

## REPUBLICANISM'S PARADIGM IN CONSTITUTIONALISM

**Karlo Godoladze**

*Ilia State University, Georgia*

“respublica res populi, populus autem non omnium hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus.”

M. Tullius Cicero, De re publica

Modern constitutionalism or limited government, the rule of law and the practical implementation of the principle of democracy, is called quite impossible without such a powerful paradigm as republicanism and republican form of government. It is obvious and clear that in the modern world the concept of republicanism and its paradigmatic conception have substantial impact on the practical functioning of constitutional democracy. According to scientific terms, this fundamental concept is basic measure and matrix in state systems which is based on the rule of law and self-restraint of governance principles. If we consider this background, it is appropriate to carry out a detailed analysis of the above mentioned concept and phenomenon. Its evolutionary development and final design of the important aspects and trends of the notion are considered and perceived to be the first origins of republicanism. The above scientific work will enable us to see clearly a phenomenon of the modern framework and define the future directions of its development. This paper is an attempt to view and perceive an issue raised from a theoretical-doctrinal standpoint. If we agree that republicanism occupies a distinguished place in the Euro-Atlantic and is a part of general human values, then its substantive meaning becomes clear. Above mentioned notion is based on the fundamental and essential character of ideals, such as political freedom, self-government, citizenship, equality and dignity. The values presented here are primarily determined by the political-legal and philosophical thinking, from antiquity to the modern era. According to above mentioned terms and direction, the present paper attempts to analyze the paradigm sense, from the ancient Greek and Roman republics, in passing by medieval revival of concept, up to construction of first modern republican states. The research aims to the possible extent to examine in detail one of the basic paradigm of modern constitutionalism, show contemporary and classic visions, concepts regarding those letters. Also considered the design of future development and the formation of possible variation of paradigm. Through this passing way, previous article contemplate meaning of republican freedom “Libertas” and perceives the value of concept as “Non Domination”.

**Keywords:** Republicanism, Republican form of government, Res publica, neo-republicanism, Republican constitutionalism.

## Introduction

Modern constitutionalism or limited government, the rule of law and the practical implementation of the principle of democracy, is called quite impossible without such powerful paradigm as republicanism and republican form of government. It is clear that in the modern world the concept of republicanism and its paradigmatic conception have substantial impact on the practical functioning of constitutional democracy. According to scientific terms, this fundamental concept is basic measure and matrix in state systems which is based on the rule of law and self-restraint of governance principles.

If we consider this background, it is appropriate to carry out a detailed analysis of the above mentioned concept and phenomenon. Its evolutionary development and final design of the important aspects and trends of the notion are considered and perceived to be the first origins of republicanism. The above scientific work will enable us to see clearly a phenomenon of the modern framework and define the future directions of its development. This paper is an attempt to view and perceive an issue raised from a theoretical-doctrinal standpoint.

If we agree that republicanism occupies a distinguished place in the Euro-Atlantic and is a part of general human values, then its substantive meaning becomes clear. Above mentioned notion based, on the fundamental and essential character of ideals, such as political freedom, self-government, citizenship, equality and dignity.<sup>1</sup> The values presented here are primarily determined by the political-legal and philosophical thinking, from antiquity to the modern era. According to above mentioned terms and direction, the present paper attempts to analyze the paradigm sense, from the ancient Greece and Roman republic, in passing by medieval revival of concept, up to construction of first modern republican states.

The basic idea to form and establish republican form of government is essentially linked to the Roman state. As modern scholars noted correctly, republican legal theory mainly originated in Roman Republic.<sup>2</sup> The main purpose of this core conception basically at the very beginning was how to protect citizens from arbitrary government and governance; this was in order to protect the common good, as the supreme value category of state and society. According to this background the essential elements and principles of republicanism were fully established; without these essentials, the concept would have lost its originality and sense. The fundamental requirements of republican government include: popular sovereignty, the rule of law, a deliberative senate, a democratic popular assembly, elected executives, an independent judiciary, and a general system of checks and balances to protect public liberty against corruption and to safeguard the equal individual rights of all citizens against each other and against state. "Together these institutions secure the republican virtues in government, which have introduced a new era of justice into politics, wherever they have prevailed".<sup>3</sup>

The research aims to the extent possible, to examine in detail, one of the basic paradigms of modern constitutionalism. It will also show contemporary and classic visions, concepts regarding those letters. Also considered are the design of future development and the formation of possible

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<sup>1</sup>Laborde, Cecile, *Republicanism* (2012). Oxford Handbook of Political Ideologies, Michael Freeden, ed., Oxford University Press, 2013, Forthcoming. Available at SSRN: <http://ssrn.com/abstract=2160877>

<sup>2</sup> See P. Pettit, *Republicanism: A Theory of Freedom and Government*. Oxford. Oxford University Press, 1997; M.N.S. Sellers, *The Sacred Fire of Liberty: Republicanism, Liberalism and the Law*. Basingstoke and New York. Macmillan and New York University Press, 1998.

<sup>3</sup> M.N.S. Sellers, *Republican Legal Theory: The History, Constitution and Purpose of Law in a Free State*. Basingstoke and New York. Palgrave Macmillan, 2003; pg. VIII.

variation of paradigm. Through this passing way, previous article contemplate meaning of republican freedom “*Libertas*” and perceivethe value of concept as “Non Domination”.

### “*Res Publica*” and origins of concept

The main starting point and function of republican legal theory is to assure general welfare of society. Solutions to this issue were looking by the ancient philosophers and thinkers. The first steps on this path, the great Greek thinkers Plato and Aristotle, carried out to their own works. Above mentioned philosophers for the first time defined and constructed republican ideals. Already in the age of Plato and Aristotle, thoughtful persons understood the common good of the people to be the only legitimate basis of justice, government and law.<sup>4</sup> In other words the central pattern of republican political and legal legacy is to serve *res publica* of a nation’s people and citizens.

“*Res Publica*” was the Roman original (genuine) term for their state, its public business, all public property, and the purposes these served. Such modern scholars and scientists noted correctly that the first “self-consciously republican” ideology originated in the senatorial opposition to Gaius Julius Caesar, and implies a procedural commitment to certain “republican” political and legal institutions, usually attributed to Rome’s republican constitution of 509-49 BC. The republican tradition took Rome as its first inspiration, and specifically Rome’s political structure as it evolved after the fall of the kings (509 BC), until Caesar’s legions finally established his principate and subjugated the senate and the people of Rome. The basic desiderata of republican government, as articulated republican legal tradition derived from Rome.<sup>5</sup> Republican liberty signifies subjection to the law and to magistrates, acting for the common good, and never to the private will or domination “*dominatio*” of any private master (suzerain).<sup>6</sup>

Marcus Tullius Cicero and Titus Livius (Livy) constructed the first and most influential comprehensively republican ideology in praise of the old institutions, trying to explain how and why the Roman republic had failed. This was in turn was based on the Roman state system analysis and experience.<sup>7</sup> Specifically thinkers considered how effectively checks and balances system in Roman state framework were functioning. This practically means the analysis of mutual relation on the one hand, the Roman Senate and executive magistrates, and on the other hand among the citizens of Rome. By the broadest sense, aforementioned thinkers analysed fully and comprehensively political and legal design and system, which functioned in Rome till the breakdown of republican form of government.

Cicero chose the old “Roman word “republic” to translate Plato’s Greek “*politeia*”. In his own dialogue *de re publica*, written about 54 BC, Cicero defined the *res publica* as the property of the people or “*populos*”, by which he meant, not just any collection of humans, but a large group associated in pursuit of a shared sense of justice and their own common welfare”.<sup>8</sup> Philosopher identified the law with “*recta ratio*” (right reason) and justified all legal

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<sup>4</sup>Ibid., pg. 1.

<sup>5</sup>Ibid., pg. 6.

<sup>6</sup> See Philip Pettit, *Republicanism: A Theory of Freedom and Government*. Oxford. Oxford University Press, 1997. M.N.S. Sellers, *The Sacred Fire of Liberty: Republicanism, Liberalism and the Law*. Basingstoke and New York. Macmillan and New York University Press, 1998.

<sup>7</sup> See *Supra* note 3; pg. 6.

<sup>8</sup>Ibid., pg. 7.

and political authority in terms of its service to the “res publica” or common good of the people. What modern lawyers and republican theorists most appreciated in Cicero was his commitment to reason, his contempt for regnum, his lifelong battle against arbitrary authority, and his desire to advance and protect the public welfare through constitutional reform and renewal.<sup>9</sup>

Cicero’s six books on the republic were lost, for the most part, until the nineteenth century, but enough fragments remained to reveal how he had struggled to perfect the actual constitution of Rome, with proficient checks and balances between the powers and magistrates of the state. The great thinker considered any true “republic” (“res publica”) to be the property of the people (“res populi”), when the people band together to pursue shared justice and their common good. Philosophers suggested that the most effective form of government would be “mixed” governance, which combines and balances the best aspects of various public institutions and authorities. As Cicero indicated “Liberty” (“libertas”) thrives best in a state where the people have ultimate power and all citizens have equal legal rights and the vote, but some decisions will still need to be made by experts, or by the expeditious action of a single authority. The balanced constitution (“constitutio”) will be more just, and also more stable than other forms of government”.<sup>10</sup>

Taken to its logical conclusion, Cicero’s theory of just laws and republican government censured any unbalanced states as a “tyranny” and worthy of revolution, whether it was dominated by monarch or mono dimensional authority, or some faction, or even by the people themselves. “If a good life is only possible under balanced constitutional government, then all governments should become republics, in deference to universal truth, and nothing would be more foolish than to confuse the positive laws of a bad government with binding law and justice”.<sup>11</sup> Such scholars articulated correctly the central concepts of republican legal theory and incorporated pursuit of the common good or welfare through popular sovereignty, liberty, virtue, mixed government, and rule of law, linked by a Roman conception of libertas that defines justice between free people as subjection to no one’s will or interest, but only to general laws approved by the people for the common or “public” good of the community.<sup>12</sup>

Polybius, a renowned Greek historian and thinker, described Rome’s constitutional balance in his Histories. As he pointed out, Rome’s unequalled success depended on its political mixture of monarchical, aristocratic, and democratic power, in which the consuls executed the laws and controlled the army, the senate proposed the laws and controlled the treasury, and the popular assemblies passed the laws and elected all magistrates.<sup>13</sup> According to Roman sense and meaning of republican form of government, the main product of republicanism was freedom. Therefore it would be rejected as narrow private interests and any attempt of arbitrary power. Republicans understood justice, liberty and common good as essentially related concepts and postulates. “Justice consists in whatever social arrangements between persons will best secure the common good of all people. Liberty is status of persons in societies whose social arrangements are just.

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<sup>9</sup> Sellers, Mortimer Newlin Stead, *The Influence on Marcus Tullius Cicero on Modern Legal and Political Ideas* (February 20, 2009). Ciceroniana, the Atti of Colloquium TullianumAnni, MMVIII. Available at SSRN: <http://ssrn.com/abstract=1354102>

<sup>10</sup> See M. Tullius Cicero, *De re publica*. Ibid., pg. 6-7.

<sup>11</sup> Ibid., pg. 8.

<sup>12</sup> Sellers, Mortimer Newlin Stead, *Introduction to Republican Legal Theory* (1999). Published in modified form in *THE PHILOSOPHY OF LAW: AN ENCYCLOPEDIA*, Vol. II, Christopher Gray, ed., 1999. Available at SSRN: <http://ssrn.com/abstract=1139851>

<sup>13</sup> See *Supra* note 3; pg. 7.

The common good of the citizens ultimately determines all justice, liberty and law in a fully republican state”.<sup>14</sup>

Modern theorists and researchers continue Roman Republicanism as they analyze among themselves the perception of Cicero’s fundamental concepts. Republican theorists have usually followed Cicero’s conception of republican laws and institutions, as set out comprehensively in his treatises *de officiis* (on duties), *de legibus* (on the laws), and *de re publica* (on the republic). Other fundamental texts include the first ten books Titus Livius in his history of Rome, the sixth book of the *Histories* of Polybius and much less importantly, the works of Aristotle, insofar as they anticipate and justify Roman practices.<sup>15</sup>

It is clear that the aforementioned great thinkers constructed the first comprehensively design and sense of the republican conception. Cicero and Titus Livius took proper attention to subordinate legislative acts for republican principles and maxims. Also in the foreground they raised law to ensure perfect regulation of narrow private interests. Nevertheless, “*res privata*” was protected in the “*forum internum*” space and was under the command of deliberative forum. To neutralize the influence of narrow interest groups and factions, thinkers introduced the principle of people’s (popular) sovereignty. According to this way of practical implementation of popular sovereignty, republican system must guarantee people’s inclusion, control and supervision, which in turn will minimize the possibility of abuse of power.

The famous Greek thinker Aristotle “himself had conceded that just as a larger body of water will be less easily polluted, so many men acting together will usually be more honest than a few”. Cicero “went further to insist, with all Romans of every party in his day, on the ultimate *imperium populi* or sovereign power of the people. Roman thinker frequently repeated in his speeches to the senate and the people of Rome that without popular sovereignty, there will be no republic. He denied the possibility of liberty, unless the people hold supreme power. He believed that a free people will elect men of virtue (“*virtus*”) to protect the common welfare of the state”.<sup>16</sup> Therefore it is necessary to ensure the principle of popular sovereignty. In order to achieve the main goal and purpose of governance Cicero formulated the well-known and recognized maxim - voice of the people (*vox populi*) is voice of the god (*vox dei*), which was widely circulated and was interpreted by a further period of thinkers and ideologists. Actually presented *sententia*, essentially describing the conceptual ontology of popular sovereignty and broad republicanism.

Constitutionalism or limited government has always been the central concern of republican legal theory. In accordance to ancient lawyers and thinkers a pattern of Republican public virtue, (“*virtus*”) was always perceived as a disposition to serve the common good. Such modern scholars designated rightly, ancient thinkers supply a rich source of republican narratives and

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<sup>14</sup> See K.von Fritz, *The Theory of the Mixed Constitution in Antiquity: A Critical Analysis of Polybius’ Political Ideas*. New York, 1954. Supra note 12; Available at Social Science Research Network.

<sup>15</sup> See J.G.F. Powell and J.A. North, eds. *Cicero’s Republic*. London. Institute of Classical Studies, 2001; Breguet, *Cicero, La République*. Paris, 1980; M. Schofield “Cicero’s Definition of *Res publica*” in J.F.G. Powell, ed. *Cicero the Philosopher*. Oxford. Oxford University Press, 1995, pp. 63-83. See Supra note 14; Available at Social Science Research Network.

<sup>16</sup> Sellers, Mortimer Newlin Stead, *The Origins of Republican Legal Theory* (2001). Published in modified form in THE INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES, Elsevier, 2001. Available at SSRN: <http://ssrn.com/abstract=1139837>

models of civic virtue.<sup>17</sup> Above mentioned concept in modern constitutional sense means, the civil awareness as well as the conceptual standards of political and legal culture (perception) of society.

When Cicero and Titus Livius discussed the overall goal of the state, they pointed to the need of harmonious co-existence of members of society. This was to ensure this issue was the main function and purpose of state, as the form of political, legal and social collaboration. Thus Cicero asserted a universal right to justice, received by all human beings directly from nature, rather than by any positive enactment. "Reason gives us all the ability to think, discuss, argue, and discover the truth about justice, as about all other subjects of our senses and natural perceptions. All people in all nations everywhere have this capacity to reason, which thinker calls the particular "virtue" of humanity":<sup>18</sup> "est enim virtus perfectaratio, quod certe in natura est." Cicero noted that reason ("ratio") could find the right measure of checks and balances in government to achieve justice ("iustitia") and harmony ("harmonia") in public life.<sup>19</sup>

Starting from Aristotle and Livius, there was unchanged continuation about perception of one of the fundamental paradigms of republicanism, the rule of law. The thinkers demanded "imperia legum" or "empire of laws and not of men". The first, "ending with the liberty of Rome", was government by law ("de jure"), founded on the common good. The second, "beginning with the arms of Caesar", was government by some few men in pursuit of their private interests ("de facto"), an "empire of men and not of laws".<sup>20</sup> Indeed Roman freedom ended when a small group of people were able to manage the implementation of their own narrow interests. Which in turn serves the fundamental difference between "de jure" and "de facto" substantive connotations of law.

The republican conception of law implies just laws made by popular sovereignty for the common good of the people. Cicero insisted that such laws must serve the public welfare "populi utilitas", not the public will "populi voluntas", because "the votes of fools" cannot alter the natural laws of justice. John Adams concluded correctly that Roman history shows that "there can be no government of laws without a balance". "All men, rich and poor, magistrates and subjects, officers and people, masters and servants, the first citizen and the last, are equally subject to the laws".<sup>21</sup> In his Philippics Cicero "repeatedly exhorts the Roman people to reassert the libertas they had lost when they fell under the domination of Julius Caesar and violently attack Antonius for aspiring to reduce his fellow citizens to a renewed condition of slavery".<sup>22</sup>

Cicero In the famous work *De legibus*, formulated his vision of the ideal Constitution. He outlines an ideal constitution for a free state and proceeds to enunciate two golden rules. "When giving laws to free people", and he reminds us once again that we must first ensure that they are never dominated by the wills of their magistrates. We must ensure that they are entirely ruled by laws, so that just as the magistrates govern the people, so the people govern the magistrates." The other golden rule is the obligation of magistrates, according to which the highest duty of

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<sup>17</sup> See M.N.S. Sellers, *American Republicanism: Roman Ideology in the United States Constitution*. Basingstoke and New York. Macmillan and New York University Press, 1994. See *Supra* note 12; Available at Social Science Research Network.

<sup>18</sup> See *Supra* note 9; pg. 8-9. Available at Social Science Research Network. M. Tullius Cicero, *De legibus* I.16.45.

<sup>19</sup> *Ibid.*, pg. 10.

<sup>20</sup> See *Republican Legal Theory*; *Supra* note 3; pg. 14.

<sup>21</sup> See *Supra* note 20; pg. 14.

<sup>22</sup> *Republicanism. A Shared European Heritage. Volume II. The Values of Republicanism in Early Modern Europe*. Edited by Martin Van Gelderen and Quentin Skinner. Cambridge. Cambridge University Press; 2002. pg. 10.

magistrates is encapsulated in the maxim *salus populi suprema lex esto*, the safety of the people must be treated as the supreme law”.<sup>23</sup>

The Romans always credited their victories and all public achievements jointly to the senate and the people of Rome (“*senatus populusque Romanus*”) so long as their republic survived. This Roman bicameralism remained a central requirement of republican government, maintaining both a “senate” and a regulated popular assembly against the unicameral “democracy” of some Greek city-states. The aforementioned principle promoted a higher dimensional degree of deliberation and inclusion in the Roman state decision-making process, which expressed by the way of another famous formula and *sententia*, “*senatescensuit, populus jussit*”, through which the senate proposed and the people ratified the laws.<sup>24</sup>

The central intention and goal for republicans since Cicero has been to revive the liberty, the principles, and the virtues of the Roman republic, while avoiding the vices and constitutional blemishes that led eventually to the tyranny of the emperors and the tragedy of civil war.<sup>25</sup> On the basis of the above-mentioned fundamental concept, virtually every prominent republican thinker shared the idea of constitutionalism and constitutional order in general. Qualitatively as a large part of modern scholars and commentators pointed out, republicanism has a fundamental connection with democracy and limited government or constitutionalism.

Thus republican philosophy and its political-legal postulates, since ancient times oriented towards establishing balance and harmony of interests in society. This is the only possible implementation of the principles of liberty (freedom) and the rule of law. Republican thinking and generally “republic” ideas include political-legal and institutional structure, which through republican legislation should provide the protection of human dignity and other fundamental paradigms. Republican theory is a doctrine about liberty and governance. If we note more correctly, it was doctrine about freedom, by utilization of self-restrained government and governance. This was in order to ensure and share justice as basic principle for social, political and legal order. The ancients and modern Republicans deeply believe that there is no liberty without justice or vice versa.

Republican liberty since the ancient period up to date is the subject of serious, oftentimes antagonistic consideration and discussion. The views and opinions of the aforementioned matrix are substantively entered into the category of constitutional and legal order. Means of which enable citizens to have the ability and authority to maintain the status of a free person. This is in accordance with the above mentioned procedure to establish relations with the rest of society. In addition, in order to ensure the freedom of grace, proponents of republicanism supported rational and legitimate intervention into civilian life. This is also in order to avoid arbitrariness, and by the most efficient way to secure the liberty or freedom. In essence, ardent Republicans believe that the limited government and the rule of law principally exclude despotic regime that negates unjustified and illegitimate interference in citizen’s lives. This mentioned maxim fundamentally determines the political-legal theory of republicanism from the origins up to modern era.

According to aforementioned background, it is clear that the republican theory should be considered as an excellent opportunity and a method for ensuring the constitutional and broadly legal order. It lays out a system that is as close to ideal as possible where his majesty the people protected arbitrariness and domination. It would be better if we end this section by the perception of the patriarch of republicanism, Marcus Tullius Cicero. Such modern scientists noted correctly

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<sup>23</sup> *Ibid.*, pg. 12. Republicanism and Political Values.

<sup>24</sup> See *Supra* note 16; Available at Social Science Research Network.

<sup>25</sup> See *Republican Legal Theory*; *Supra* note 3; pg. 3.

that this great Roman philosopher and thinker is the father of modern law and politics.<sup>26</sup> Indeed, the modern researcher by no means bypasses the influence of Cicero. That is why we have decided to complete this part of the article by the perception of genius thinker and wise statesman.

The “defining characteristics of modern law and government include appeal to reason, the limitation of arbitrary power, and commitment to the welfare of the people as a whole. All three were present in Cicero, all three were rare after Caesar, and all three remain precarious today. The modern age of law and politics began as lawyers, scholars, and politicians started to understand, to emulate, and eventually sometimes to surpass Cicero. “Postmodern” legalism begins when reason, deliberation, and constitutional checks and balances lose their hold on lawyers, judges, and others in positions of public responsibility”.<sup>27</sup> As noted by the incomparable eloquent, it is necessary that the trend of arbitrary and despotic rule be altered by the civic virtue and human dignity based antipodal. Thus it is necessary to remember, that presumption of tyranny will never be entirely secure; therefore it is vitally important to recognize Cicero’s main sententious “*Cedant armatogae, concedat laureaudi!*”<sup>28</sup>

### **The medieval renaissance and subsequent evolution of Republicanism**

The medieval revival of republican’s concept connected multi-featured thinkers and philosophers who have returned the analysis of ancient political-legal heritage and contributed refinement theoretical and doctrinal aspects of republicanism. One of the remarkable thinkers by perception of aforementioned trend was the renowned Italian philosopher Niccolò Machiavelli. In his well known work *Discorsi sopra la prima deca di Tito Livio* thinker widely discussed about republican liberty. Indeed, it is possible to say that Machiavelli was one of the great apologists by the revival of the Italian republicans’ thinking.

After that, “the resistance of the Swiss, various Italian cantons, and the United Provinces of the Netherlands to imperial control added practical models for republican liberty, as did the constitutional and theoretical writings of the various English authors, in their efforts to restrain or to remove kings during the Civil War and “Commonwealth”, the Glorious Revolution, and the extended British controversies over American independence”.<sup>29</sup> Finally the French and American Republican states fully constructed first paradigms of anti mono dimensional authority and broadly monarchical form of government. It is clear that, after the above mentioned sacred phenomenon, the Western thought is firmly based on constitutionalism and in general the conceptual paradigms of republicanism.

The republican revival began as a work of historical renewal of a forgotten tradition of Western thought. Challenging “the conventional view that liberal modernity in the Anglo-American world emerged out of Lockean natural-rights ideology, revisionist historians showed that there was a coherent republican tradition, running from the neo-classical civic humanism of Renaissance Italy powerfully exhibited in Niccolò Machiavelli, through to the works of James Harrington and the “Commonwealthmen”, and later to Jean-Jacques Rousseau and James

<sup>26</sup> See Supra note 9; Available at Social Science Research Network. See also Hans Baron, *The Crisis of the Early Italian Renaissance: Civic Humanism and Republican Liberty in an Age of Classicism and Tyranny* (revised edition., Princeton, 1993).

<sup>27</sup> *Ibid.*, pg. 48.

<sup>28</sup> See M. Tullius Cicero, *Philippicae*, II.8.20. Supra note 26; Available at Social Science Research Network.

<sup>29</sup> See M.N.S. Sellers, *Republican Legal Theory*; Supra note 3; pg. 7.



Madison, which deeply influenced English thought up to the late eighteenth century, and was a powerful inspirational force during the American revolution”, while the tradition as a whole was centrally connected with the concepts of freedom (liberty), political participation, civic virtue and corruption.<sup>30</sup>

Despite the fact that there is a scholarly discourse on Machiavellian republicanism as the phenomenon, it is clear that usually modern commentators and distinguished theorists start the medieval analysis of aforementioned concept from Machiavelli which derives primarily from Machiavelli’s Discourses on the First Ten Books of Livy, where the thinker virtually laid the foundation of liberal republicanism. The later is expounded by Thomas Hobbes in his various writings. Machiavelli and Hobbes are the paramount sources of this liberal republicanism, but the thought of each had to be radically transformed before either could contribute to this new core composition.<sup>31</sup>

One of the most important elements that Machiavelli contributes to this particular form of republicanism is an intensive perseverance to a democratic republicanism. The great thinker “makes prominent claims in favor of the people and denounces, in their name, the tradition of “all the writers” on politics as being too aristocratic”. The philosopher “endorses Rome precisely because it embraced the people. In order to produce an aggressive republic, the philosopher sets himself the task of evaluating the appetites of the two classes, the common people and the great. The people desire security and property, whereas the great desire dominance and honor. He constructs his republic squarely on the desires of each. He also determines that his purpose is served—his purpose of creating a belligerent republic—if both classes can to a degree satisfy their desires”.<sup>32</sup>

Machiavelli credited Cicero “with the insight that although the people may be ignorant, they are capable of grasping the truth, when good men place the truth before them. He thought that this makes people proper guardians of liberty. Because the people have less opportunity to usurp dominion, they will strive to free themselves, and prevent domination by others”. Machiavelli adopted Cicero’s maxim that the voice of the people (*vox populi*) is often the voice of the god (*vox dei*). He argued that so long as they are guided and regulated by law, the people will choose better magistrates than princes would. Left without regulation, the people would fall into confusion and welcome tyrants to control their warring private interests, thus exclude the real functioning of democratic republicanism.<sup>33</sup>

Nevertheless Machiavellian republicanism is qualitatively different from its classic predecessor. The main difference is related to the understanding of civic life. “His republicanism embraces a civil life characterized by tumult. He rejects the teachings of classical philosophy that emphasizes harmony in political life, because he relishes conflict and dissension. This struggle between the two classes originates from their desires and passions. He intends not to educate their passions, not to teach them to put the collective good before their own individual good”. As

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<sup>30</sup> Republicanism and Political Theory. The Republican Contribution to Contemporary Political Theory. Edited by Cecile Laborde and John Maynor. Blackwell Publishing; 2008. pg. 2-3.

<sup>31</sup> Machiavelli, Hobbes, and the Formation of a Liberal Republicanism in England. Vickie B. Sullivan. Tufts University. Cambridge University Press; 2004. pg. 9-10.

<sup>32</sup> Ibid., pg. 10.

<sup>33</sup> See M.N.S. Sellers, Republican Legal Theory; *Supra* note 3; pg. 11.

he says in *The Prince*, “trully it is very natural and ordinary thing to desire to acquire, and always, when men do it who can, they will be praised or not blamed.”<sup>34</sup>

In accordance with above mentioned important aspect, Machiavelli's ideas are vastly different from the Western republican thinking. The philosopher notes that poverty and war are main reasons why it is possible for citizens to unite as much as the practical implementation of general welfare principle. Such theme causes severe scientific discourse; however, as correctly pointed out, modern scholars cannot sidestep the Machiavellian republican legacy or the thinker's contribution by the further improvement and development of republican notion.

Modern scientists have identified a group of authors who have essential and functional influence on the construction of modern republican conception. Leading republican authors include Marcus Tullius Cicero, Niccolo Machiavelli, James Harrington, Algernon Sidney, John Adams and “(more controversially) subsequent self-styled “republican” legislators such as Abraham Lincoln and Charles Renouvier. Many important writers outside the republican tradition also reflect a strong republican influence, including the Baron de Montesquieu, Jean-Jacques Rousseau, and Immanuel Kant. These eighteenth-century authors illustrate the close connection between republican ideas and the European enlightenment, leading up to the French and American revolutions”.<sup>35</sup> This listing is incomplete; however we can note boldly that on the whole the dynamics of evolution and development are properly presented.

Let us discuss some points of republican perception of James Harrington and Algernon Sidney. Harrington in his *Commonwealth of Oceana* (1656) advocated limits on landholding, because he agreed with Machiavelli that wealth and leisure made Rome too corrupt to be free. Besides, political theorists supported rotation in office to maintain the civic equality necessary for true republican virtue. Sidney's *Discourses Concerning Government* (1698) argued that wealth would actually strengthen the republic and endorsed representation in the popular assembly to check the excesses of direct democracy and its practical results in polity.<sup>36</sup>

Prominent American statesman and thinker Jon Adams fully agreed with the idea of representation and stressed the relevance of representative system. By the perception of checks and balances system, statesman approved the necessity of veto mechanism by the hands of higher executive official. It is also important to note James Madison's distinctive contribution on the formation of contemporary republican notion. Undoubtedly, Madison polished the doctrinal substance of republicanism when he focused on Federalist papers as an essential character of representation and its inevitability by the way of practical functioning of American republicanism.

Before discussing American and French republican paradigms, it is necessary to review England's “Glorious Revolution” (1688) and the legacy which evolution formed in the aftermath of revolution. Baron de Montesquieu and Jean-Jacques Rousseau also contributed to this. Republicans feel that a republic is the next logical step of a historical process of gradual democratic reform. They assert that British people will excel within a non-hereditary democratic and open system for selecting the head of the executive branch of government as well as the head of state. Republicans argue that such a system would advance the egalitarian cause of meritocracy, and create a political consciousness less connected with social class or birth. Every

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<sup>34</sup> See *Supra* note 31; pg. 11. See also Niccolo Machiavelli, *The Prince*, trans. Harvey C. Mansfield, 2d ed. Chicago: University of Chicago Press; 1985.

<sup>35</sup> See *Supra* note 33; pg. 2.

<sup>36</sup> *Ibid.*, pg. 3.

child growing up in a British republic, from whatever background, would know from an early age that they could aspire one day to becoming Head of State.<sup>37</sup>

In accordance with the opinion of proponents, the aforementioned form of government was the best healer of monarchy and curbed the absolutism. Implacable opponents of monarchical rule consistently argued that absolutism opposed two fundamental human paradigms such as popular sovereignty and democracy. By devaluation of above mentioned principles, absolutism undermined the future construction of nation-state in that the monarch violated people's basic rights when he interfered into functioning of English parliamentarism and representative system; therefore it was an irreversible one and for all by the British people to deny the monarchy. As far as republicans perceive the people as the source and constituent of all power, it was necessary and inevitable to prevail republican principles gradually.

Republicans agreed that kings or any other uncontrolled power in the constitution would lead to self-interest and corruption. Liberty and common good depended on "mixed government" and a "balanced constitution". During the age of European revolution, even many theorists who remained reluctant to identify themselves as "republican" nevertheless accepted aspects of this ideology.<sup>38</sup> Qualitatively all of the major apologists of republicanism were supported by the practical implementation of these maxims. One of the turning stages by the establishment of republican principles was the brilliant work of Charles-Louis Montesquieu, especially "De l'esprit des lois". It was created in 1748 and would not be an exaggeration if we note that it is still operating as benchmark of modern constitutionalism.

The French thinker fundamentally argues in relation to the importance of the rule of law and common welfare postulates. It also stresses the functional influence of balanced government, senate and popular elected assembly. Nowadays, the contemporary theory and doctrine of constitutionalism are inconceivable without Montesquieu's renowned notion about separation of powers. In addition, a renowned French philosopher formulated the decisive argumentation about "small republic" thesis. Montesquieu argued that the practical implementation of a republican form of government was possible only in the small size states and polities.

As the French thinker "elaborated in *Grandeur and Decadence of the Romans* and *The Spirit of the Laws*, Montesquieu's argument about the size of republics includes three major steps. The first is that size corresponds to a diminution in republican virtue. Large states necessarily have a plurality of interests in them and come to have substantial material inequality as well. This means that citizens develop private interests that diverge from each other sufficiently to increase the gap between private and common interest, which diminishes their willingness to uphold the latter against the former". As a result, the civic virtue that is animating principle of republics becomes more difficult to sustain. 'When that virtue ceases, ambition enters those hearts that can admit it, and avarice enters them all.'<sup>39</sup>

Second, and closely related, "is the difficulty in a large republic in perceiving the general good even if one wanted to. The common good is not only 'better felt' but also 'better known' in a small than in a large republic. Where the first argument concerns motivational problems for civic virtue, this argument suggests that large republics face informational or epistemic

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<sup>37</sup> See Republicanism: The Pros and Cons. Available at [www.stoa.org.uk/topics/monarchy/republicanism-pros-and-cons.pdf](http://www.stoa.org.uk/topics/monarchy/republicanism-pros-and-cons.pdf); Last visited January 10, 2014.

<sup>38</sup> See M.N.S. Sellers, *Republican Legal Theory*; *Supra* note 3; pg. 3.

<sup>39</sup> Levy, Jacob T., *Beyond Publius: Montesquieu, Liberal Republicanism, and Small-Republic Thesis*. History of Political Thought, 2006. Available at Social Science Research Network; <http://ssrn.com/abstract=739447>; pg. 2.

problems".<sup>40</sup> Thus by the perception of Montesquieu in the large and diverse states in general are difficult to reconcile on the common principles and values. Correspondingly, the narrow private interests always outweigh the general welfare principle as a foundational starting point by the formation of fully republican polity.

The third argument "centers not on virtue or homogeneity, but on institutional mechanisms and powers. It involves executive and military power. For Montesquieu as for other political thinkers of his era, it could not escape notice that the most important large republic in Rome's history, and the most recent, the English Commonwealth, both ended in one form or another of military dictatorship. Comparisons between Cromwell and Caesar abound in political works of the era in general and in Montesquieu's oeuvre in particular. The relationship between the military successes of republican Rome and its eventual civic failure is a major theme of Montesquieu's considerations".<sup>41</sup> Based on his observations, the aforementioned military component ended civil virtue and led to the devaluation of civic awareness and dignity, both in the cases of Rome and English Commonwealth.

Montesquieu's argument in sum constituted a direct challenge to neo-Roman and Machiavellian republican legacy. "He certainly denied that liberty was to be found only in republics. A constitution-bound monarchy in a large state could provide individual liberty and security, religious toleration, the rule of law, commercial prosperity, and progress in arts, sciences, and manners. Republics were either doomed to irrelevance and importance as small states, or destined to corrupt and destroy themselves as they grew". Finally Montesquieu's version of the small republic thesis "retained the status until Alexis de Tocqueville's own reinterpretation and transformation of the large republic question in *Democracy in America*, in which he emphasized the importance of mores and sociable habits over either institutional design or classical civic virtue".<sup>42</sup>

Another great French republican philosopher Jean-Jacques Rousseau accepted that there is a tight relationship among republican forms, civic virtue, personal service to the state, patriotism, smallness, and the avoidance of commerce and partial private interests. Rousseau "insisted that governments need not to assume republican forms in order to be republics at the level of justification. He even endorsed as a commonplace the idea that a monarchy must have intermediate bodies in order to protect against despotism. Of course, Rousseau drew normative lessons quite differently from Montesquieu's; on the desirability of virtuous republics he was Machiavelli's rather than Montesquieu's heir. But on the conditions that made such republics possible, on the social science of state size and regime type, he clarified but did not contradict Montesquieu's teachings".<sup>43</sup>

Subsequently, above mentioned views and Montesquieu's 'small republic thesis' make a great influence on the intellectual debate and discourse of eighteenth to nineteenth centuries republicanism. Finally, the aforementioned postulates have been criticized and the systems which do not substantially take into account presented ideas were practically established. All these and following benchmark of republican ideas connected to the American and French paradigms and their political-legal heritage and spread worldwide.

When George Washington gave his inaugural speech as the first president of the United States under the new federal Constitution, he asserted that "the destiny of the republican model

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<sup>40</sup>Ibid., pg. 2-3.

<sup>41</sup>Ibid., pg. 3-4.

<sup>42</sup>Ibid., pg. 8-9.

<sup>43</sup> See *Supra* note 39; pg. 10.

of government” was “deeply, perhaps... finally, staked on the experiment entrusted to the hands of the American people”. A new “Senate” would meet on the “Capitol” hill, overlooking the “Tiber” (formerly “Goose Creek”) river, as in Rome, to restore “the sacred fire of liberty” to the western world.<sup>44</sup> Such modern scholars noted correctly that the vocabulary of eighteenth-century revolution “reverberated with purposeful echoes of republican Rome, as political activists self-consciously assumed the Roman mantle”.<sup>45</sup>

James Madison and Alexander Hamilton, two main activists and founders of the American Constitution and broadly U.S. political system, published their own Federalist Papers under the pseudonym of Publius. Which in turn is connected to the founder and first consul of the Roman republic Publius Valerius Publicola (his Roman cognomen means “friend of the people”). Ultimately, it should be emphasized that the French discourse, like the American revolutionaries’ actions, directed towards turning to revival such a system of governance, which has provided the best protection of freedom, in ancient Rome.

American and French statesmen and politicians entered into conflict with their monarchs, and they immediately formed an important ideology which is essentially based on the Roman senatorial attitude toward Caesar and his successors. The Roman example “gave Americans heroes, vocabulary, architecture and a constitution for their revolutionary experiment in government without a king”.<sup>46</sup> The guiding principle of this republican tradition was government for the “res publica”, the public affairs, or the public good”. Thomas Paine and other eighteenth-century republicans and ideologists viewed the individual and the collective well-being of citizens as the only legitimate purpose of government.<sup>47</sup> The next is a torrent of abuse against the monarchy in general and George III in particular. As Paine explains that a country with a charter (constitution) needs a king about as much as it needs a hole in the head.<sup>48</sup>

American and French republicans thought of themselves as part of a two-thousand year-old tradition, originating in Roman conceptual framework. “The standard account divided political science between the “ancient prudence”, destroyed by Caesar and Augustus, “whereby a civil society of men is instituted and preserved upon the foundation of common interest” and the “modern prudence” in force ever since, “by which some man, or some few men, subject a city or a nation, and rule it according his or their private interests”. Republicans fought to restore the ancient prudence, which ended “with the liberty of Rome”.<sup>49</sup> They also shared and relied on the wisdom of medieval republican thinkers because it ensured the substantial discourse about freedom and republican form of government.

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<sup>44</sup> See M.N.S. Sellers, *Republican Legal Theory*; *Supra* note 3; pg. 16. See also George Washington, *The First Inaugural Speech* (30 April 1789), in W.B. Allen (ed.), *George Washington: A Collection*. Indianapolis. Liberty Press, 1988, pg. 462.

<sup>45</sup> *Ibid.*, pg. 16.

<sup>46</sup> Sellers, Mortimer Newlin Stead, *Classical Influences on the American Founding Fathers* (July 21, 2009). THE CLASSICAL TRADITION, Anthony Grafton, Glenn Most, Salvatore Settis, eds., Harvard, 2009; University of Baltimore School of Law Legal Studies Research Paper No. 2009-20. Available at SSRN: <http://ssrn.com/abstract=1437142>

<sup>47</sup> See *Supra* note 3; pg. 16.

<sup>48</sup> Lucas Prakke (2006). *Swamping the Lords, Packing the Court, Sacking the King*. *European Constitutional Law Review*, 2, pp 116-146.

<sup>49</sup> See *Supra* note 38; pg. 17. See also John Adams, *A Defence of the Constitutions of Government of the United States of America*. 3 vols, London. C. Dilly, 1787-1788, at I.125. J.G.A. Pocock (ed.), *Harrington: The Commonwealth of Oceana and A System of Politics*. Cambridge, Cambridge University Press, 1992.

French republicanism “developed its institutions under the strong influence of Pennsylvania, in the person of Benjamin Franklin, who had presided at Pennsylvania’s constitutional convention and represented the United States as ambassador to France from 1776 to 1785”. If American republicanism basically looked to Rome, its French counterpart was primarily inspired by the ancient Spartan model. The practical results of these differing attitudes were constitutional first, “contributing to French carelessness about the checks and balances of republican form of government, and cultural second, leading to a greater French emphasis on public virtue than Americans felt were necessary under the republican form of government”.<sup>50</sup>

As modern researchers accurately noted, the Romans’ greatest contribution to contemporary republics in terms of design was not only offering the fundamental political-legal principles, but the fact that the influence of aforementioned legacy established the system which for the first time was based on constitution as the supreme law of state and society to secure republican liberty through the fundamental structure of the polity.<sup>51</sup> Thus on September 17, 1787, for the first time in the history of mankind, the first written constitution of the World was adopted as the U.S. Constitution, which laid the solid ground of modern republicanism and the essential idea of limited government.

Generally speaking, the American Constitution as the supreme law is based on three major western achievements and values: constitutionalism or limited government, which fundamentally directed to exclude the democratic pathologies and especially prevented, curbed the tyranny of the majority. Republicanism through popular sovereignty and the rule of law, to rebut any mono-dimensional authority or monarchy and the conceptual perception of natural rights philosophy. Primarily to recognize that any of the state’s main maxim and principle is human dignity and human in general as a natural phenomenon.

The question and dilemma that the devoted republicans faced was which combination of powers in society would compel the formation of good and equal laws and an impartial execution, and faithful interpretation of them so that the citizens may constantly enjoy the benefit of them, and be sure of their continuance.<sup>52</sup> Eventually, by the influence of the Roman republicans’ conceptual framework, America as well as France established systems that are based on the following fundamental principles and postulates.

First of all, it should be emphasized that republicanism has been established as the absolute antithesis of the monarchy. It was founded on the popular sovereignty principle, which represents a starting point and touchstone for republican form of government. It should also be formed by bicameral legislature through popular, general assembly and senate. It has been recognized the primary paradigm of common welfare and most importantly by the implementation of aforementioned maxim, which were developed as the fundamental mechanisms of constitutional balance. These were afterwards known as the checks and balances milestone system.

In summary we can say that Roman republican legacy and experience have provided solid ground and have contributed to strengthening the independence of newly emerged republican states and most importantly found new institutional framework. It is clear that founding fathers and French revolutionaries directly revived forgotten western thought, especially Roman republican institutional design. In spite of the different implementation of republican principles, both republican states were based on the essential republican maxims, such as the ancient

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<sup>50</sup> See *Supra* note 3; pg. 18.

<sup>51</sup> See Philip Pettit, *Republicanism: A Theory of Freedom and Government*. Oxford. Oxford University Press, 1997; Maurizio Viroli, *Republicanism*. A. Shugaar (trans.), New York. Hill and Wang, 2002.

<sup>52</sup> See *Supra* note 44; pg. 18. *Republican Influences on the French and American Revolutions*.

postulate of common good, popular sovereignty, checks and balances and representative system and primarily the rule of law. As modern republicans pictorially noted, they found both their moral and their constitution in the old republican legacy of Rome. This donated everything to protect “res publica”. “Omniareliquitservarerepublikam”<sup>53</sup>

### **Modern tendencies of Republicanism: Neo-Republicanism**

As the researchers of modern legal thought pointed out, Neo-Republicanism “has searched to recover the forgotten meaning of the expression ‘republic’, after having been condensed in light of the historic interpretation and the contemporary contributions. It plays a part in the theories of democracy side by side with the liberal conception, the participative conception or the communitarian conception, among others”. This way, it represents a normative and ideal model in the sense that it does not try to describe reality but to state what it should be. The Neo-Republicanism is, then, a normative theory of modern democracy.<sup>54</sup>

There are several neo-republican approaches and perceptions, some more liberal and others more communitarian in nature. It is possible, however, to identify three major common republican paradigms, among others: first of all civic virtue, (virtu), designating the involvement in the community, the preference for the public interest, the search for a common good as opposed to corruption (the incapability for the free life, the emergence of private interests, the “factions”).<sup>55</sup>

The second fundamental maxim is the political participation “that involves an extended process of discussion and deliberation where all can participate in independent and equal conditions (deliberative democracy) in which the argumentation in itself appeals to dialogical reason (audialterampartem) and where conversational compromise gain a decisive importance”. The third postulate is a certain model of citizenship and patriotism built around a civic conversation, the participation in the ‘polis’ with an emphasis in duty and responsibility.<sup>56</sup>

Modern republican discourse and the doctrine of Neo-republicanism are primarily related to three main researchers and theorists: Quentin Skinner, Maurizio Viroli and Philip Pettit. In addition, there are other contemporary authors such as Mortimer Sellers and J.G.A. Pocock, who have a distinctive contribution by the development of republican trends and doctrine. Aforementioned researchers among others refined and interpreted medieval and early modern republican legacy, which made it possible to understand and perceive inherited republican notion by the matrix of modern sense.

Pocock’s republican perception and understanding may be seen as a second reading of Hannah Arendt’s concerns over the American and French revolutions, with an emphasis on the citizen’s civic participation and deliberate hostility to the liberal vision of Man and Society. His works reinforce the republican recovery of the origins of the American revolution and the bitter debate between federalist and anti-federalists.<sup>57</sup> It is quite clear that the main ideological line

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<sup>53</sup>Ibid., pg. 25.

<sup>54</sup> See Ricardo Leite Pinto, NEO-REPUBLICANISM AND CONSTITUTIONAL LAW. A REPUBLIC OF REASONS.Paragraph 1.Neo-Republicanism and Theories on Democracy.Papers of Communication to the VIIIth International Congress of Constitutional Law Association (Athens, 11-15 de July 2007).Available at [www.enelsyn.gr](http://www.enelsyn.gr).Last visited January 20, 2014.

<sup>55</sup>Ibid., pg. 1.

<sup>56</sup>Ibid., Paragraph 1, pg. 1.

<sup>57</sup> See Supra note 54; pg. 2.

with Pocock was nourished by the roots of American and French republican paradigms. Diverse, but equally powerful in its followers, is Skinner's neo-roman republicanism. His republic "consists of an association of citizens for juridical order and common interest, being the civic participation not an end in itself but an instrument to attain free life".<sup>58</sup>

Two other neo-republican paramount visions are Pettit and Viroli. Pettit elaborates on "a theory of contemporary republicanism based on a conception of freedom that turns back to the classical thought: freedom as an absence of slavery. In this sense, it defends that the traditional distinction between positive freedom and negative freedom does not answer to a modern republican conception. The republican ideal will not be so much to privilege a direct and obligatory way for the participation on the political life, but to preserve the freedom as non domination through public deliberation, valuing the citizen's capacity to contest power (contestatory democracy)".<sup>59</sup>

Maurizio Viroli develops a neo-republican conception that allows answering the difficulties of either communitarism or liberalism in the definition of citizenship. The author states that republican patriotism would be anti-nationalist. According to his republican perception, "the citizen's adherence to the substantive values of the republic as a political community, and not the abstract values of 'the nation', would allow everyone to perform their civil and political rights and to adhere to political and social reforms in a solid way. Solidarity implies a sense of belonging to 'the republic' in a universal way, and not necessarily to 'the nation'".<sup>60</sup> It is quite clear to indicate that above mentioned thinker formed the modern concept of solidary republicanism, which basically described the main tasks and aims of contemporary school of neo-republicanism.

Let's introduce some remarks about modern conditions of French neo-republican thought and discourse. Such modern scholars correctly describe the specificities of the historic patrimony of 'the republic', more in line of the lieux de memoire, the anglo-saxsonic neo-republicanism reflexes that were sensed late. The a la francaise debate "ended up focusing on the answers to give to the revendications in favor of the recognition of specific identities centered in the public scope, by force of pressure of the political agendas immediately related to the policies of integration of ethnic minorities".<sup>61</sup> It primarily focused on the continuation of French republican identity as eternity clause and value of the constitutional framework.

In general, it is necessary to note that the modern republican scientific line or direction is characterized by the qualitative critics of liberal substance. Michael Sandel, in his critiques of liberalism "considers that freedom depends on the collective 'self-government', which presumes the citizen's capacity to deliberate on public scope by means of finding a common good. According to his vision, the setbacks of liberalism may be overcome by the appeal to elements of a republican doctrine that emphasizes the connection to the community, the civic virtue and the

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<sup>58</sup>Ibid., pg. 2. See also Skinner Quentin (1995), "Responsible Republicanism: educating for citizenship" in *The University of Chicago Law Review*, vol. 62, pp. 131 e ss.

<sup>59</sup> See Pettit, Philip (1997), *Republicanism, A theory of Freedom and Government*, Oxford, Oxford University Press. See also Supra note 56; pg. 2.

<sup>60</sup> See Viroli, Maurizio (2002), *Republicanism*, New York, Hill and Wang. See also Supra note 57.

<sup>61</sup> See Ricardo Leite Pinto, *Neo-Republicanism and Theories on Democracy*; Supra note 54; pg. 2-3.



participation in public affairs”.<sup>62</sup> Clearly Sandel’s conception mainly advocated communitarian postulates and cause through the indication of republican paradigms.

Renowned contemporary German thinker and philosopher JurgenHabermas by distinguishing liberal conception from the republican, in regard to the nature of the public decision making process, is guided through a third way, the deliberative democracy. “But a way centered in the value of dialogue as an ideal of public communication towards settlement, reflecting the republican’s contribution. The existential issue of the validity of the republican discourse cannot avoid such a great modern liberal philosopher as John Rawls. The classic republicanism may help enhance his conception of political liberalism in the way that the citizen’s participation becomes instrumentally relevant as the guarantee of the individual freedoms”.<sup>63</sup> It should be noted that among the communitarian proponents, the primary postulate of civic participation is openly acknowledged. In fact, it can be boldly said that the basic achievement of modern neo-republican thought is the construction of civic engagement and accountability principles as a key substance of practical existence of free and open society, polity.

The neo-republicanism jurists’ understanding as well as political theorists’ perception is far from being uniform and unanimous. “It seems to be a common point between all, or at least authors cited above that the idea that the definition of a common good should arise from dialogue, as a conversational compromise that assumes the value of the civic virtue and, in that sense all are defenders, some more than others, of a deliberative democracy. Some legal thinkers seem to distinguish the role of the jurists of the Supreme Court, guardians of the republican dialogue”. Others adopted the Madisonian solution of centering the dialogue on representatives elected by the people that end up filtering the popular will and correct excesses, populism and irrationality, while other thinkers understand that such a role, at least in the constitutional moments, depends on the people that in exceptional moments deliberates the interests of the community or society.<sup>64</sup>

When the modern neo-republican jurists analyzed and explored the fundamental constitutional issues and evaluated the effectiveness of Constitution, they stressed the relevance and importance of proper implementation of republican postulates in the supreme law of society. Nowadays, if we look at the extensive palette and experience of comparative constitutionalism, we shall see that the world formed the trend according to the empowering process of eternity and republican clause in the Constitution is irreversible. It is qualitatively considered as the main coordinating, consensual foundation and value, in terms of political-legal institutional inheritance.

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<sup>62</sup> See Sandel, Michael (1982), *Liberalism and the Limits of Justice*, Cambridge, Cambridge University Press. *Democracy’s Discontent, America in Search of a Public Philosophy*, The Belknap Press of Harvard University Press. See also *Supra* note 60; pg. 3.

<sup>63</sup> *Ibid.*, pg. 3. See also Rawls, John (1995), *Political Liberalism*, New York, Columbia University Press. *A Theory of Justice*, Revised Edition, The Belknap Press of Harvard University Press; Cambridge, Massachusetts; 1999.

<sup>64</sup> See Michelman Frank (1986), “The Supreme Court 1985 Term Foreword: traces of self-government”, *Harvard Law Review*, 100, pp. 4-77. (1988) “Law’s Republic” *Yale Law Journal*, vol. 97, #1 pp 1493-1537. Ackerman, Bruce (1998), *We the People: Transformations*, The Belknap Press of Harvard University Press. Sunstein, Cass (1988) *The Partial Constitution*, Cambridge, Harvard University Press. See also Pinto; *Supra* note 54; Paragraph 2; *Neo-Republicanism and Constitutional Law*; pg. 3-4.

<sup>65</sup> See M.N.S. Sellers, *Republican Legal Theory; The History, Constitution and Purposes of Law in a Free State*; Palgrave Macmillan; 2003. See also Pinto; *ibid*; Paragraph 3; *Neo-Republicanism and the ‘Republican form of government’*; pg. 5.

The above indicated correctly that this constitutional mechanism and lever is an eternity clause which ensures the effective and practical transmission from generation to generation, unchangeable constitutional identity. For example, by the horizon of comparative constitutionalism, the French 1958 and Portuguese 1976 constitutions, principally strengthen republicanism, as the primary limit of constitutional revision and amendment and have guarded aforementioned sacral principle through the constitutional adjudication, review. In this regard, it emphasized the United States supreme law, the US Constitution, which is guaranteed by the principle of a level and assigns and binds the federal government to ensure the maintenance and protection of republican form of government under the states' territories and jurisdiction.

It is interesting to see how the 'republican form of government' and the expression of 'republic' itself have been dealt with by the constitutional doctrinal discourse of some of these countries. Starting with the USA, the expression has raised little interest. But nowadays, a constitutional lawyer and theorist Mortimer Sellers recovered and elaborated it. For the latter, "the republican form of government would be based on the idea of the common good as a goal for the politic activity, centered on legality, on the sovereignty of the people, on the 'checks and balances', on the political representation, on a bicameral legislature, on rotation in office and on federalism".<sup>65</sup>

In France, the republic is present in almost all the political debates and the doctrine proclaims the 'French exception' in questions of republican passion, associating them to symbols, memories and mystic. Despite the fact that the French constitution refers to 'the republican form of government' as a limit to the constitutional revision of the Constitution of 1958, its juridical condensation does not go beyond a negative approach as a 'regime opposite to the monarchy'. However, the French Constitutional Council (the exclusive legitimate body of constitutional justice) has an extended concept, by reference, to the category of fundamental values inscribed in the preambles of the Constitution and to the "fundamental principles recognized by the laws of the republic": popular sovereignty, separation of powers, fundamental liberties, indivisibility of the state and laicity (the French conception of secularism and secular order of state).<sup>66</sup>

By the perception of the modern republican jurisprudential line, we will discuss another interesting European case such as Portugal. In Portugal, the constitutional doctrine and jurisprudence associated with the 'republican form of government', whose historic origins go back to the republican constitution of 1911, (nowadays fundamentally guaranteed the supremacy of constitution through the way of constitutional adjudication, review) by the following principles: anti-monarchy, renovation of the public offices, separation of Church and State, popular sovereignty, unity of the state.<sup>67</sup> It is correct, if we conclude that all modern republican paradigms have prevailed as the substantive value and content of aforementioned European societies and polities.

Analysis of the trends of contemporary republicanism must be completed by the discussion and perception of one of the paradigmatic and new democratic doctrines, such as deliberative democracy. In essence, the scientific discourse of the last several decades founded the effective solutions in such cases, which are substantively inherent to democracy, disagreement of opinion.

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<sup>66</sup> See Viola, Andre (2002), *La notion de République dans la Jurisprudence du Conseil Constitutionnel*, Paris, LGDJ. Mathieu, Bertrand and Verpeaux, Michel (1996), *La République en Droit Français*, Paris, Economica. See also supra note 65; pg. 5.

<sup>67</sup> *Ibid.*, pg. 5.

The ideal of deliberative democracy is not new for western civilization and thought. We still see the origins of this concept with Aristotle, afterwards Montesquieu, James Madison or Stuart Mill defended it. Deliberation and consensual agreement, as a political decision-making mechanism, is especially relevant in a modern republican government system, and particularly the representatives of modern Anglo-Saxon neo-republican school.

There are still many opened variables on deliberative democracy, also because there are several approaches from different authors. “There is still the distinction between elitist deliberative democracy that is based on the representatives and a republican deliberative democracy based on the role of the citizens and the potential of the public for the informal deliberation. The latter allows the crossing of the theory of deliberative democracy with neo-republicanism, in the sense that most of the neo-republicans are, some more than others, deliberative”. Such modern theoreticians indicated that most importantly are the general lines of the theory of deliberative democracy and, then, its assumed republican filiation.<sup>68</sup>

The deliberative democracy in its essence is a normative model with the purpose of justifying and legitimizing the political decisions. It is a normative model because it does not intend to describe society but to state what it should be. This way, the deliberative process is a condition for political decisions. Renowned constitutionalist John Elster indicated that it represents a regulatory and approximative ideal. “Regulatory because it stands for a normative horizon to which we should tend to, as much as possible. Approximative because it operates in a gradual way: the more deliberative the decision process, the more legitimate will the political decisions be”.<sup>69</sup> This concept is extremely important for the formation of a modern republican paradigm of deliberation as the core of republican legitimacy.

According to renowned constitutionalist Jon Elster, the mechanisms used in democracy for the decision making process are, fundamentally, three: vote, negotiation, or argumentation. By rule, these three are used concurrently. “It happens, however, that the three mechanisms articulate themselves in such a way that one of them stands out, depending on the democratic chosen model: market democracy based predominantly on vote, pluralist democracy based on negotiation and deliberative democracy based on argumentation. The first, based on the theory of the ‘social choice’, has the democratic system transformed in an economic market where the parties sell programs acquired by voters”. Although the vote prevails as a way to make decisions, this one results from a political motivation between individual interests (desires) or self-centred groups.<sup>70</sup>

The pluralist model recommends negotiation and compromise as forms to, understanding democracy as a free competition; this is free competition between interest groups fighting to influence the political decisions and finding themselves forced to negotiate to reach a basic compromise or consensus in decision making. Negotiation is therefore the heart of the model. Finally, “deliberative democracy is preferentially based on the principle of argumentation towards which the exchanges of unbiased reasons in favour or against a certain solution, in an equal setting and in the predisposition of giving in to a better argument, with the intent to reach a

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<sup>68</sup> See Ricardo Leite Pinto; *Supra* note 54; Paragraph 4; Republic, “republican form of government” and deliberative democracy. pg. 6.

<sup>69</sup> See Elster, Jon (eds) (1998), *Deliberative Democracy*, Cambridge, Cambridge University Press. “Deliberation in Constitution Making” *ibid.* Marti, J Luis (2006), *La Republica Deliberativa, Una Teoria de la Democracia*, Madrid, Marcial Pons. See also *Supra* note 61; pg. 6-7.

<sup>70</sup> See *Supra* note; pg. 8.

better and improved decision”.<sup>71</sup> Nevertheless, it is clear that in a democratic system only using through the way of deliberation, decision-making is a sparingly difficult task. Therefore it is appropriate that we consider aforementioned concept by the close connection with other fundamental democratic decision-making mechanisms and levers.

It is clear that deliberation demands pluralism and disagreement. Without disagreements there is nothing to deliberate and nothing agreed upon. “Argumentation expects a good preparation and information from the citizens, not only for argumentation in itself but also for its understanding, being demanded freedom of opinion, equal access to the public space and the ideals of equal opportunities and redistribution of wealth. All revolve around the idea of argumentation - government by discussion, exchange of arguments and reasons in favour or against a certain proposal – principal of collective procedure, principal of inclusion, principal of publicity, principal of openness and continuity, principal of equality and freedom of the participants”.<sup>72</sup> This is a conceptual framework, which is constructed according to deliberative postulates such as the modern paradigm of republicanism and qualitatively republican dialogue.

According to the above, the mentioned framework can be achieved if it is properly grounded, and most importantly, in political-legal terms, when the decision which has a solid ground of legitimacy. Political-legal legitimacy, by its turn is the procedural and substantial foundation and touchstone of any modern constitutional (limited) polity system. Without this phenomenon, the constitutional democracy and broadly limited government, virtually stop its existence. Thus, it could be said that “deliberative democracy is justified if the political decisions, taken by deliberative procedure, are legitimate because the referred to procedure allows to find, in general, better decisions than other political process of decision, like vote or negotiation”.<sup>73</sup>

The deliberative democracy has declared itself, since the beginning, as a model that allows the legitimization of the political decisions. Certainly the other democratic models that are predominantly based on vote or on negotiation are, too. The fact is in that, as a regulatory ideal, in the line of the deliberative literature, it is the best model: the more democratic and deliberative the political decision is, the more legitimate it becomes. In this sense, it is quite clear that the deliberative theory is a procedural and substantive theory about legitimacy.<sup>74</sup>

In short, we highlighted the idea of Philip Pettit, who stated correctly that the model or the idea of deliberative democracy has an indisputable republican ‘pedigree’. “The traditional republicanism, mainly the one gaining destiny on the debates on classic and civic humanism from renaissance, is based on the belief of ‘dialogical reason’: both sides should be heard, all this conception qualitatively summarized as ‘audialterampartem’”.<sup>75</sup> In other words, the modern

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<sup>71</sup> Ibid., pg. 8-9.

<sup>72</sup> See Macedo, Stephen (eds.) (1999), *Deliberative Democracy, Essays on Democracy and Disagreement*, Oxford, Oxford University Press. Maynor, John (2003), *Republicanism in the Modern World*, Cambridge, Polity. Nino, Carlos Santiago (1996), *The Constitution of Deliberative Democracy*, New Haven, London, Yale University Press. See also Pinto; *Supra* note 69; pg. 11.

<sup>73</sup> See Bohman, James and Rehg, William (eds.) (1997), *Deliberative Democracy*, Cambridge, London, The MIT Press. Dryzek, John (2000), *Deliberative Democracy and Beyond, Liberal, Critics, Contestation*, Oxford, Oxford University Press. Ackerman, Bruce and Fishkin, J. (2002), “Deliberation day” *Journal of Political Philosophy*; vol. 10; #2; pp. 129-152. See also Pinto; *ibid*; pg. 11.

<sup>74</sup> See Gutmann, Amy and Thompson, Dennis (1996), *Democracy and Disagreement*, Cambridge, London, The Belknap Press of Harvard University Press. See also *Supra* note 70; pg. 12-13.

<sup>75</sup> See Honohan, Iseult (2002), *Civic Republicanism*, London, Routledge. Brugger, Bill (1999), *Republicanism Theory in Political Thought, Virtuous or Virtual?* London; Mac Millan Press. *Ibid*; pg. 13-14.

republican understanding of liberty as the main goal and product of republican doctrine fundamentally based on rational deliberative discourse which ensures the core legitimacy in decision-making process and what is fundamentally does not exclude any of the political/social actors from the general decision-making process. Thus the epistemological value and essence of deliberative substance is virtually decisive according to neo-republicanism; therefore it entered into the heart of modern republican conception.

### Concluding Remarks

Modern republicanism can be summarized as a powerful concept of value, which is primarily focused on the founding of the political-legal way to protect and implement liberty as the core paradigm. All of this is linked to modern constitutional theory and doctrine, according to the implementation of republican paradigms and in particular, recognition of the importance of deliberation is vitally essential for contemporary polity. The republican state ideal based on reason and argument means to solve any democratic issue by the way of rational discourse. This approach includes a wide arena of constitutional interpretation and semantic reconstruction, where in addition to the standard constitutional-normative framework would have a decisive impact on the non-formal deliberation, inclusion and informal interaction.

We strongly believe that liberty and human dignity can be protected by the mutual dialogue of republican and liberal conceptions. From our standpoint these western paradigms do not exclude each other; on the contrary they both complement and improve the western conceptual framework regarding liberty and its practical implementation in the modern polity. The basic challenge of modern political-legal theory is the construction of a system which maximally implements and protects continuance of the state and statehood, the rule of law, and ensures impartial execution, accountability and transparency in the polity and socium.

Republican doctrine provides solutions to these complex problems. Political-legal system cannot be legally even more legitimate if it sidesteps the fundamental value of republicanism, the common good of the people. Thus, all republican maxims and postulates beginning from popular sovereignty up to human dignity are vitally important for implementation of common welfare of society which is organically connected to republican civic virtue or modern republican pattern of civic participation and deliberation. Together, the central elements of the republican form of government help to guarantee liberty as non-domination, as the sense of republican postulate. Such Cicero indicated correctly, liberty rests on truth and reason, as applied human nature, to secure *res publica*. “*Refferenim decet a dea, quae posui principio, fundamenta iustitiae, primum ut ne cui noceatur, deinde ut communitatis serviat*”.<sup>76</sup>

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<sup>76</sup> See Marcus Tullius Cicero, *de officiis*, I.x.31; See also M.N.S. Sellers; *Republican Legal Theory*; pg. 145.

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