom as Non-domination: Against Dominionum and Imperium

Pettit's republican theory is an ambitious project which implies a fundamental rethinking of the social and political spheres on the grounds of non-domination. The greatest advantage of Pettit's approach is its clear normative basis (Richardson, 2006, pp. 175-176) and systematic character (Larmore, 2001, p. 229). A wide range of institutional and procedural elements of Pettit's model of political life is determined by clear ethical starting points in a coherent and plausible way. Any conception or mechanism that appears in Pettit's model directly or indirectly serves the goal of preventing or securing non-domination and is provided with normative justification. The number and complexity of intrinsic ties and connections of Pettit's republican theory makes the task of its critical examination quite challenging. That is why the following part of my work will be dedicated to the reconstruction and interpretation of only the most essential elements of Pettit's theory and their relations to each other. I will try to show how the idea of freedom as non-domination necessarily determines democratic social arrangements and the essential role of participation within this institutional framework. The ontological structures and moral virtues that underlie democratic processes and make them happen will be another subject of my analysis.

The cornerstone of Pettit's republican theory is the conception of freedom as non-domination that is distinguished by Pettit from both negative and positive conceptions described by Isaiah Berlin in his famous essay (Berlin, 2002). Domination is described by Pettit with the help of a simple scheme: "One agent dominates another if and only if they have a certain power over that other, in particular a power of interference on an arbitrary basis" (Pettit, 1997, p. 52). Although the formula seems to be quite understandable, its main variables are worth being clarified.

By interference Pettit understands a wide range of different behaviors while all of them "coercive or manipulative, are intended by the interferer to worsen the agent's choice situation by changing the range of options available" (Ibid, p. 53). In other words, it means that one is unfree if he or she is deprived of certain options on an arbitrary basis. With the help of actual physical obstruction or a threat of it the interferer makes one behave in a way that in other circumstances would not be chosen by the interfered. An obvious illustration is the situation of a slave who is deprived of the option to rest when his or her master wants him or her to work (or to move when the master wants him or her to stay).

An important addition that makes Pettit's understanding of freedom different from classical liberal conception of freedom as non-interference is the idea of arbitrariness. The will of an

interferer counts as arbitrary if it is not controlled or authorized by the interfered. For example, Ulysses who is tied with ropes to the ship's mast nonetheless remains free because this restriction is the result of his own will (Pettit, 2006, p. 135; Carter, 2008, p. 65). In other words, Ulysses authorized the sailors to constrain the range of his choices in a given moment and therefore provided the case of interference with non-arbitrariness. If Ulysses was bound not due to his own wish or order but because of a mutiny organized by his sailors, it would mean that he became the subject of arbitrary interference and therefore was deprived of freedom.

Within a social framework non-arbitrariness is provided by law (other sources of this provision are also possible, but Pettit limits his focus to the legislative sphere due to its stable and institutional character). If deprivation of one's choices is authorized by law one becomes the subject of arbitrary interference and therefore cannot be regarded as unfree: "Under the approach adopted, freedom does not require that you escape the interference of others in your choices; the law, which was seen as the friend of liberty, inevitably involves some interference in everyone's choices" (Pettit 2016, p. 6). Legislative processes have to be open for the citizens in order to make their position similar to that of Ulysses. Their rights to participate in public discussions create a form of public control that provides potential state interference with the non-arbitrary character. Citizens can express their opinion on different social issues and push the legislative body to establish certain laws in order to fix them. Also, they are welcome to contest the established decision post-factum if they believe that a new law infringes their interests.

At the same time, Pettit does not claim that democratic participation is valuable for its own sake. Pettit's conception of democratic participation has fully instrumental character (Markell, 2008, p. 28), which creates significant distance between Pettit and other classical republican authors such as Hannah Arendt, who considered public speech as primary political value (Rostbøll, 2014, pp. 32-33).

Also, Pettit highlights that democratic political participation is not the way to *exercise* freedom but only to *promote* or *secure* it: "The institutions which promote people's freedom as non-domination go to constitute that freedom, not to cause it", and it clearly shows that republican freedom is firstly the status of a citizen while state institutions and democratic processes are designed to establish and secure it (Pettit 1997, p. 81). This claim can be regarded as an attempt to distinguish republican freedom from the positive approach.

Although any case of domination represents the same mechanism of arbitrary interference, the variability of circumstances that provoke domination is quite significant and worth mentioning. The most famous illustration used by Pettit is the case of a lucky slave (Ibid, pp. 22-23). Even

though her master is kind and does not put any actual constraints on his life, the slave is nevertheless a subject of domination due to the fact that he lives “at the mercy of another” (Ibid, pp. 4-5). The status of a slave implies the possibility of arbitrary interference. The slave’s dominated position remains even if there is no actual interference going on in her life. Besides clarifying the republican conception of freedom, this example helps Pettit to distance himself from the classical liberal tradition. Pettit argues that the classical liberal understanding of freedom as non-interference (the negative conception of Berlin) has to recognize the “lucky slave” whose choices are not actually interfered with as a free person.

Other examples are “the wife who is subjected to abuse from her husband, the worker who has no recourse against an oppressive employer, and the debtor of an arbitrary bank” (Boesche, 1998, p. 862). Another illustrative example is a pharmacist who refuses to sell a medicine when it is urgently required or when he agrees to do it for significant overcharge (Pettit, 1997, pp. 53-54). According to Pettit “such a person interferes in the patient's choice to the extent of worsening what by the received benchmark are the expected payoffs for the options they face” (Ibid, p. 54) and therefore dominates the patient.

Recognition of a wide range of conditions under which domination is possible leads Pettit to far-reaching conclusions. Due to the fact that any person necessarily participates in a number of relationships within which domination is likely to happen, the task of preventing deprivation of freedom becomes challenging. According to Pettit this mission embraces two main practical functions - resourcing and protecting:

First, we would have to resource or facilitate the choice in the sense of ensuring that any of the required resources you happen to lack – these may be personal, natural or social – are made available to you; we would have to compensate, in other words, for any vitiation of the choice. And second, we would have to protect you in the exercise of that choice; assuming that protection is needed, we would have to guard against your being subject to the will of another in how you exercise it: that is, against invasion (Pettit, 2012, p, 69).

The necessity of arrangement of a wide range of public institutions is a logical consequence deduced from the assumption described above. The resourcing aspect of prevention of domination underlies “heavy responsibilities in the sphere of social justice” and demands appropriate procedures (Ibid, p. 185). Pettit claims that certain natural or financial handicaps are common reasons of domination and the republican state has to run certain programs that will be able to increase socioeconomic independence of the handicapped (Pettit, 1997, p. 159). Educational policies could be another example of the resourcing aspect of republican struggle against domination. Low level of education creates a disadvantaged socioeconomic situation for a citizen and significantly increases his or her chances to become a victim of domination.

Therefore, provision of equal educational opportunities is another resourcing task of the republican government.

At the same time, the protection aspect demands active legislative and enforcing processes. While the aim of the resourcing aspect is to prevent domination, the purpose of the protective aspect is to fight the existing forms of domination. Certain legal regulations of the relationships between employers and employees can be an example of policies aimed in overcoming domination created by capitalist market forces.

The scale of allowed state control and the number of state activities within the republic therefore can become quite significant. Preservation of equal statuses of the citizens demands state supervision and creative activities in the spheres of education, labor, trade, family relations and many others.

At the same time, Pettit recognizes the fact that the state can also be a source of domination. In order to clarify this idea he refers to the classical Roman dichotomy of *dominium* and *imperium*, where the former means “horizontal” domination of an individual by another individual while the latter means “vertical” domination of an individual by the state (Richardson, 2006, p. 176; Simpson, 2017, p. 30). This dual possibility of domination creates “the division of political labor – with protection from *dominium* being the work of the state, and protection from *imperium* being the work of the people” (Simpson, 2017, p. 31). Pettit mostly ascribes the latter function to different non-governmental “watchdog groups and social movements” (Pettit, 2012, p. 246) that must “be ready to bring charges against those in government, elected or unelected, whether in the courts, in the press, or on the streets” (Ibid, p. 237).

Although it is possible to think about freedom as non-domination under stateless conditions (for example, if Robinson Crusoe dominates Friday by arbitrary interference in his set of choices it means that he deprives him of freedom), in Pettit’s republican theory it is mostly understood as a supreme political value (Pettit, 1997, p. 80). Its political nature is explained by two related reasons: non-domination “is not something that individuals can satisfactorily pursue by private, decentralized means, and it is something that the state is able to pursue fairly effectively” (Ibid, p. 92). Since non-domination is assumed as the primary political goal, it becomes clear that the state institutions must be designed in ways that serve and promote it. Therefore, the coercive power of the state can be used in order to organize and run two essential processes that were mentioned above – resourcing and protection for the sake of non-domination. Coercive activities of the state agencies necessarily imply interference and those that serve republican ideals are not an exception (Ibid, p. 171). In order to be non-arbitrary, state interference must be subordinated

to the interests of the interfered (i.e., citizens) and comply with the procedures authorized by them. That is why Pettit's republican theory gives an essential role to democratic institutions (via which common interests are crystallized and established) and public debate (which pushes representatives in the necessary direction and gives voice to those who believe that the taken direction was wrong). This crucial element of Pettit's model is his conception of *contestatory democracy*.

1.2 The Political Way to Freedom as Non-domination: Contestatory democracy

Pettit's contestatory model implies two basic requirements: (i) it has to allow "all the major voices of difference within the community" (Ibid, p. 200) and, therefore, it has to open the way for public consensus on common interests; (ii) it has to react "appropriately to the contestations raised against it" (Ibid). According to his contestatory approach, the common interests of the citizens can be fairly and precisely identified through discussions within the legislative body which serves as "an inclusive and interactive debating chamber" (Ibid, 232). At the same time, if some individuals or groups feel that the decision of the legislative body creates certain disadvantages for them, they can raise their voices and try to persuade the rest of the society that this decision does not serve common interests. The legislative body will take into account this reaction and will change or fix its decision. The following example will illustrate the described mechanisms.

Imagine that in a republic which manages to have a working contestatory democracy, certain patriotic groups initiate public debates on the necessity of compulsory army service. This question is widely discussed in media and different public events and it pushes the legislative body to raise this question officially. After a number of sessions, patriotic representatives succeed to persuade their initial opponents that compulsory army service is what the republic needs and wants. The law passed and the executives start the draft procedure. At the same time, a religious minority whose creed does not allow any use of weapons raises its voice and claims that the established military duty violates their religious rights. The legislative body admits that it did not take into account their situation and adds an amendment to the law that lets citizens avoid military service if it contradicts their religious beliefs.

At the same time, a person who does not belong to the pacifist religious minority but feels no passion for army service is likely to be drafted. Although his or her personal preference is to avoid the service, according to Pettit's criteria, he or she *will not* be deprived of freedom because the interference he or she experiences due to the military duty is non-arbitrary. The draft procedure is not a random "whim" of the executives, but a sanctioned coercive activity based on

the law which, in Pettit's terms, should be regarded as a public consensus resulting from the open and inclusive debate. Therefore, even if the person is drafted despite his or her opposing personal preference, he or she cannot claim that this situation is a case of domination. The procedure fully corresponds to republican requirements and none of the drafted can be considered unfree.

This example points the fact that participation (which can take different forms as long as it expresses contestation) is an essential element of Pettit's model and one of the most important guarantees of its sustainability and efficiency. If one believes that this or that decision of the republican legislative body implies a serious infringement on his or her interests and at the same time refuses to participate in the public processes that can potentially change the people's opinion and withdraw (or at least fix) the questionable law, he or she cannot make any claims to the society and the republican government. His or her disadvantaged situation becomes the result of his or her passive political behavior and to some extent can be regarded as his or her own fault. This problem will be discussed later in the text and now I will address just one possible explanation, which could be given to it by Pettit. This explanation could be based on the idea that "non-domination is better thought of as an institutionally defined status, rather than a situationally defined nexus of causal possibilities" (Richardson, 2006, p. 190). One's choice to avoid contestation (after his or her preference was taken away due to the decision of the legislative body) *does* change his or her actual situation, but *does not* change his or her status. If democratic institutions and procedures are designed well enough to provide every citizen with a right to defend their preferences (if they become the subjects of legal restrictions), it means that the republic succeeds in its mission to establish and defend each citizen's equal *status*. Therefore, citizens remain being free even if they do not *exercise* this status in order to defend their preferences.

Participation is a universal tool that is relevant for fighting both *dominium and imperium*. Taking part in public debate is the best way to attract attention of the authorities to different cases of private domination. The task of the state will be to react to this signal and to initiate an official discussion on what kind of social or economic arrangements can lead to its overcoming. At the same time, the threat of *imperium* or domination exercised by the state also "requires a high aggregate level of civic engagement" (Pettit, 2012, p. 226). Republican government is likely to be active and run a lot of projects that will necessarily imply interference. Although representatives and executives should be impartial and promote only those policies that imply intersection of interests of all social groups, mistakes are unavoidable. Cases of corruption and power abuse are also not totally excluded even in a state that fits republican ideals. Therefore,

citizens must be ready for contestation activities and the exercise of their civil rights. Due to the design of republican political system (that implies large presence of the state in different aspects of social life and likelihood that individuals are subjects of interference) contestatory participation practically becomes a requirement.

Pettit recognizes that political participation sometimes implies the struggle against “political apathy” and therefore “deserves the name of virtue” (Ibid, pp. 227-228). Also, he admits that this virtue has a demanding character but is “certainly within people’s reach” (Ibid, p. 228).

Although Pettit applies this moralistic concept of virtue to his model of republican political life, it is clear that his view of democratic participation has an instrumental character and does not imply intrinsic values (Rostbøll, 2014, pp. 29-30; Celikates, 2014, p. 48). As was mentioned before, according to Pettit, democratic participation does not directly embody freedom, but rather serves its security. Pettit does not share the idea that democratic self-rule is valuable for its own sake, but rather believes that it is the only form of governance that can provide non-arbitrary state interference with non-arbitrariness. For the same reason he would not agree that non-democratic regimes can keep citizens as free as democratic ones – under the conditions of the former their situation will be similar to the situation of the lucky slave. Thus, as Rostbøll brilliantly concludes, “democracy is robustly connected to freedom, in Pettit’s view, because it is a form of government that is designed and forced to track people’s interests as they see them and to interfere exclusively on that basis” (Rostbøll, 2014, p. 30). Pettit’s instrumental approach to democracy is mirrored in his understanding of the respective political virtue which becomes “a sort of virtue that is independently reinforced by personal interest and spontaneous investment—as distinct from virtue of a pure, moralistic kind” (Pettit, 2012, p. 228).

At the same time, democratic contestation must not be grounded in purely individualist or sectarian interests. Both legislation and contestation must be rooted in more general common interests or considerations. Thus, claims addressed by the pacifist minority from our example should be grounded not in this minority’s exclusiveness but refer to the “shared individual interest in freedom of religion” (Ibid, p. 245) which is essential for the republican society.

1.3 Ontological Background of the Modern Republican Project

Pettit’s position on participation and respective political virtues is inextricably tied with his reasoning on the questions of political ontology. The latter questions are discussed in the text where Pettit makes an attempt to reconstruct and defend the ontological foundations underlying Rawlsian theory of justice (Pettit, 2005). At the same time his interpretation of Rawlsian ontology was regarded as an attempt to ascribe his own ontological views to the author of *The*

Theory of Justice (Ochoa, 2011, p. 37). I share this position because the concept of civicity that is introduced and described in Pettit's text on Rawls fully corresponds the republican ideals. Also, it seems to be the synonym to Pettit's notion of contestatory citizenry which is an important element of the republican model described in *The People's Terms* (Pettit, 2012).

In his writing on political ontology Pettit defines two basic ontological structures¹ that underlie alternative political projects. The first one is political singularism that does not recognize groups as political entities, and ascribes both will and responsibility only to individuals. This tradition is closely associated with libertarianism and is represented by Robert Nozick. Its alternative is solidarism which, on the contrary, fully "dissolves" individuals in collective bodies and regards the latter as the only form of political being. The most obvious example of this approach is the idea of general will designed by Jean-Jacques Rousseau.

'Civcity' is introduced by Pettit as an alternative to both conceptions presented above. According to Pettit, civcity emerges when individual agents exist under the same regime and are represented by the same figures. These conditions make the citizens seek the ways (i) to guide their representatives according to their common interests and (ii) to prevent the potential power abuse that can be performed by the representatives. In public debate that is conducted on these grounds citizens produce certain "commonly accepted presumptions and valuations" (Pettit, 2005, p. 167) that are counted as social capital. These basic presumptions and valuations create special ties and connections among the citizens that can further justify their claims against each other. Under these conditions the society cannot be regarded as a sum of absolutely independent individuals. At the same time, this structure does not deprive citizens of their individual interests and lets them promote these interests within the framework that is founded by common considerations. If the ontological basis of a political system meets these requirements it can be counted as civcity.

Pettit recognizes that "the notion of the civcity that we have identified may apply in a variety of contexts, ranging from the small to the large, the informal to the formal" (Ibid, p. 167). Students of one faculty who are represented by a student board can be a good example. When they know that they have a real opportunity to promote and defend their interests, they are likely to initiate a discussion on what these interests are. It goes without saying, that students will offer very different projects because they have very different subjective views on what is good education. At the same time, there definitely will be certain overlaps in their interests– for example, their

¹The term "ontological" is applied because this structures embody the most fundamental types of relationships (i) among the people and (ii) between the people and the state. They determine and shape all the institutions and procedures that appear further. Also these conceptions define what can and what cannot be identified as political entities.

mutual interest in fair assessment of their essays by their professors. These common considerations can become not only guidelines for their representatives, but certain shared values that can provoke collective action. If afterwards the students find out that one of their fellow students was assessed unfairly (for, example because of personal antipathy of the professor) they are likely to make an attempt to help him petitioning or other forms of active disagreement.

Within this ontological context Pettit's reliance on active political participation and political virtues that are inimical to political apathy becomes more understandable. These ontological foundations of the republican society shape the attitudes of the citizens to each other and to the government that they share. Due to belonging to the structure of civicity citizens recognize their common interest in checking the representatives. Thus, civicity creates certain room and motivation for common public activities and active communication.

As we can see, all basic elements of Pettit's republican thought are connected, and together constitute a complex but systematized theory. Pettit starts defining freedom as non-domination and considering it as the most essential ideal of social life. The political nature of this ideal is explained by the fact that Pettit objects to isolation as a way of seeking non-domination. The normal life of a human being necessarily implies communication with others and these normal conditions should not be abandoned for the sake of non-domination. Therefore we should find the ways to provide and secure it within a *social context*.

Pettit understands non-domination as the absence of arbitrary interference in the set of one's choices. At the same time, non-arbitrary interference (which means that this interference serves the interests of the interfered and was authorized by him or her) does not count as domination and must not be regarded as an infringement of freedom. Within social contexts non-arbitrariness is provided by laws if the legislative process is open for participation and allows contestation of its results. Thus, Pettit's understanding of freedom as non-domination determines the arrangement of democratic institutions which are embraced by Pettit's conception of constestatory democracy.

While institutions are the form, participation is the substance. Since representatives have an important mission to fight domination in all its possible forms and locations, the legislative process becomes very active and results in a large number of laws that initiate a wide range of social arrangements and distributions. It is likely that certain sanctioned state activities will be regarded by some individuals and groups as an infringement on their interests. At the same time, in the republican framework they have a right to contest these decisions and should exercise that right in order to defend their interests via public debate and other forms of political participation.

If they refuse to participate they cannot make any claims and regard themselves as unfree. Thus, within the republican work participation becomes not just a civil right but rather a necessity (because otherwise one can find him- or herself in an extremely constrained position, while formally he or she will remain be absolutely free).

Pettit's belief in active civil participation is grounded in his ontological views. He argues that sharing the same governance and mutual need in its check leads to emergency of a special ontological structure – civicity. The described circumstances provoke public debate within which certain responsibilities and virtues are worked out. It creates a certain social climate that shapes citizens in the way that makes them active and loyal to the society they belong to.

Further parts of this work will show that all of these elements that compose Pettit's republic (freedom as non-domination, contestatory democracy and ontology of civicity) are problematic. Also, I will argue that Pettit's framework creates an extremely disadvantaged (in fact dominated) position for the citizens whose preference is to avoid political participation.

Chapter Two: Freedom as Non-domination and its Discontents

Pettit's conception of freedom as domination, which was briefly discussed in the previous chapter, has become one of the most criticized elements of the modern republican theory. As mentioned before, Pettit makes an ambitious claim that his approach to freedom is essentially different from both negative and positive conceptions of freedom. However, a number of significant writings express explicit objection to this statement. There is strong disagreement with both aspects of Pettit's ambitious claim: Larmore (2001) argues that Pettit fails to distinguish republican freedom from the negative conception; Carter (2008) and Kramer (2008) claim that the conception of *pure negative freedom* (which is ignored by Pettit in his major works) successfully accommodates all of Pettit's criticism and actually coincides with the republican one, while Harbour (2011) detects a significant overlap between republican freedom and the positive conception.

2.1. *Pure negative freedom criticism*

Pettit interprets negative freedom as absence of actual interference in one's set of choices. Therefore, the famous *lucky slave* (the slave whose master is merciful and does not actually interfere in the slave's life) counts as free according to this approach. However, Kramer and Carter disagree that the negative understanding of freedom necessarily implies unacceptability of *only* actual interference (Harbour, 2011, p. 190). The negative approach can be extended and take into account *potential* interference and identify its presence as an infringement of freedom. Thus, "on the pure negative view, freedom is an "opportunity concept" rather than an "exercise concept" (Carter, 2008, p. 63). It means that one does not have to experience actual interference in order to be unfree – "a credible threat is sufficient" (Celikates, 2014, p. 43).

A good example of the pure negative approach is Carter and Kramer's interpretation of the famous Hobbesian "highwayman" argument. It also articulates the difference between the pure negativist and republican approaches to the negative conception of freedom. According to Hobbes, if one is stopped by the robber who offers this person a classical choice between her life and her money, one remains being free because she still has a choice between two options and can avoid actual physical interference (Harbour, 2011, p. 190-191; Celikates, 2014, p. 42). Carter and Kramer reject this interpretation of the situation and claim that the highwayman deprives the person of another option – to keep both her life and her wallet – and uses a threat as a means of this deprivation. This example clearly illustrates the pure negative approach which highlights that "interference does not come about through the actual application of violence (*ex hypothesi*), but it consists in the undoing of the conjunctive exercisability of many opportunities –

opportunities that could have been exercised conjunctively in the absence of the dominant party's sway" (Kramer, 2008, p. 44). The lucky slave's position then seems to be quite similar to that of the victims of the highwayman. The very framework of her existence implies the threat of interference that can be exercised by her master. Even if the slave's master is merciful it is quite likely that actual interference will be applied if the slave explicitly acts contrary to master's wishes or if the master is simply in a bad mood (Harbour, 2011, p. 191). Therefore, the overall number of options available for the slave is reduced and her behavior is significantly shaped due to these circumstances. The threat of physical interference that her very life implies (even if it has never been *actually* performed by the master) deprives her of a lot of different options in given moments and "this will be no less true at times when the slave is able to avoid the master's actual sanction" (Ibid). The same could be said about Nora – the main character of Henrik Ibsen's famous play and another Pettit's illustrations of domination without interference (Pettit, 2016, pp. 5-6, 10). Due to the social and cultural contexts Nora is a subject to her husband's will, but her life does not face any actual constraints because of her husband's mercy and big heart. Although Pettit claims that this situation does not imply interference, the pure negative approach would interpret it as another case where the conjunctive exercisability of many opportunities is problematic and, therefore, Nora's freedom is curtailed. Just like the lucky slave, Nora cannot choose desirable options when, for example, her husband is in a bad mood. She knows that nothing prevents her husband from actual physical interference and chooses the behavior that will not make him angry. But this choice is similar to the one which is made by the person who gives her wallet to highwayman.

The republican reply to this criticism is mostly based on the claim that the proponents of the pure negative approach neglect the existential situation of the slave and ignore that "freedom is a question of the status of the agent, and not (or rather: only secondarily) of their sets of options" (Celikates, 2014, p. 43). According to Pettit, the very possibility of arbitrary interference creates the situation of "alien control" (Ibid), which is problematic by itself regardless of the probability of whether the interference will be actually exercised or not. At the same time, if one is convinced by the pure negative understanding of freedom, he or she can argue that it does not only make the republican approach unnecessary, but also changes focus from abstract and uninformative statuses to more tangible "likelihood with which this fact (*ed. of domination*) will lead to the closing down of certain options or combinations of option" (Ibid). The category of status is too general for the pure negativists: every particular case should be examined from the perspective of "how credible the threat and how probable the threatened interference is" (Ibid). For example, Carter and Kramer claim that if a *gentle giant* who has some immense power, which could destroy the whole village where he lives, is actually friendly and helpful to his

fellow villagers and the probability that he will use his power against them is close to zero, the villagers “can sleep without having to worry” (Ibid) and should not be regarded as dominated and unfree.

The debate between Pettit and the proponents of the pure negative freedom gave rise to a brilliant critical contribution made by Harbour (2011). He points to the fact that while the lucky slave serves as Pettit’s favorite pro-republican argument, the example of the *contented* slave challenges the very framework of the modern republican theory.

The thought experiment designed by Harbour is centered on the figure of the contented slave. This slave recognizes her incapacity to live on her own and believes that it is better for her to follow the commands of her master than to make decisions by herself. At the same, she understands that if she has an opportunity to escape, she will not be able to resist the temptation to do so. Then if she asks her master to find her after her escape and enforce her coming back, she acts similar to Ulysses (whose case was described in the first chapter). However, “in preventing the slave from running free, however, the master would be interfering in a manner that tracked the slave’s avowed interests² and therefore would not infringe on his liberty” (Harbour, 2011, p. 195). If, on the contrary, the master refuses to re-enslave the contented slave, he is far from acting according to the slave’s interests (Ibid). I would add that if the state interferes in this situation by banning slavery and enforcing the contented slave’s liberation, it creates the conditions within which the contented slave finds herself *dominated*. When the slave is forced to become a free citizen she is experiencing the interference she does not welcome and that contradicts her interests, while she has no chance to defend her choice of being a slave. It is obvious that when this situation takes place her set of choices is interfered with by the state and that she becomes deprived of her deliberate choice to be fully subordinated to her master. At the same time, she has no opportunity to contest the decision of the state to abolish slavery, because her campaign would be regarded as promotion of domination, which cannot be allowed by the republican state. Slavery is regarded as a basic pattern of the domination relationships and its promotion or defense directly contradicts the very purpose of the republican regime.

Harbour’s claim that the contented slave argument challenges the republican position is quite plausible: Pettit has to either (i) acknowledge that slavery can be consistent with freedom as domination or (ii) to assume that the slave and all other people who are happy with their “dominated” position “are *wrong* about what is really in their interests” (Ibid). Since (i) is likely

²The term “avowed interests” is not used but Pettit. Harbour uses it to express Pettit’s idea that the interference experienced by the people “must be responsive to the ideas, interests, and objections of those subject to it” (Harbour, 2011, p. 189).

to ruin the whole republican theoretical construction, (ii) is more likely to be considered as a possible answer. However, this way brings Pettit to the outcome that he tried to avoid – the situation where one can be forced to be free, which is obviously associated with the most ardent proponent of *positive* freedom – Jean-Jacques Rousseau (Pettit, 1997, pp. 30-31, 252-253). Moreover, if Pettit admits that the slave might be wrong about her own desires, he makes a step in the direction of recognizing two selves – (contingently) *empirical* and (contingently) *true* – or at least the distinction between *true or authentic* desires, and *mistaken or uninformed* desires. According to Isaiah Berlin, this dichotomy is nothing but the most essential assumption of the positive conception of freedom (Berlin, 2002, p. 179). Pettit’s success in his ambitious attempt to drive the wedge between republican freedom and the positive conception, therefore, becomes questionable.

2.2 *The Problem of Common Interests*

Another element of Pettit’s conception of freedom which has become a subject of significant concern is his claim that interference for the sake of common interests makes for non-arbitrary state interference. According to Pettit, state interference is justified and cannot be regarded as *imperium* if it is guided by the common interests of the people: “What is required for non-arbitrary state power, as this comment makes clear, is that the power be exercised in a way that tracks, not the power-holder's personal welfare or world-view, but rather the welfare and world-view of the public. The acts of interference perpetrated by the state must be triggered by the shared interests of those affected under an interpretation of what those interests require that is shared, at least at the procedural level, by those affected” (Pettit, 1997, p. 56). At the same time, Pettit claims that “sectional or factional” interests cannot serve as a proper justification of interference (Ibid). This requirement is also relevant for *contestation* against legislative decisions: those who oppose the established laws have to prove that these laws infringe the *common* interests, not just the *particular* interests of their group. Otherwise their claim is invalid. If this is a fair inference, several aspects need to be discussed.

Firstly, it is clear that on the social level absolute unanimity is impossible even when the most basic and obvious “common” interests are discussed. But this issue does not concern Pettit due to his belief that “people will accept outcomes that go against them if they are in the general interest” (Shapiro, 2012, p. 327) if this “general” interest is properly formulated and justified through the public debate. Pettit leaves this potential willingness of the people to act against their own interests completely unexplained. Shapiro explicitly claims that Pettit’s confidence “that losers in the contestatory process will accept the legitimacy of their defeat” (Ibid) is a matter of faith. Pettit could reply to this claim by saying that the fairness of the procedures (in the sense

that they recognize equal statuses of the citizens and provide them with equal opportunities to success) necessarily determines the fairness of the outcomes, and that the “losers” do not have a good reason to resist against them³. Although this attempt to justify the belief in people’s readiness to accept the rejection of their private interest in favor of general is not completely implausible, this element of Pettit’s conception of freedom remains being an assumption open for disagreement. This issue pops once again in the context of Pettit’s political ontology, which I will discuss in the 4th chapter.

Secondly, Pettit’s view of proper contestation that welcomes only the claims “deprived of their arbitrary character by having been subjected to the standards of commonness and avowability” (Markell, 2008, p. 15) creates a risk for a lot of reasonable claims to be considered as sectional and, therefore, invalid. Let us recall the example of the legal arrangement of compulsory army service initiated by the republican government after the respective decision of the legislative body. Since Pettit argues that “local culture and context” determines whether “a certain act of interference counts as arbitrary” (Pettit, 1997, p. 57), I will add a detail: the society of the given republic is extremely patriotic and cherishes its rich military traditions, so the majority of population passionately supports the draft recruiting. Now imagine that the resistant voice is raised not by a religious minority, but a pacifist group. The members of this group try to participate in social discussion, but their arguments are rejected by the rest of population. Most participants continue to insist that military service is rooted in national traditions and is commonly welcomed practice, while the position of the pacifists is nothing but their desire to have a sectional privilege. Let us also assume that the results of the honestly composed public surveys fully mirror this attitude. If we apply Pettit’s method of distinguishing arbitrariness and non-arbitrariness to these circumstances, we have to assume that the pacifists have to accept their loss and deny them a right to claim that their freedom is infringed upon when they are coerced to join the army. Pettit argues that the test for sectional or factional character of the claim is carried out “by recourse to public discussion” (Ibid, p. 56) and we have to conclude that the pacifists failed to pass it. Also, Pettit’s requirement of equal treatment is satisfied: the pacifist citizens are ascribed to the same rights and duties as their fellow citizens. The most essential republican principle – equality of the statuses – is, therefore, safe and sound.

³The following passage is a proper representation of Pettit’s procedural approach: “The disappointed party in a contestation like this should be able to recognize that reasonable people differ on the matter in question. And so, under an appropriate institutional setting, such a party may be capable of assurance that the judgment against them materializes via procedures of which they approve—in awareness, for example, of the considerations that they themselves regard as persuasive—and that it represents a genuine attempt to determine the common interest” (Pettit, 1997, p. 198).

Pettit admits that under certain conditions normal republican procedures can fail and lead to the situation where the group which has not managed to defend its interests refuses to recognize the decision of the state. It happens when the interests of this group are absolutely unacceptable for the majority, but absolutely essential for the group members. For example, it could be a religious group whose diet implies some special ways of cattle slaughter, living in an animal-friendly society. The majority of the population of this animal-friendly republic believes that their common interest is to save animals from human cruelty and they do not accept the arguments of the religious group when its members try to contest the prohibition. Pettit identifies two possible solutions of such fundamental irreconcilable conflicts, and both of them seem questionable.

The first way offered by Pettit is to provide this group with a right to “secede from the state, establishing a separate territory or at least a separate jurisdiction” (Ibid, p. 199). This option is very questionable since territorial integrity is usually considered as one of the most essential national interests by most of the countries, and even Pettit’s republic is likely to be opposed to separatism. Who will provide the minority with a right to secede if all the procedures launched by the republican government determine the *rejection* of this right? The same could be said about a potential right of a group to have an autonomy. Moreover, this approach can be applied only to the groups that traditionally have certain places of compact residence. The pacifists from the previous example who are likely to live in different parts of the country will be obviously deprived of an opportunity to establish a new state.

Another way is to provide the dissident group with “a special treatment under law” (Ibid, p. 200). This approach will discharge certain groups from the duties and constraints established by the republican laws due to special claims of these groups. First of all, this strategy stressfully challenges the principle of equal statuses cherished by Pettit. The rest of the population can claim that the group that gets this “special treatment” becomes privileged. Of course, sometimes “special treatment” can take some non-problematic forms, which does not create any tension among the groups of population. However, if, for example, the pacifist group is provided with an exclusive right to avoid being drafted to the military, the rest of population might claim that it creates a different number of civil duties for average citizens and the pacifist minority. This type of “special treatment”, which implies an exemption from the civil duty that remains mandatory for everyone else, could be considered as a privilege. Also, it is extremely unclear how to distinguish “sectional” interests from the ones that deserve “special treatment”. For example, the demands of some groups, which proclaim themselves the followers of some parody religions (like Pastafarianism), are unlikely to be taken seriously. If one claims that it is the Flying Spaghetti Monster, who does not let him or her join the military, one has a low chance to get a

“special treatment”. But something that looks absolutely absurd, non-important and, therefore, not deserving a special treatment can be actually a matter of life and death for the members of a certain group. Even if the majority of Pastafarians simply make fun of their “religion”, it is possible to imagine that there are some real believers among them. If these convinced Pastafarians do not get a special treatment despite of their claim, while the followers of some more traditional religions do, it creates a serious controversy. On the other hand, ambiguity of the discussed border creates a large room for fraud and abuse of the “special treatment” approach.

Harbour’s criticism implies another claim, which I agree with: claim that integrity of Pettit’s procedural approach is “at the cost of reintroducing the most troubling features of the positive view” (Harbour, 2011, p. 198). Pettit’s idea that one has to accept the outcome of the game because its rules equally distribute the chances for victory has one more important implication. The rules of the game also determine that common interests have *priority* over individual ones. One can be attracted by these rules and find the procedure fair if she agrees with the higher position of common interests. For example, the contented slave will have a good reason to join the republic if she recognizes either that she can be mistaken about her own interests or that the common interests of the republican community prevail over her own. Otherwise, she will not recognize her liberation (that goes against her view of her personal interests) as a justified and fair outcome. Both forms of motivation that were presented above are embraced by the positive conception of freedom.

Besides the motivational aspect, the practical implication of Pettit’s view of freedom also points to its positive background. Pettit’s endorsement of non-arbitrary state interference and his view of law as a “friend of liberty” (Pettit, 2016, p. 6) create a very high risk of an attack on one’s set of choices by a legislative project. If one decides not to participate in public debate and the project, therefore, does not face any serious contestation, one will enjoy *formal* freedom as non-domination even though she suffers from being deprived of her choice. Thus, in order to enjoy *effective* freedom as non-domination and avoid suffering from the interference, one *has* to participate in public discussions and actively exercise her citizenship. Therefore, activities that are embraced by the positive conception of freedom as self-governance become a necessary precondition for saving one’s actual freedom within the republican framework. Otherwise one’s disadvantaged position will be considered as a fair result of the republican procedures, which will make the non-arbitrariness requirement satisfied. It will deprive her of a right to complain that her freedom is infringed upon, because *formally* she will remain being as free as before her

preference was taken away. Thus, the republican approach to freedom turns political rights to participation into a vital necessity.

2.3 Liberal Criticism

Brennan and Lomasky are also concerned with the fact that Pettit's republicanism creates perfect background for the notorious situation where one "is forced to be free" (Brennan & Lomasky, 2006, p. 241). They claim that the republican "official requirement is to consider the *interests* of citizens, not their *preferences*" when legislative decisions are made, and preferences in this scheme refer to individual level, while interests are defined only collectively (Ibid). The situation in which one's complaint that she is forced to do what she does not want will be followed by the answer "yes, but your interests were given due consideration by the legislators/regulators" can emerge regularly in Pettit's republic (Ibid). For certain individuals or minorities these conditions can create an uncomfortable way of life – if not inferior. Brennan and Lomasky use the example of adherence to traditional modes of life which can be recognized as "fake consciousness" by the republican regime (Ibid) and claim that the republican procedures can justify the ban of traditional practices. Of course, this prohibition would satisfy the republican requirements only if the conservatives were provided with an opportunity to contest this decision on certain open public platforms, but, at the same time, such an outcome is possible within Pettit's republican framework.

The illustration which was used in this chapter earlier – the sad story of the pacifists – can be interpreted in the terms used by Brennan and Lomasky. When the pacifists declare that they do not want to join the military, they express their individual *preferences*, while their *interests* are defined through social debate within which their position is identified as fake consciousness by most of the participants. When, afterwards, the pacifists are forced to join the army, they cannot be regarded as unfree – the republican requirement is satisfied since the interference they experience corresponds to *their* interests.

Finally Brennan and Lomasky state the republican understanding of freedom is problematic because it justifies "greater scope for state exercise of compulsion" and "does not negate the disvalue of being restrained from one's preferred mode of activity" (Ibid). This concern is reasonable, but it speaks another language. As it was mentioned before, Pettit welcomes the exercise of state interference if it serves the purpose of fighting against domination. If one's "preferred activity" results in another person's dominated position, its restraint becomes morally and legally justified. The claim of Brennan and Lomasky, on the other hand, speaks liberal language, according to which any interference is considered as problematic. I find this way of

criticizing Pettit quite non-productive because it cannot result in a dialogue. Greater scope of the state interference, which is the subject of Brennan and Lomasky's concern, is not considered problematic by Pettit as long as it serves the ideal of non-domination. The same is relevant for the problem of being restrained from one's preferred activities: within the republican framework it is not recognized as problematic if this outcome has a non-arbitrary background, while for Brennan and Lomasky the very fact of this restraint counts as infringement of freedom. At the same, the criticism addressed by Brennan and Lomasky contains some other more valuable arguments, which I will refer to in the next chapter.

The problem of potential infringement of individual freedom due to collective decisions is also covered by Larmore (2001). He refers to one quite surprising and provocative statement in Pettit's *Republicanism* but does it by taking the statement out of context, which makes Larmore's argument quite vague. The discussed passage is worth being cited in full:

Although we discussed constitutionalist constraints, and indeed the likely aims of a republican state, prior to introducing the notion of a contestatory democracy, the notion of democracy has an important primacy. The account of republican aims, and the account of constitutionalist requirements, is a provisional, theoretically driven story about the shape that a successful republic is likely to have to take. But once a contestatory democracy is in place, then of course everything is up for grabs. If the operation of that democracy leads to the emergence of different aims from those that we outlined, or if it forces a rethinking of constitutionalist constraints, then it is obviously the dictates of that democratic process that should prevail. Again, if the operation of that democracy occasions a restructuring of the paths of contestation itself, then again, the democratic process must prevail (Pettit, 1997, pp. 200-201).

The surprising character of this passage is explained by the fact that it obviously does not fit the republican framework, which declares freedom as non-domination as the supreme political ideal and uses contestatory democracy as an instrument of its realization. Suddenly Pettit states that "no text and no tradition is more important than the precipitates of the local democratic process" (Ibid), and this claim seems to allow a sacrifice of the republican values due to democratic decisions if the procedure underlying this decision corresponds to the contestatory standards. However, Larmore's response to this idea is even more surprising: he states that Pettit is confused in his own conclusion. According to Larmore, the "everything is up for grabs" situation is impossible within Pettit's framework due to Pettit's own view of how contestation works: "Not everything can be subject to revision, if contestation is to mean anything like what Pettit himself has in mind" (Larmore, 2001, p. 242). He points to Pettit's "requirement that citizens and legislators make their legally-binding decisions without appeal to convictions which their fellow citizens have good reason to reject embodies in fact a basic sort of respect for the individual"

(Ibid, p 240) and concludes that this constraint finally turns Pettit's republic into a liberal polity (!) (Ibid, p. 242).

It goes without saying that Pettit's requirement of status equality and common interest orientation puts certain constraints on democratic processes. We can hardly imagine a situation where the republican society starts a democratically approved genocide of a certain group of population or puts it into concentration camps. At the same time, these constraints do not form a strictly defined area of non-interference which could justify Larmore's verdict of the liberal nature of Pettit's political theory. For example, nothing prevents the republican society from the decision to constrain the freedom of speech, if this decision was not successfully contested.

Unfortunately, Larmore does not cite the particular parts of *Republicanism* which make him think that Pettit's theory implies the sufficient extent of "respect for individual" to identify the whole project as a liberal one. On the pages to which Larmore refers, Pettit discusses (in a very abstract way) certain considerations that have to underlie the contestatory process. The only aspect of the content of these "suitable considerations" (Pettit, 1997, p. 189) mentioned by Pettit is the inclusive requirement (Ibid, p. 190). However, this kind of setting determines the respect of individual *voice* and not of the individual sphere itself, at least in the way it is understood by classical liberalism. Pettit claims that every individual must be provided with an equal position in social debate and an opportunity to raise her voice. Within this context the respect of individual means that if an individual decides to enter the public forum, she will be allowed to do it, and her words and arguments will be heard and taken into account by her fellow citizens. At the same time, it definitely does not mean that an individual is ascribed to a set of guaranteed individual freedoms (associated with liberalism), which cannot become the subject of interference under any conditions. There is no a single sentence in Pettit's text, to which Larmore refers, that could be interpreted in such a way.

Therefore, I conclude that Larmore's attempt to incorporate the liberal understanding of freedom into the set of fundamental premises of the republican theory, to a serious extent misses the target.

At the same time, the cited fragment of *Republicanism* where Pettit surprisingly places democracy above republican values remains being problematic and needs explanation. The only possible way to avoid serious controversy is to assume that Pettit leaves his theoretical framework for a while and in this passage looks at contestatory democracy not as an element of his theory but as an actual political practice. According to this *external* perspective all theoretical

guidelines are less significant than an actual democratic choice of the people. Pettit admits that even if this choice implies non-republican future, we have no way except to recognize it.

On the other hand, it was shown that even regardless of the confusion provoked by this questionable passage, Pettit's understanding of freedom contains a number of problematic implications, many of which have already attracted significant criticism. The case of the contented slave which shows that certain relationships of domination are actually consistent with freedom as non-domination; the problematic and ambiguous character of the common interests as a justification of the non-arbitrary state interference; and political participation which is turned into necessity if one wants to avoid a disadvantaged position without a right to complain on being unfree are the most challenging critical responses to Pettit's freedom as non-domination.

Chapter Three: The Dark Side of Political Participation

The previous chapters have shown that the conditions of Pettit's republic turn the citizens' right to participation into necessity. It is explained by the fact that Pettit's republic is open for any project and one's set of choices is likely to be curtailed by claims of other, competing projects. If one's wants to avoid such infringements on one's set of choices, one has to raise her voice and try her best to persuade the rest of society that the respective law has to be cancelled. Otherwise she will have no right to claim that her freedom is infringed upon: since the republic provided her with an equal position in the social debate and, therefore, a real opportunity to save her choice, it is her *own* responsibility if this opportunity is ignored. Due to the absence of any boundaries, which constrain the state interference and preserve the citizens' privacy, practically any individual choice of any citizen can become the subject of deprivation. Although Larmore finds a "basic sort of respect for the individual" (Larmore, 2001, p. 240) in Pettit's framework, this hypothetical respect (in the previous chapter I have already argued that the very fact of its presence is questionable) does not imply any *formal or procedural constraint*. The requirement that demands the legislative projects to be grounded in the common interests is unfortunately quite vague and cannot serve as a functional filter (this statement will be revealed further in the chapter). Due to these conditions practically any choice of any citizen will need certain protection through contestation. In this chapter I will argue that these conditions create a disadvantaged position for certain groups of the population and actually make them the victims of domination.

The tradition of challenging the belief in large-scale active democratic participation has a long history and embraces a number of significant theories. I deliberately constrain my focus to those theories which were designed in the 20th-21st centuries and seem "applicable" to Pettit's position on democratic participation. I will also highlight accordance between these theories and the recent attempts to criticize Pettit's heavy reliance on active democratic participation inherent in his conception of contestatory democracy and the modern republican project as such. Three main problems are usually considered when democratic regimes are criticized: *low motivation (which results in non-participation)*, *rational ignorance and poor quality of participation*. I will argue that all of these problems are relevant for Pettit's conception of contestatory democracy and can stressfully challenge the republican project.

3.1 *The Problem of Non-Participation*

One of the most important sources of modern skepticism regarding the prospects of active democratic participation is the famous position of Schumpeter. The criticism designed by the

famous Austrian scholar is centered on the problem of *low motivation* to democratic participation. To some extent it also connected with the problem of its *low quality*.

In *Capitalism, Socialism and Democracy* Schumpeter states that the distance between the private concerns of the citizens, on the one hand, and the national affairs, on the other, becomes too significant in the democracies which unite a large number of citizens (Schumpeter, 2010, p. 234). The lack of connection between the interests of an individual and those taken into consideration by the politicians produce a situation in which an average citizen stops experiencing politics as something fully real and “feels oneself to be moving in a fictitious world” (Ibid) when she deals with it. Finally, an average citizen starts regarding herself as “a member of an unworkable committee, the committee of the whole nation” (Ibid), which prevents her from active and competent style of political engagement. Due to this attitude political behavior becomes discouraged and ignorant: “Thus the typical citizen drops down to a lower level of mental performance as soon as he enters the political field. He argues and analyzes in a way which he would readily recognize as infantile within the sphere of his real interests. He becomes a primitive again. His thinking becomes associative and affective” (Ibid, 235). It goes without saying that Pettit’s belief in active contestation by the citizens becomes less plausible if the tendencies described by Schumpeter are taken seriously. Even if the decisions of the state directly touch the citizen’s interest, the sense of distance from the policy-making sphere can outweigh the citizen’s motivation for participation. At the same time, if the citizens nevertheless decide to enter the political field, they find themselves in an unfamiliar environment and are likely to lack the proper level of expertise for making a reasonable political judgment. A politician, whose projects are presented in the form, which emotionally appeals to the citizens, has all the chances to get power even if her position is potentially harmful and destructive.

Recent research highlights that the form of the control of the state activities, which is ascribed to the citizens by Pettit, is actually virtual⁴ or editorial (Celikates, 2014, pp. 45-46). Possibility of the citizens’ contestation, according to Celikates’ interpretation of Pettit, is more a theoretical check than a practical mechanism. Representatives take this possibility into account and it prevents them from radical decisions, which are likely to be unwelcomed by the citizens. At the same time, when it comes to actual contestation, Pettit offers the citizens a set of forms, which are limited to “institutionalized procedures in which individual citizens can voice their protest in very mediated ways” (Ibid, p. 48). One could say that since the ways of contestation are established, shaped and controlled by the state, they will also be perceived as a part of a

⁴“Virtual” here is understood as not involving actual activities, imaginary. Celicates does not refer to anything internet-related.

“fictitious world” (in Schumpeter’s terms), which will articulate the distance between the citizens and the state. Contestation, which is actually managed by the state and is exercised through its institutions and procedures, is likely to be perceived not as an act of civil resistance, but as another governmental initiative. It is questionable whether Pettit’s expectations on active and passionate discussion and contestation are plausible if this possibility is taken into account. Schumpeter’s claim that the citizens are hardly interested in formal political discourse because its directions are determined by the political elites is consistent with Celikates’s concern about the citizens’ potential skeptical attitude to the forms of contestation, which rather belong to the formal field than are opposed to it.

3.2 The Problem of Low Quality of Democratic Participation

Another famous concern with the citizens’ motivation and level of competency is expressed in *The Myth of the Rational Voter* by Brian Caplan. His position overlaps with Schumpeter’s and also contains the idea that the value of individual participation decreases due to the increasing number of participants: “Under democracy, however, the probability that one vote—however misguided— changes policy rapidly decreases as the number of voters increases”; “In real world political settings, the price of ideological loyalty is close to zero” (Caplan, 2007, p. 18). In the light of these statements even taking part in the elections can be considered too costly and, therefore, irrational. Going to the polling station implies certain opportunity costs and if one realizes that the value of her vote is very low she is likely to prefer another activity. Under these conditions contestation seems even less rational because this kind of participation demands more time, energy and preparations, while the probability that this individual contribution will change the actual policies remains very low.

However the main concern of Caplan is rather focused on the quality of the choice made under the democratic conditions than with the scale of potential participation. Due to the fact that nothing actually depends on their personal votes citizens have no incentive to care too much about their decision. When one realizes that one’s vote cannot actually change the outcome of the elections, one can hardly continue feeling a lot of responsibility for the decision one is making. Caplan compares the situation of democratic choice with the individual decision on whether to drive or not in the light of one’s desire to breathe fresher air (Ibid). In both cases one is likely to decide that one’s personal contribution will not change the situation stressfully and perform the behavior that could be considered “irresponsible”. That is why there is nothing strange and surprising in one’s voting “for fun” or having very unstable political position. It goes without saying that such attitude creates an improper background for contestatory activities expected by Pettit from the republican citizens.

Certain empirical findings can also stress Pettit's reliance on active democratic participations as a means of provision of non-arbitrariness for the state interference. Pettit believes that within the republican framework those who would like to contest the decisions of the state will always have a chance to persuade the rest of society via public discussions and debates. However, Rosenberg (2019) questions the capacity of the citizens both *to persuade and be persuaded*. Detailed empirical examination of Pettit's project is not on the list of purposes of my work but Rosenberg's findings are too relevant to completely ignore them. I will briefly introduce the most essential Rosenberg's conclusions, which can challenge Pettit's reliance on democratic participation.

Rosenberg bases his recent research on an impressive number of psychological and sociological works, which describe and analyze a huge amount of the relevant empirical data. One of the conclusions which he makes summarizing these materials accords the one by Caplan but he goes even further than it: citizens of the modern democracies are not just ill-informed (and have no motivation to fix it), but do not seem to possess any broader perspective, which embraces their political views in a coherent and well-ordered way. Their political affiliation (if any) is mostly grounded in emotional needs and is less dependent on rational reasoning. Finally, they lack the "resources to draw upon to make their judgments" (Rosenberg, 2019, p. 22) and thus rely on "the authority and convention" (Ibid) even in the most essential political questions. Even if some of the citizens claim to be independent and critical, their actual behavior will hardly reflect it: more likely they "will simply reject their current authorities and traditions in favor of new ones much like adolescents rebelling against their parents" (Ibid).

Due to these findings, one can hardly expect that the public debate, which is designed for preservation of freedom as non-domination and plays a crucial role in Pettit's project, will always be correspondent to Pettit's requirements and stay inclusive, respectful, argumentative and rational in its core. Of course, Rosenberg's conclusions should not be taken for granted and are open for the debate. Although the extent of the problem could be discussed, Rosenberg's findings plausibly speak in favor of existence of the problem. If low competence of political expertise and participation performed by average citizens is recognized as a fact, Pettit's reliance on democratic contestation could be regarded as irrelevant for actual political circumstances. Although Pettit's main purpose is to build up a coherent theoretical model, it is obvious that he tries to make it *consistent* with the reality. In the light of this observation Pettit's conception of contestatory democracy becomes one of the most problematic aspects of the modern republican project.

Pettit's heavy reliance on active democratic participation highlights another concern: all of the republican mechanisms of the large-scale state interference in the citizens' life can fall into the wrong hands. This concern is also embraced by the broader problem of the low quality of democratic participation, which is discussed in this section. Shapiro highlights that "Pettit never confronts the reality that people cannot be forced to deliberate" (Shapiro, 2012, p. 328) and believes that public debates will always attract a lot of participants and result in the triumph of progressive projects. It is true that Pettit includes the groups defending and promoting "people's working conditions, women's rights, environmental sustainability, racial equality, opportunities for the disabled, the conditions of prisoners, gay and lesbian rights, health provision and public education" (Pettit, 2012, p. 226) in the list of potential participators but does not mention, for example, neo-Nazis or religious fundamentalists. A low level of the citizens' participation and competence combined with the significant role of democratic procedures (determined by Pettit's framework) can pave the way to power for the mobilized extremist groups. Shapiro's claim that Pettit's "account of social movements and civic associations underestimates the ways in which they can operate to foster domination rather than undermine it" (Ibid, p. 321) is quite reasonable if we take into account different arguments presented in this chapter, including Rosenberg's image of an average modern voter based on recent empirical findings.

In order to defend his position from Shapiro's criticism Pettit could once again refer to his idea that state interference is justified only when it serves common interests, while the views of neo-Nazis or religious fundamentalists are usually shared by marginal minorities only. But as already mentioned, a particular project is considered in the common interest or of sectional importance as a *result* of an all-inclusive public discussion (Pettit, 1997, p. 56). This means that the republican framework does not employ any filter on *access* to the debate; the debate *itself* serves as a filter. Unfortunately, there are no guarantees that religious fundamentalists will always fail to persuade a sufficient number of the citizens that the lifestyle they offer is the only way to reach the true good. If their proposals are accepted by the majority and do not face any powerful contestation, the outcome of this process will be absolutely *opposite* to Pettit's expectations of the republic promoting LGBT and women's rights. Moreover, the idea of "common interest" is quite flexible and the borders of the group regarded as citizens can be drawn differently. Neo-Nazis could persuade the rest of society that Jews and Gypsies do not belong to the *true* body of the republic (maybe it is unlikely to happen nowadays, but it is at least possible to imagine this scenario), which would make their deportation in the revised "common" interests. Unfortunately, the *inclusive* debate might result in the establishment of *exclusiveness*, while the mechanisms designed for *promotion* of freedom produce its *reduction*. Thus, Shapiro's skepticism on Pettit's view of the perspectives of his project is quite reasonable.

3.3 *The Problem of Rational Ignorance*

Brennan and Lomasky's criticism of the republican reasoning on democratic participation is focused on the problem of rational ignorance. They claim that Pettit is too radical in labeling non-participation as "political apathy" (Pettit, 2012, p. 227), while in fact it is usually nothing but a rational choice made due to the opportunity costs (Brennan & Lomasky, 2006, p. 232). Active democratic participation, which includes deliberation, persuasion, and sharing decision-making, is as an extremely costly activity according to Brennan and Lomasky. Since one has to be competent enough to be a full-fledged participant, one would have to use a lot of resources and sacrifice a number of promising opportunities. Brennan and Lomasky conclude this reasoning with a few rhetoric questions, which obviously tell us that the style of democratic participation cherished by Pettit is not only unfeasible but also potentially harmful to the individuals and the society as a whole: "We do not doubt that it would be possible to generate much enhanced levels of political awareness in the citizenry, but at what cost? Do we really want pilots to spend less time on take-off techniques and surgeons to stint on practicing suture tying so that they can devote the odd hour or two to the consideration of foreign policy?" (Ibid, p. 233)

The lack of the citizens' motivation to participate in the democratic procedures is identified as a challenging problem by Ackerman and Fishkin: "... we do not expect voters to take the obligations of citizenship seriously. They can be as uninformed and self-interested as they like, and nobody will blame them as they enter the polling booth. To the contrary, political participation has so declined (and not only in America) that voters bask in the faint glow of community approval if they merely take the trouble to go to the polls – regardless of how ignorant or selfish they may be in casting their ballots in the privacy of the ballot box" (Ackerman & Fishkin, 2002, p. 131). In order to solve this problem, the authors address the idea of Deliberation Day – a national project, which participants spend a day debating on the most essential social, political and economic problems. This idea is compatible with Pettit's republican framework and could be a part of it. However, Ackerman and Fishkin realize that the citizens are not likely to attend such an event due to the lack of proper incentives. To address this concern, they suggest to pay each "deliberator" 150\$ "for the day's work of citizenship, on condition that he or she shows up at the polls the next week" (Ibid, p. 129). This shows, again, that the citizens are unlikely to become active participants of the democratic procedures without certain *additional* motivation. However, Pettit's republican theory neglects this concern.

Due to the problems and threats which become noticeable in the light of critical remarks made by Schumpeter, Caplan, Brennan and Lomasky, Rosenberg and Shapiro one could become skeptical of the reliance on democratic participation as an effective means of preventing

domination. Three main problems, which are usually associated with the criticism of democracy – low motivation to participation (which results in non-participation), low competence and irresponsibility of the participants, and rational ignorance of the citizens – have certain reflections in the context of Pettit's project. Relevance of Schumpeter's idea that average citizens *do not participate* in democratic processes due to the feeling of distance from the official discourse is proved by Celikates, who claims the forms of contestation designed by Pettit belong to the sphere of official politics. Therefore, they can be regarded as articulating the distance described by Schumpeter. At the same time, Caplan's idea that an individual has no incentive to politically educate herself and participate in a responsible way due to the fact that under the conditions of big democracies her contribution is close to zero is another challenge for Pettit's position. Rosenberg's conclusions based on empirical findings strengthen the concern grounded in Caplan's skepticism. Undesirable results of democratic processes are also discussed by Shapiro, who claims that Pettit's contestatory democracy might result in reduction of actual freedom and not its promotion as Pettit expects. Finally, Brennan and Lomasky claim that the attitude, which is identified by Pettit as political apathy, might be nothing but rational ignorance – a reasonable choice not to plunge into political problems and to avoid political participation due to the costly character of these activities. This problem is also recognized and discussed by Ackerman and Fishkin, who argue that ordinary citizens need some supplementary material incentive in order to be engaged in the deliberative processes. Unlike Pettit, they argue that reliance on the citizens' internal motivation is not enough for the well-functioning system of democratic deliberation.

In the light of the described claims Pettit's reliance on democratic participation might be considered as risky. Moreover, due to the fact that the conception of contestatory democracy serves as a basic mechanism of promoting and securing freedom as non-domination, the whole republican project is seriously challenged by the described criticism.

3.4 Political Participation and the Highwayman

In addition to these criticisms, there is an independent argument against Pettit's neo-republicanism, which shows that under certain conditions neo-republicanism enables domination and the loss of freedom. This argument is inspired by the pure negative freedom approach and employs the highwayman allusion, which was discussed in the previous chapter.

Imagine a person (P) who on a regular basis makes a choice (C1) which does not imply any violence and is morally acceptable. At the same time P's set of choices contains another important choice (C2), which is actually a choice not to participate in any political activities. At

some moment the republican legislative body starts to prepare a bill, which (if passed) will deprive P of C1. The republic is well-ordered and all Pettit's requirements to the procedures are satisfied. P has an access to public debate and can raise her voice contesting the bill. However, if she joins the debate these circumstances will deprive her of C2. If P refuses to sacrifice C2 and is deprived of C1 at the end of the day, Pettit's verdict would be that P remains as free as she was before the deprivation of C1 because the interference she experiences is non-arbitrary (she had a full access to the procedures which could save C1, but rejected this option). Since taking part in the procedure would mean deprivation of C2, Pettit's argument could be interpreted in the following terms: P is free because she has a choice between the deprivation of C1 and C2.

Suddenly Pettit turns into Hobbes who says that one is free being robbed by a highwayman, because one has a choice between one's life and wallet.

Proponents of the pure negative freedom claim that the robbed person is unfree because she is deprived of the third option – *keeping both her life and her wallet*. The same could be said about P – she is also deprived of – let us say – C3, which is a choice to keep both C1 and C2. As much as the victim of the highwayman, P's set of choices is attacked by the third side. Even if P agrees to make an undesirable choice to participate due to the threat of losing C1, her choice is similar to the one which makes the robbed person when she gives her wallet to the highwayman.

A real-life reflection of this situation could be the disadvantaged position of certain religious or ideological groups, which members find political participation absolutely unacceptable due to their beliefs. Under the republican conditions they will be regularly deprived of the option to follow this prescription, on the one hand, and to keep their lifestyle, on the other. For example, consider a religious group, which forbids its members from political activity. Let us assume that it also practices certain rituals (for example, a special type of cattle slaughter or prohibition of registering same-sex marriages), which become the subject of the governmental restrictions. Thus, the citizens who belong to this group find themselves in a situation, within which they have no chance to act according to both requirements of their religion at the same time. It is also relevant for the people who have certain individual values and attitudes, which do not let them participate in any public discussions.

This example shows that Pettit's position on participation does not only fail to pass the pure negative freedom test, but also the republican one. It becomes obvious if we apply the set of Pettit's own terms to the examined case.

The republican requirement of non-arbitrariness, which makes the state interference compatible with freedom, means that the citizens authorize this interference by their own agreement. When

the religious group (which was discussed above) is deprived of the option to follow both requirements of its creed, it actually suffers from an arbitrary interference and, therefore, can be regarded as dominated.

The victim of highwayman would be regarded as a subject of domination by Pettit because she suffers from the interference, which is not sanctioned by her. She has to make a choice between two undesirable options (wallet or life) due to the threat that comes from the highwayman. The situation of the non-participant religious group or an individual who finds participation unacceptable is quite similar – they also have to choose between two undesirable options, and this choice is *imposed* on them. As much as the robbed person did not choose the situation within which she finds herself, the non-participants did not choose the conditions which are imposed on them by the republic. The option to follow the ritual (which becomes the subject of prohibition) and not to participate (at the same time) is taken away by the very conditions of the republic, while the citizens who face this deprivation have no control over the *design* of the republic and have never chosen or at least had any influence on it. They simply find themselves in this situation and under these conditions due to the tough luck to be born on the territory controlled by the republic. It is quite similar to the case of the victim of the highwayman who finds herself in the situation of robbery because of unlucky coincidence.

It is also important that the discussed religious group does not even have *to face* the situation of this choice between two undesirable options in order to be recognized dominated. The very *possibility* of this outcome justifies its dominated status. Consider Pettit's own illustration: the story of Nora from Henrik Ibsen's *A Doll's House*. Nora belongs to the society, which traditions and culture determine women's fully subordinated position. As any other wife Nora is a subject of her husband's will. Although Torvald (the husband) is a good person and allows Nora to do whatever she likes, Nora is regarded as unfree and dominated according to the republican approach since "it remains the case that should he change his attitude, ceasing to dote on her as he currently does, then he would presumably interfere in those choices where he did not want her to be guided by her own tastes" (Pettit, 2016, p. 9). The very possibility of the fact that Torvald could deprive Nora of certain choices without getting is enough to recognize Nora as a victim of domination. Although Nora enjoys non-interference it is nothing but a matter of good luck, while the very framework of her existence implies "being manifestly unprotected against it" (Ibid). The position of the discussed religious group under the republican conditions is very similar to Nora's. Even if the republican society is at the given moment tolerant to the special type of cattle slaughter, which is used by the group due to its religious traditions, the very possibility of the situation, within which the group will have to either sacrifice it or to defend it by joining public

debate, speaks in favor of the dominated position of the group. As much as nothing prevents Torvald from depriving Nora of some of her choices, nothing prevents the republican society to deprive the religious group of its choice to follow its rituals and to avoid political participation at the same time. Therefore, although the republican framework is designed for fighting against domination, it at the same time *determines* domination of certain groups.

The interference which is experienced by the group is grounded in the very principle that public debates can result into enforced deprivation of choices, while the citizens in the given moment (historically far from the moment of foundation of the republic) *have never sanctioned or authorized it by themselves*. The citizens of the republic can choose or contest being interfered via public debate, but they have never discussed or chosen the very mechanism of the public debate as justifying the interference by the state. Proclaiming that public debate will be the main mechanism of the republican engine, Pettit does not actually refer to any public debate and starts to resemble the mysterious *Legislator* from Rousseau's *the Social Contract* (Rousseau, 2002, pp. 180-183). I am not arguing that the citizens would necessarily reject the republican framework but if informed about the costs of democratic participation and the possibility of situations close the discussed in the examples, they would be likely to (at least) consider the idea of a minimal state with the limited room for governmental interference.

The problematic character of Pettit's position on participation could be reduced by the proper ontological foundations of his theory. However, in the next chapter I am going to argue that Pettit's political ontology does not provide a sufficient background for his conception of contestatory democracy.

Chapter Four: Pettit's Political Ontology: Mission Incomplete?

4.1 Civicity and the Acceptability Game

The conception of contestatory democracy plays a significant (if not essential) role in Philip Pettit's republican project. Active contestation (as well as other forms of democratic participation) performed by the citizens is regarded by Pettit as an effective check, which can prevent the cases of *imperium* or domination exercised by the state. However, as it was shown in the previous chapter, Pettit's heavy reliance on democratic participation is questionable due to a number of reasons. Contestatory democracy does not provide any guarantees that the citizens' democratic participation will imply the sufficient extent of activeness and competency for preservation of people's freedom. Moreover, it was argued that the republican framework creates a disadvantaged position for certain groups of population or particular individuals who find political participation absolutely unacceptable and, therefore, are likely to face a choice between two undesirable options (to be deprived of certain preferences due to the state restrictions or to get engaged into politics, which contradicts their traditions). It was also argued that this outcome falls under the category of domination and, therefore, creates a contradiction within Pettit's theory.

The described problems could be solved (or at least reduced) with the help of certain ontological explanation. Since political ontology forms the most fundamental layer of a political theory and to a serious extent determines and shapes its further implications, Pettit could use it in order to argue that certain basic ontological structures, which underlie the republican project, prevent the questionable outcomes. It is fair to say that Pettit makes this attempt and elaborates the ontological aspect of his theory in certain works (Pettit, 2012; Pettit, 2005). However, Pettit's ontology rather provokes new questions than accommodates the criticisms which were discussed in the previous chapter.

Pettit's ontological position is presented via two main forms: the conception of civicity and the acceptability game. The former idea is actually Pettit's interpretation of Rawlsian ontology but, as it has already been mentioned, it could be regarded as Pettit's attempt to argue that Rawls shares his own ontological position. The latter idea – the acceptability game – serves as an element of Pettit's own republican ontology, but seems to have a lot in common with the idea of civicity.

Civicity is understood by Pettit as a form of human co-existence, within which people share the same administration and work out certain guidelines for policy-makers via public debate.

Although Pettit ascribes this ontological structure to the framework of Rawlsian political theory, there is no doubt that his modern republican project is grounded in the same set of ontological ideas (Ochoa, 2011, p. 37). Pettit claims that this debate will give birth to certain presumptions and valuations, which will enjoy general acceptance and create a constraint on all further judgments and decisions “or at least the mode in which they are taken” (Pettit, 2005, p. 167). Since Pettit also states that these fundamental presumptions and valuations “provide the currency in which debate on other, more concrete, matters is conducted”, one could interpret them as certain basic *rules of the game*, which underlie public discussion as an essential element of the republican version of democracy. Equal distribution of positions within the debate, which is determined by these rules, has far-reaching socio-political consequences: people get “the grounds for mutual address” and certain pre-contractual claims against each other (Ibid, p. 171). Since one has a status of a full-fledged side of the debate, she can claim for fixation of inequality, which stresses this status. In the text where this statement is made Pettit recognizes certain similarity between his ontological views and the position of Habermas (Ibid, p, 169) and Pettit’s defense of the validity of the pre-contractual claims under civility is an element where this similarity reveals itself quite vividly. Habermas claims that the primary result of entering the deliberative constitution-making practice is a system of equal statuses of the participants, which also defines and ascribes a set of basic rights to every participator. It is not the first but rather zero step of political life: the system of statuses does not result from the decision-making process – it underlies it (Habermas, 2001, pp. 776-777). That is why certain claims do not need contractual basis: one’s status of the participator already presupposes basic rights and one might make a justified claim to other deliberators if one faces difficulties in the exercise of these basic rights.

By the reference to the theme of pre-contractual claims Pettit tries to respond to Robert Nozick’s criticism of Rawls. In order to criticize the idea of justified pre-contractual claims, the libertarian thinker designs a thought experiment, which tells the story of ten Robinsons Crusoe who live on ten neighboring islands and suddenly find out each other’s existence. Nozick argues that if they start making claims against each other (on the ground that someone’s island is too small or with worse soil), “such claims clearly would be without merit” (Nozick, 1974, p. 185), while Pettit states that full-fledged communication could bring them “shared civic life” (Pettit, 2005, p. 171) and finally make the pre-contractual claims justified. Thus, the purpose of Pettit’s ontology becomes double-fledged: on the one hand, Pettit makes an attempt to design a structure which could become a proper background for the system of republican institutions, and, on the other, he tries to argue that the discussion-based ontology justifies the practice of pre-contractual claims. In this chapter I will cover both aspects and argue that Pettit fully succeeds in neither of them.

The structure, which is designed in order to explain the basic republican mechanism of human co-existence, reveals a number of challenging problems under examination. At the same time, later in this chapter I will also make an attempt to demonstrate that even discussion-based ontology, which satisfies Pettit's requirements, might determine the non-republican republican conditions of co-existence, under which the pre-contractual claims are not justified. While Pettit tries to show that there is a link between civicity and justification of the pre-contractual claims, I will argue that this link does not have a necessary character.

4.2 The Recognition Problem

The conception of the acceptability game reveals the rules of the game formed by the generally accepted presumptions and valuations, which emerge out of the social debate according to the conception of civicity. Pettit regards the acceptability game as the most fundamental scheme of political communication, which underlies contestatory democracy and determines the way of its functioning. The cornerstone of the acceptability game is the requirement "to treat others as equals" (Pettit, 2012, p. 253) or "to hear the other side" (Ibid, p. 254), which is even defined by Pettit as the "norm of norms" (Ibid, p. 255). Within this context equal treatment is understood in discursive terms: all participants have to listen to each other's arguments. Such treatment implies addressing only those proposals which are relevant for all participants of the debate. If within the debate one offers a consideration which is absolutely irrelevant for certain individuals or groups, it means that the norm of norms is violated, since these people are treated as if they were not the full-fledged participants of the discussion or did not participate at all. Pettit also claims that the communication based on the acceptability game will necessarily produce "specific norms of argument and deliberation" as its "inevitable by-product" (Ibid, p. 156). Thus, the acceptability game results in the same outcome as the one which is brought by the communication under civicity: the emergence of particular rules, forms and procedures which finally compose the developed system of deliberation and contestation.

Pettit uses the model of a condominium as an example of a community in which members build up their co-existence and communication according to the principles of the acceptability game (Ibid, pp. 152, 158). According to this model all the owners, regardless of the size of their apartments and the amount of fees they pay, they have an equal standing in collective decision-making, while only common affairs become the subjects of various proposals offered by the owners and the discussion itself.

Vatter (2015) points to the fact that the whole condominium argument is based on one questionable assumption. Pettit takes for granted that the owners "*accept without question each*

other equally as owners” (Vatter, 2015, p 685). What if some residents of the condominium are squatters? What if the majority of owners define the very term “owner” in the way, which takes into account the size of the apartment and sets a certain threshold? All of these questions illuminate the fact that Pettit neglects the problem of recognition.

Both conceptions (civility and the acceptability game) are based on the idea that participants of the social discussion treat each other as equals. It might be true but *at first* it must be decided *who* has a place at the table and holds the status of a participant. Even most inclusive democratic projects imply certain exclusive mechanisms: for example, children or foreigners are unlikely to be provided with the rights to participation even under the conditions of modern well-structured inclusive democracies. Carl Schmitt’s verdict that “democracy demonstrates its political power by knowing how to refuse or keep at bay something foreign and unequal” (Schmitt, 1985, p. 9) can sound too radical, but it is true that equality of the participants articulates itself in contrast with the unequal position of non-participants. Since certain boundaries, which separate participants from non-participants, appear under any conditions, the question of criteria underlying these boundaries inevitably arises. Pettit’s condominium owners are likely to exclude guests or Airbnbs residents from the list of participants, but it has to be recognized that any other criteria could be applied and the scale of exclusion could be much wider. Moreover, it is unclear who is authorized to determine the criteria. If we argue that the decision on who has a right to make a democratic decision must be made in a democratic way, we find ourselves in a trap of evil infinity. This problem was recognized by Jean-Jacques Rousseau, who came to a conclusion that it is the mythical *Legislator* who discovers the rules of association and constitutes the republic according to them (Rousseau, 2002, pp. 180-181). One could regard this answer as unsatisfactory but at least it is an answer, while Pettit prefers to ignore the question.

The problem is recognized and discussed not only by Rousseau but also by modern authors. Describing the framework of the acceptability game Pettit expectedly states that the participants of the game “will debate with one another on broadly the sort of model envisaged by deliberative democrats” (Pettit, 2012, p. 253). One of the most influential proponents of deliberative democracy – Seyla Benhabib – admits that deliberation, which takes form of public debate, demands mutual recognition of the participants as the full-fledged equal sides of the discussion and that this demand is worth being analyzed. Although she does not speak of it as a problematic controversy, she nevertheless admits that the recognition process within the deliberative framework turns into “recursive validation”: “Although it [the discourse model] presupposes that participants must recognize one another’s entitlement to moral respect and reciprocity in some

⁵Online platform for homestay tourism and short-term dwelling.

sense, the determination of the precise content and extent of these principles would be a consequence of discourses themselves” (Benhabib, 1996, p. 79). One could be confused by the given statement because according to it the participants of the discourse *at first* recognize each other as the sides of the dialogue and only then understand *why*. However, Benhabib refers to Kantian liberal tradition and employs Kant’s idea of general *a priori* respect for the autonomous personality, which must be enjoyed by any human being (Ibid, p. 78). It helps her to find certain basis for the discussion and prevent it from being considered completely groundless. One could say that Benhabib’s employment of Kantian approach seems to be more an *ascription* than an *explanation*, and that the construction becomes unsustainable if one rejects the universal character of moral respect proclaimed by Kant. Also one could claim that this approach could be seriously challenged by Schmitt’s criticism because according to it “every adult person, simply as a person, should *eo ipso* be politically equal to every other person” (Schmitt, 1985, p. 11). Therefore, the only justified form of political organization than can emerge on these grounds, is “a democracy of mankind” (Ibid), which seems to be at least a very questionable alternative. Even the most famous proponent of the idea of unbounded demos – Arash Abizadeh – is very careful in addressing the political implications of the principle he defends⁶.

Nevertheless, Benhabib recognizes the fact that one’s place at the deliberative table cannot be taken for granted. The answer that she gives contains a reference to an *a priori* assumption, which can be regarded as more or less successful way to solve the problem, but it is at least an attempt. If Pettit mentioned that the apartment owners agree to play the acceptability game because they all share Kantian ethics and believe that the autonomous nature of human personality demands and determines mutual respect among them, one probable would not be much persuaded but would have fewer questions.

Pettit claims that since people start discussing something, they recognize each other’s equal stand in the debate, which is mirrored by their recognition of each other’s basic rights. But he ignores the fact that both individuals and groups can refuse to talk to each other even if they find themselves in the same context. Just as the owners of the apartments are unlikely to welcome the squatters at the discussion table, the citizens of the republic can also play the acceptability game in a very exclusive manner. Pettit’s claim that the laws of the republic if they are not sanctioned by everyone who is subordinated to them, cause arbitrary interference in the affairs of certain groups of population and, therefore, make them suffer from domination, could be met by a response that the mission of the republic is to provide non-domination to its citizens while the

⁶Consider the following passage: “Hence the demos is everywhere and nowhere. It is everywhere: in principle unbounded. It is nowhere: a regulative ideal that no actual, politically articulated collectivity can ever fully succeed in instituting” (Abizadeh, 2012, p. 881).

groups which are excluded from decision-making processes *do not belong to the political body of the republic*. Pettit highlights a number of times that contestatory democracy must take inclusive forms, but under any conditions the limits of inclusiveness are likely to coincide with the limits of citizenship. At the same time, the concept of citizenship is flexible and different criteria can be applied in order to distinguish citizens from non-citizens. It is possible to imagine a situation within which Pettit's requirement of inclusiveness is *formally* satisfied (since *all* the citizens have a right to raise their voice in the debate) while the process of decision-making in fact becomes extremely exclusive due to the strict rules determining who can be counted as a citizen.

The absence of Pettit's interest to the recognition problem can be explained by the instrumental character of his approach to democracy. The recognition problem becomes the main concern of another famous republican (in the broad sense) thinker – Hannah Arendt – who, unlike Pettit, ascribes intrinsic value to democratic participation. According to Arendt, being unfree mostly means being *stateless* or, in other words, excluded from all “human structures” (Rostbøll, 2014, p. 23). Even the slave is not completely unfree according to this approach because she “has a place in and is part of both the socio-economic and the legal structure of society, even if she is excluded from the *polis* or the political life of the community” (Ibid). Deprivation of freedom is characterized not by actual or potential arbitrary interference but by the impossibility of making claims: the stateless person “does not have anyone to whom she can address herself” (Ibid). Arendt's verdict on the existence under these conditions is extremely pessimistic: the stateless person “has lost the very qualities which make it possible for other people to treat him as a fellow-man” (Arendt, 1958a, p. 300).

Thus, in Arendt's framework exclusion and limiting one's freedom become absolutely indistinguishable. At the same time, Arendt's emphasized attention to the problem of exclusion is determined by her understanding of democracy and its role in human life, which is quite different from Pettit's. According to Arendt, to be “heard and seen” is the way “to become somebody”, articulate oneself and achieve self-fulfillment (Rostbøll, 2014, p. 31). In this context democracy becomes something more than a platform for seeking consensus and turns into the set of ontological conditions for being truly human. Arendt regards the Greek *polis* as an embodiment of this framework and claims that its authentic definition is not “the city state in its physical location” but “the organization of the people as it arises out of acting and speaking together, and its true spaces lies between people living together for this purpose” (Arendt, 1958b, p. 198).

With the help of political participation human being exercises self-realization, which is impossible to be realized in other spheres. That is why exclusion becomes Arendt's greatest concern: it leads to dehumanization of human beings and allocates the stateless persons in another non-human realm of existence. If one is deprived of a right to participation, she will have to live a "life without speech and without action", which "has ceased to be a human life because it is no longer lived among men" (Ibid, p. 176).

If Pettit's conception of contestatory democracy had similar ontological background, the criticism of his reliance on large-scale democratic participation (which was presented in the previous chapter) would be irrelevant and it would be understandable why people in Pettit's eyes are so eager to sacrifice a lot of resources and opportunities for the sake of costly political activities. However, Pettit's framework does not imply any special role of democratic participation compared to other activities and nothing prevents from considering it in the terms of preferences and choices.

Besides the recognition aspect, Pettit's position on the fundamental basis of the public debate as the essential form of civil co-existence contains another problematic point. Rules of the game usually define not only who is allowed to play but also which procedures are involved in the game. At the same time, Pettit's acceptability game seems to produce its own rules within the very process of playing: certain norms, which regulate the debate and establish its procedures, emerge out of the debate itself. It can be accepted that the norms and regulations which shape the discussion can become more precise and detailed (or can be replaced by other ones) due to the decisions made during the discussion. However, the discussion needs some starting point which justifies the idea that discussion as such is as a proper way of decision-making. It should be also taken into account that discussion is not the only option available for the condominium inhabitants: nothing prevents them from transferring the decision-making responsibility to one of the neighbors who proclaims himself a prophet or making the decision by lot. If one argues that all of these alternatives could be considered via discussion on the procedures of decision-making, the recursive problem will emerge one more time, because this discussion will also demand certain justification. Rousseau's idea of the *Legislator*, which was mentioned earlier in this chapter, was designed in order to overcome this controversy: Rousseau understood that the system of democratic decision-making cannot be established in a democratic way and ascribed this task to the charismatic leader and his or her political will. Pettit avoids integration of a non-republican element to the fundamental structures underlying his republican theory, but the price of this decision seems to be too high: while the task of political ontology is to provide the theory with proper foundations, examination of Pettit's ontological structures reveals the *lack of their*

own ontological justification. Pettit's ontology does not give any answers to the most challenging questions: *who* and *why* composes his basic political entities and *what* justifies public debate as a legitimate form of decision-making.

At the same time, Pettit's claim that his ontological structures justify pre-contractual claims among the participants of public debate which leads to the state's "heavy responsibilities in the sphere of social justice" (Pettit, 2012, p. 185) on the social level, can be regarded as implausible in the light of certain criticisms. Pettit states that citizens' democratic involvement will be grounded in the virtue, which will be "reinforced by personal interest" (Ibid, p. 228). I am going to elaborate a well-known thought-experiment which shows that even under the conditions close to Pettit's fundamental structures, personal interest will drive the participants in the other direction. Pettit's claim against Nozick is based on the idea that the Robinsons from his experiment are "mutually isolated" (Pettit, 2005, p. 171) and they lack the grounds for making pre-contractual claims against each other due to the absence of communication. I will slightly change the conditions of the experiment in order to show that even if the Robinsons start communicating each in the way that is fully correspondent to Pettit's requirements, the outcome of their communication might be different from one that is expected by Pettit. I will argue that pre-contractual claims will not be justified even if the participants communicate with each other according to the rules of civility, while the institutions, which will arise out of the discussion, will hardly remind the republican ones.

4.3 Philip Pettit vs. 10 Robinsons Crusoe

Imagine that 10 Robinsons Crusoe living on neighboring little islands suddenly find out about each other's existence and start to communicate. Each of RCs has a small household on his or her island. They differ in farming talents and in leisure time preferences. Let's imagine that RC1 prefers to rest as much as possible, while RC2 works harder than any other and is mostly skilled in farming. Economic outcomes of RCs' households at the moment of their meeting are all different and RC1's situation is the worse while RC2's – the best.

RCs meet, visit each all the islands and become aware of each other's achievements. After a while RC1 realizes that he is physically stronger than RC2 and he can easily steal a number of goods produced by RC2. Later the same evening RC1 comes to RC2's island, uses some MMA techniques and goes back in a boat full of meat, vegetables and fruits.

After this RC2 initiates a meeting of all other RCs and tells them what happened. He points to the fact that RC1 is physically stronger than each of them and since his island is on the same distance from any other (let's assume that RC1's island is in the center of a "circle" composed of

other islands) RC1 is an equal threat for all of them. Other RCs agree that the RC1 problem is a mutual one and that it can be solved only by common efforts. The RCs decide to choose two strongest of them to form a patrol that will watch all the islands and represent their community in negotiations with RC1. Other RCs agree to pay them a price that will be higher than the amount of goods the patrol RCs (let's say – RC3 and 4) could produce by themselves. Since different households are more or less attractive for RC1 as a target (because of difference in prosperity) RCs agree that their contribution should depend on their economic results and make a deal that each of them will transfer 10% of the produced goods to RC3 and RC4. The proportional contribution is the same for all while real amounts of goods transferred to the patrol are different (for example RC2's real contribute is more than any others').

RC10 initiates another meeting and offer to apply the same system to potential services provided by RC5 who was a doctor before shipwreck. He argues that all RCs need some health care in case of disease and offers to apply the same centralized approach, which was used in order to overcome the threat of RC1. RCs negotiate and decide to decline RC10's offer - they argue that this danger despite looking a lot like the RC1 threat is essentially different. RCs have different chances for diseases because some of them might have certain chronic ones or naturally less effective immune system. Also, some RCs used to have or still have quite unhealthy lifestyles that make their chances of disease higher as well. The RCs decide that it will be more efficient for them to have individual contracts with RC5 who can either provide them with some single consultations or offer insurance coverage.

The same story happens when RC8 offers to organize a centralized fire system – others claim that not every island has a volcano and they have no interest to pay for services they will hardly use.

It is important to mention that the RCs communicate in a respectful way and recognize each other's right to raise one's voice and to address a proposal. Every proposal is discussed and becomes a subject of voting. Let us assume that the RCs even work out a formal system of deliberative procedures, which provides them with equal time for their speeches and questions. Thus, Pettit's requirement is satisfied: the RCs treat each other absolutely equally as deliberators. But it hardly leads to justification of pre-contractual claims. How will the RCs react if one of them for some reason does not succeed with a harvest and claims that the rest of RCs must provide him with support and enforce this decision with the help of protective agency composed of RC3 and 4? It goes without saying that at least some of them will not be indifferent and let their neighbors starve or die. But it will be a charity-like individual decision based on sympathy not *duty*. Some RCs can decide to insure themselves in case of drought and agree to support each

other under tough conditions, but it will create a *contractual* basis for future claims. RC2 who is very sure about his bright future is likely to refuse to participate in this agreement. Other RCs will not have any moral or ontological foundations for justification of coercing RC2 to join the agreement by means of the protective agency. Although Robinsons follow the norm of norms, which underlies acceptability game, by listening to each other and addressing only the mutually relevant proposals, it does not lead to justification of the pre-contractual claims.

The described experiment implies a number of assumptions, the problematic character of which was discussed in this chapter. In particular, it is assumed that 9 Robinsons recognize each other as full-fledged participants (it could be possible that 8 Robinsons refuse to deal with, for example, RC9 for some reason) and agree to recognize the decisions, which result from discussion and voting as legitimate and mandatory for all. However, it was also shown that even these grounds do not necessarily lead to the outcomes expected by Pettit. Public debate and deliberation as the most fundamental forms of human co-existence can determine the emergence of certain (quasi)political institutions, which will share just a few features with the republican ones if any.

Pettit's political ontology leaves many more questions than answers. It was designed to clarify the most fundamental structures of the republican project and to explain why the republican procedures will be welcomed and actively used by the citizens. However, the answers given by Pettit provoke some new challenging questions. The most essential one points to the recognition problem: it is very unclear what in Pettit's framework creates the boundary between participants and non-participants and what prevents this boundary from being very strict. It is also unclear what provides the discussion with the status of the legitimate and uncontested way of decision-making. The history of political philosophy reveals that the search of the answer to this question is a challenging and sometimes painful process, which can result in certain unwanted concessions. However ignoring the problem, which is relevant and potentially stressful for the theory, does not seem a good alternative. Finally, Pettit's ontological structures fail to serve one more task, which they were designed for – to support and justify the idea of pre-contractual claims. The thought experiment which I addressed in the chapter shows that active and respectful political communication can lead to the rejection of this principle and the establishment of certain non-republican regimes.

CONCLUSION

Philip Pettit's modern republican project is one of the most widely discussed political theories of nowadays and it has attracted a number of critical responses. Although the criticism of Pettit's republicanism is quite diversified, it is possible to track its three main themes: the idea of freedom as non-domination, the conception of contestatory democracy and the ontological background which underlies the system of republican institutions. In this thesis I followed all these critical lines and discussed them with the help of independent arguments. The examination of Pettit's republicanism, which I addressed in this paper, results in the conclusion that Pettit's political theory contains certain problematic elements. These elements seriously question Pettit's success in providing the system of political institutions and procedures, designed for promotion freedom as non-domination.

Pettit's approach, which implies the idea that one's freedom is not infringed upon if one experiences interference that was authorized by those subjected to interference, reveals its problematic character in the political sphere. On the collective level the authorization which provides state interference with non-arbitrary character, is realized via public debate. If one's preferred mode of activity is restrained due to certain legislative decision, while one refuses to join the debate in order to defend the deprived choice, one cannot claim that one's freedom is infringed upon: according to the republican formal standards one remains as free as one used to be before the restriction. Since the well-ordered republic provided the one with an equal position in the debate and a full access to public forums, the outcome (according to which one is deprived of some of one's choices) might be regarded as one's own responsibility if one decides not to get involved in the republican procedures. Thus, under the republican conditions the right to political participation turns into necessity: one *has* to exercise it in order to defend one's preferable lifestyle. Otherwise one might find oneself in the situation when one's space of *actual* freedom is radically reduced, while *formally* one's freedom will not be anyway infringed. Since political participation becomes an integral element of the life of any person who seeks to live in accordance to her preferences, it is fair to say that the republican freedom implies an element, which is traditionally associated with the positive approach.

The described problem has far-reaching consequences: under the republican conditions the position of certain groups and individuals becomes disadvantaged and might be even considered as dominated (in Pettit's own terms). In order to prove this statement I referred to the famous "highwayman" argument, which is associated with the pure negative freedom approach. When

one is stopped by the highwayman and has to make a choice between life and wallet, one's freedom is infringed even though one has an opportunity to choose: one is deprived of the most preferable choice to save both one's life and wallet. The choice, which is left to the person, is imposed on her and both options that it implies are actually undesirable (even if one chooses life, one will lose her wallet, and losing the wallet is, of course, unfavorable). The republican conditions create a similar situation for certain groups whose lifestyle, on the one hand, contains some special traditions that can be unwelcomed by others (in the text I used the example of a religious group, which creed determines a special type of cattle slaughter), and, on the other, implies ultimate unacceptability of political participation. The choice which this group will have to make if their tradition becomes the subject of a legal restriction, implies two undesirable options: they will have to either sacrifice this tradition or join the public debate, which also contradicts their creed. Moreover, from Pettit's own perspective the position of this group is dominated: the group is deprived of its choice (to keep the tradition and avoid participation) and it has no control over this interference because it is determined by the very framework of the republican project and its basic mechanisms. Finally, the group does not even have to *face* this situation in order to be recognized dominated. According to Pettit, one is already dominated if the framework of one's existence implies the *possibility* of arbitrary interference. Even if one does not experience any actual arbitrary interference but exists under the conditions, which make it possible, this *potential* arbitrary interference is a sufficient reason for recognizing the one as a subject of domination. The same could be said about the discussed group: even if the rest of republican society is at the given moment tolerant to their traditions, the very possibility of the situation within which they will be deprived of the choice to follow their creed and keep both their tradition and non-involvement in public processes justifies their dominated status. The group has no control over this potential interference and cannot prevent it because this potential outcome is determined by the most fundamental republican mechanisms, according to which state interference is non-problematic when it is grounded in public debate and is not successfully contested.

The problem of one's subordination to the republican procedures appears one more time in the context of Pettit's political ontology. The basic ontological structure, which underlies the system of republican institutions and procedures, might be challenged by two connected questions: what makes the deliberative discussion a legitimate procedure of decision-making (which results are mandatory for all) and who (and why) falls under the category of participant? The latter question reveals Pettit's neglect (or at least problematic lack of attention) of the recognition problem, which is widely discussed in the modern political theory. While Pettit grounds all the republican procedures in the principle of equal treatment within the debate, he does not explain what makes

the participants recognize each other as the full-fledged sides. Since certain boundaries, which separate participants from non-participants, appear under any conditions except the global all-inclusive democracy (which is not Pettit's choice), the criteria, which underlies these boundaries must be either explained or recognized as arbitrary.

Pettit's political ontology serves one more purpose: with its help Pettit argues that fundamental discursive structures, which imply mutual respect and deliberative decision-making, determine the justification of pre-contractual claims. In the text I described a thought experiment, which, on the one hand, satisfies Pettit's requirements, but on the other, results in quite different conclusions. According to it, the communicative framework of human co-existence does not necessarily lead to the justification of pre-contractual claims and genesis of the republican-like institutional environment.

Although this paper was mostly focused on certain problematic elements of Pettit's modern republican project, it goes without saying that Pettit's political theory contains a large number of powerful statements and plausible arguments. Even in the light of certain criticism Pettit's republicanism fully deserves the good reputation that it enjoys.

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