

Republican Constitutionalism

Plebeian Institutions and Anti-Oligarchic Rules

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Abstract: The article presents a plebeian strand of republican constitutional thought that recognises the influence of inequality on political power, embraces conflict as the effective cause of free government, and channels its anti-oligarchic energy through the constitutional structure. First it engages with two modern plebeian thinkers – Niccolò Machiavelli and Nicolas de Condorcet – focusing on the institutional role of the common people to resist oppression through ordinary and extraordinary political action. Then it discusses the work of two contemporary republican thinkers – Philip Pettit and John McCormick – and contrasts their models of ‘contestatory’ and ‘tribunician’ democracy. Finally, I incorporate a political economy lens and propose as part of republican constitutionalism not only contestatory and tribunician institutions but also anti-oligarchic basic rules to keep inequality and corruption under control.

Keywords: Condorcet, constituent power, corruption, inequality, Machiavelli, McCormick, Pettit

While mainstream democratic constitutionalism is formal and procedural in its analysis, as well as representative and liberal in its basic structure, republican constitutionalism puts forward a material and ethico-prudential analysis, as well as a mixed basic structure in which the selected few govern while the many act as counterpower. As I have argued elsewhere (Vergara 2020), the republican interpretation of the mixed constitution in ancient and modern times was material: socioeconomic conditions and the impact of inequalities



on political power were integral to the structure of political orders. While elitist republican constitutionalism was based on a harmony that promoted the just political dominance of the few and the subordination of the many, plebeian thought embraced conflict as the effective cause of free government and promoted the resistance of the common people to domination through anti-oligarchic institutions.

After the modern revolutions and the declaration of human rights and equal citizenship, republican constitutional thought had to adapt to the blurring of the previously legal division between the few and the many. While post-liberal elitist republicanism successfully embraced proceduralism to justify the rule of the few on democratic grounds, plebeian republicanism is still adapting to the nominal abolition of subordination that undermines both the collective identity of the many and its institutional imagination. In what follows I will partially reconstruct the plebeian strand of republican constitutionalism, commenced by Niccolò Machiavelli and further developed by Nicolas de Condorcet during the revolutionary period of the late eighteenth century and through their insights examine its current iterations and the possibilities it opens to expand the horizon of anti-oligarchic institutional design for the twenty-first century.

Modern Plebeian Republicanism: Machiavelli and Condorcet

The plebeian republican thought I review here seeks to justify, on republican grounds, the active participation of the many to control those in power: as necessary for keeping the republic free from oligarchic domination. The origin of plebeian thought can be traced to the experiences of rebellion and emancipation by the common people, from the Roman Republic to the Paris Commune (Breugh 2016), and today emerges as an analytical lens based on the recognition of the subordinate status of ordinary people as de facto second-class citizens (Green 2016). Plebeian thought not only is critical of structural forms of domination but also proposes institutional means for common people to engage in political decision-making at the level of ordinary politics, as well as ways to institutionalise the constituent power – the power to intervene the basic structure – which

is conceived as a revolutionary spirit that allows for the republic to renew periodically its foundational principles and anti-oligarchic capabilities.

As the first modern plebeian constitutional thinker to have a materialist interpretation of the republic – within which the constitution is an organisation of power that tends to reproduce economic and social hierarchies (Vergara 2022b) – Machiavelli designed institutional proposals aimed at correcting inequalities to prevent what he saw as an otherwise inevitable drift of republics into oligarchy (McCormick 2013). For Machiavelli, a regime of liberty demands a dynamic balance of power between the few and the many that is only achieved through institutionalised political conflict, allowing for the few to satisfy their ruling ambition and for the many to defend liberty through their active participation in political power (Bonadeo 1973; Pedullà 2019). Different from democratic constitutionalism, which promotes – even if only in an abstract and indirect manner – popular self-government, Machiavelli’s republican constitutionalism is profoundly realist and contingent. On the one hand, it recognises the transhistorical and transnational nature of oligarchy, and therefore conceives popular rule within an order that presupposes the existence of the powerful few, and on the other, proposes ad hoc institutional mechanisms to contain them and aid in the struggle of plebeian resistance to oligarchic domination. The institutional and procedural diversity that comes out of Machiavelli’s constitutional thought is geared towards limiting the material power of elites and empowering the common people within different republican orders.

The Florentine Secretary not only celebrated conflict between the few and the many as the foundation of ‘good laws’ but also gave to the common people the role of ‘guardians of liberty’, arming them to fulfil their function not only with legislative and military power but also with constituent power (Vergara 2022a). This meant that Machiavelli’s ideal constitutional structure would have not only institutions for plebeians to exercise decision-making power during normal politics, but also the extraordinary power to intervene the basic structure, legally empowered to create new institutions and rules to periodically renew the republic and liberate it from oligarchic domination. Interestingly, for Machiavelli this form of plebeian constituent power is not only creative – something shared

with democratic constitutionalism – but also avenging, aimed at punishing those who actively undermine liberty. This extraordinary power to punish those who have circumvented laws and procedures to accumulate more power than it is safe, does not correspond to the traditional duality of the constituent power as creative and destructive – to destroy an order to build a new one – but rather tracks the anti-oligarchic bent of republican constitutionalism. To have a republic free from corruption, the common people must renew its foundations by periodically modifying its basic structure and inflicting extraordinary punishment on corrupt elites. Without this material enforcement of liberty through plebeian constituent authority, the republic would be doomed to become corrupted through its own institutions and procedures.

After the return of the Medici and the end of the Florentine democratic experience, Machiavelli urges in his *Discourse on Remodeling the Government of Florence* to reorganise Florence to give the city a lasting republican structure that satisfies all ‘those elements that must be contented’ and establishes a mechanism to ‘establish fear in great men’ (Machiavelli 1989: 101–102). Regarding the satisfaction of the different social classes, he argues there are three different kinds of individuals: ‘the most important, those in the middle, and the lowest’ (107). Because some citizens are ambitious and desire to outrank others, this desire needs to be satisfied in the republican organisation of power if the regime does not want to end up having the same fate as Florence’s democratic experiment, which ‘fell for no other cause than that such group [the powerful few] was not satisfied’ (108). Because the *grandi* seek glory, the best constitution is the one able to satisfy the interest of the elite in a manner that is productive of liberty (102–103). Instead of satisfying their desire for social distinction through riches or social power, the few should have an institutional space to attain glory and distinguish themselves in the service of the republic.

Machiavelli uses this argument of satisfaction of desires through institutional means to push for the reopening of the Great Council in Florence. He argues that a constitution that does not satisfy the people after they have already experienced the exercise of political power, would certainly not endure. Machiavelli’s proposal for Florence envisioned, on the one hand, a consolidation of the executive and legislative elite councils, and on the other hand, an

empowerment of the *popolo* with the reestablishment of the Great Council and the creation of a popular surveillance office: the Council of Provosts. This plebeian office was aimed at providing a tiebreaking vote in matters of discord within political institutions and, more importantly, to oversee government officials, with the prerogative to take away their power and appeal their decisions, in case they do things opposed to the common good (Machiavelli 1989: 112). The Council of Provosts, composed of sixteen Gonfaloniers of the Company of the People, was meant as an anti-oligarchic institution, dedicated to supervising and controlling government officials to ‘make them abstain from actions that are not good’ (111–112). The Provosts would take turns to reside in the palace with the Signores to be witnesses of their proceedings, and thus this office served also a transparency function, allowing the common people to see how decisions are made and deals struck and in this way prevent corruption.

In addition to supporting the reopening of the Great Council as a necessary plebeian institution for the Florence of his time, and the introduction of a Council of Provosts as a surveillance and transparency anti-oligarchic institution, Machiavelli sketches the exercise of constituent power as also essential to preserve free government. Since all foundings are conflictual, the common people need to replicate that extraordinary political energy to redraw the political boundaries against what has become oppressive. Only the many – who desire not to be oppressed and do not partake in ruling (Vatter 2014) – can be the legitimate guardians of liberty. If the republic has become systemically corrupt, enabling oligarchic domination instead of liberty, and therefore in need of renewal, the common people must be institutionally authorised to exercise the *original* constituent power and bring the republic back to its beginnings.

Since the birth of republics is marked by creation and force – institutionalisation of popular power and foundational violence – Machiavelli proposes a periodic renewal of the republic to legally trigger a constituent moment as well as an extraordinary public impeachment of those who have been agents of corruption. In his *Discourses on Livy*, he urges the establishment of periodic renewal events to allow for the creation of new plebeian and anti-oligarchic institutions and procedures such as the ‘Tribunes of the People, the Censors, and all the other laws that opposed the ambition and pride of the citizens’ (*D* III.1). Machiavelli’s response to ‘systemic

corruption’ – the progressive oligarchisation of power in society (Vergara 2021) – is not to eliminate institutions and procedures that have become corrupt, since this battle would require too much political capital because those who benefit from corrupt institutions will oppose reform, but rather to add new institutions and legal means of popular censure to restrain the ambition of the few.

In addition to institutional innovation to create new means of controlling the few backed by adequate enforcement, Machiavelli adamantly argues for extraordinary instances of punishment as necessary violence exerted against those who have transgressed liberty, such as the sons of Brutus, who conspired against the republic to ‘profit unlawfully’ (*D* I.16), the Decimviri, who usurped political power and became tyrannical, and Melius the grain dealer, who sought to buy the favour of the masses by feeding the people at his own expense (*D* III.1). From his experience in the Florence of the Medici, Machiavelli identifies fear as a crucial emotion that must be present both in the founding of republican liberty and in renewal moments. Therefore, going ‘back to the beginnings’ is not only reconciling law and liberty through the creation of new institutions, but also about instilling the same fear of punishment to those who “had done wrong” as it was experienced during the founding. Machiavelli conceives of this foundational power as essentially creative and avenging, as a constituent power able to establish institutions and laws in favour of equality as well as to ruthlessly punish individuals profiting from the corrupted constituted order. This constituent power as extraordinary enforcement of liberty should be, according to Machiavelli, legally convoked within ‘a lapse of not more than ten years’ to punish offenders before they ‘quickly join together [and] they cannot be punished without danger’ (*D* III.1). He proposes to imitate the Romans, who were ‘accustomed to punish large numbers of those who did wrong’ (*D* III.49). Therefore, a good republican constitution should codify these instances of constituent power to periodically examine and reconcile the legal framework with social reality, by establishing new methods of adaptation and deterrence to curb corruption and the overgrowth of oligarchy.

Plebeian constitutionalism and its anti-oligarchic institutional and procedural innovations were revisited by the Marquis of Condorcet during the revolutionary period of the late eighteenth century. Given Condorcet’s radical egalitarian worldview and his material

constitutional lens, the framework he proposed was not aimed at suppressing the revolutionary spirit and demobilising the people by reserving political action for the enlightened few, but at creating the institutional structure necessary to harness the emancipatory nature of popular politics for the benefit of the republic. From a critical analysis of the constitutionalism that emerged in the thirteen colonies across the Atlantic, Condorcet argued that the system of separation of powers was a complicated machine that could not replace the material mixed constitution, and only served to conceal a parallel ruling system based on ‘intrigue, corruption and indifference’ (Condorcet 2007: 199). Condorcet’s principal concern when designing a constitution for France was to prevent corruption, the inevitable degradation of the system of restraints and incentives aimed at limiting the oligarchic tendencies of representative government, ‘the vices which will corrupt even the best organised constitution if it remains unaltered’ (221).

Condorcet’s constitutional plan for the nascent republic offers a three-pronged cure for corruption and the oligarchisation of power: frequent renewal of the representative assembly, an institutional popular protest counterpower exercised directly by the common people through primary assemblies and enforced through a Council of Overseers, and the periodic revision of the constitution. For him, having a representative government without a popular counterpower to monitor it is equivalent to trading one form of despotism for another, ‘suffering under several types of oppression rather than fearing just one’ (Condorcet 2007: 169). Having served in the legislature, he was sceptical of the quality of elected leaders. In his experience, places of power were ‘full of stupid and corrupt men’ (178)¹ who have oligarchic tendencies or are inept at protecting the interest of the people against them. And even if there certainly are a few good leaders, they are never the majority and thus will always be unable to dismantle structures of domination. Condorcet learned first-hand that reasonable arguments and truth are unlikely to win the votes of the elites, and therefore the fate of the system must not be placed on representative institutions.

From a critical engagement with the Constitution of Pennsylvania, which in its article 47 instituted the Council of Censors as checking power, and French economist Anne Robert Jacques Turgot’s 1775 plan of local assemblies, Condorcet put forth in his 1793

constitutional proposal known as *Le Girondine* a republican organisation of political power aimed at addressing the inevitable erosion of law and its democratic foundations. As an alternative to the exclusively representative constitutionalism of the United States, Condorcet proposed a mixed constitutional framework in which the ruling power of making laws and decisions about administration and foreign affairs would be concentrated in representative government, which nevertheless was constitutionally bound to obey decisions reached in local assemblies. Different from James Madison's theory of factions, in which ambition counters ambition and the most effective way to deal with the pernicious effects of factions is to multiply them (Hamilton et al. 2003, n.10), Condorcet proposes a government composed of different bodies (administrative, executive, legislative) that are not designed to check each other but to fulfil a particular role at different levels of government, responding to an external popular power that has the legal authority to check corruption and push back against oligarchic domination.² While the federal constitutional structure in the United States recognised in its First Amendment the individual right of citizens 'to petition the Government for a redress of grievances' (but not direct, binding power), Condorcet's 'popular branch' was an institutionalised collective power aimed both at electing the members of government and sanctioning their decisions.

Le Girondine established a participatory institutional framework that attempted to institutionalise the 'partial, spontaneous protests and private voluntary gatherings' that arose with the revolution into a network of local assemblies, which 'following legally established procedures, [would] carry out precisely determined functions' (Condorcet 2007: 190). Primary assemblies of between 450 and 900 citizens would be established by law in every district alongside representative government (*Girondine* III.1) – which would have meant 7 million male residents organised in as many as 16,000 local assemblies.³ This bottom-up process of will formation based on a multiplicity of times and spaces of sovereignty and deliberation (Urbinati 2004) not only would be superior, in terms of determining the general will than having only district or national representatives (Condorcet 2007: 168), but also would provide the opportunity for the political education of the common people – a necessary condition for the full enjoyment of their rights.

Besides giving primary assemblies the prerogative of constituting government through collective electoral procedures,⁴ Condorcet conceives of assemblies as the site for the people's institutionalised form of appeal, a 'legal means of protest which could cause any law to be re-examined' (2007: 192). Rejecting the idealist position of trusting elite self-policing, Condorcet places the power to monitor government, not in a specialised elite institution, but rather in popular assemblies. This 'right of censure' could be exercised by any resident who, after collecting fifty supporting signatures, requests his primary assembly to review an existing law or consider proposing a new one (*Girondine* VIII.3; IX.5 & 6). Given his aversion to anti-progressive forces in society driven by 'fear of innovation', what for him is 'one of the most damaging scourges of the human race' (Condorcet 2007: 200), Condorcet enabled legal innovation to originate at the neighbourhood level, in any corner of the republic. The assembled people would have the power to oppose change and to generate it, autonomously, effectively setting the direction that government must follow, but without actually governing themselves. Progressive reform, first formulated to become what Condorcet calls a 'simple proposition', could be put into motion organically, spreading through the network of assemblies at the district, regional, and national levels, forcing the representative assembly to transform it into law. If the legislature refuses to comply or deviates from the sovereign will, writing a law that does not track the people's decision and that is rejected, it 'would seem to have lost the nation's trust and must be replaced' (2007: 197; *Girondine* VIII.22–26). In this way, Condorcet builds into the lawmaking process a strong incentive to track the will emanating from primary assemblies as an enforcement mechanism of the popular will.

Given that such a decentralised decision-making institution would not be able to enforce its own decisions against the centralised power of government, Condorcet proposes another institution dedicated to make sure that the sovereign will is properly applied and enforced. Similar to Machiavelli's Council of the Provosts, Condorcet also proposed a surveillance, supervisory institution, the Council of Overseers selected by the people.

The council will supervise (*surveiller*) the observance and execution of the laws and arrange the details of general administrative measure, so that they can be applied. It will carry out the will of the nation (*volonté*

nationale) and inform the people's representatives of anything which may require new resolutions to be made. (Condorcet 2007: 204–205).⁵

While primary assemblies are conceived as sovereign organs of judgement that function as a check on representative government, the Council of Overseers is a delegate censorial institution that does not have a will of its own but is tasked with making sure popular judgements get codified into law and are properly applied by the executive and administrative organs. Condorcet conceives this Council of Overseers as a liaison (*lien*) both between the citizens and the legislature, and between the legislature and the executive and administrative branches. Such an office, 'necessary for social order', is aimed both at enforcement and surveillance, at supervising that the will of the people 'is carried out precisely, in an orderly and safe fashion' (Condorcet 2007: 204–205). Members of the Council of Overseers would be elected not by the legislature but by the assembled people, since they are 'officers of the people and not of the representatives' (204–205). Condorcet's monitoring council – selected by the people and aimed at enforcing the people's will by examining every law approved by the legislature and seeing that it is appropriately applied – is a plebeian institution of accountability aimed at preventing systemic corruption and oligarchic domination. In addition, given that the council acts not only as the eyes of the Legislature in the process of execution of law, but also as the eyes of the people in the places of power, Condorcet's Council of Overseers is also a transparency institution. Different from Machiavelli's Provost, who would reside in the palace only to witness all proceedings and report back to the people, Condorcet gives to his Overseers the prerogative to also direct and enforce the people's mandates; as agents of the Legislature they would have the institutional power to set limits and expectations for the executive branches in terms of the correct application of the law.

Because no legal structure is immune to corruption, for Condorcet the constitution needs to have means 'to regulate the way in which a nation can establish a new constitution if citizens feel that the first poses a threat to their freedom' (Condorcet 2007: 221). Taking into account both the 'profound indifference which often follows revolutions' and 'the slow and secret abuses which eventually corrupt human institutions' (122), he also gives to primary

assemblies the role of approving or rejecting draft constitutions, as well as to decide whether to initiate a constituent process. Following the premise that even the ‘best organised constitution’ will eventually become corrupted if it is not periodically reformed, Condorcet argues that a good constitution must have ‘an orderly means of correction and reform’ so to counteract the conservative ‘faint-heartedness which says that all disruption will destroy the State, and the fear which constantly sees tyranny in peace and order’ (225). To achieve periodic events of repair and reboot, *Le Girondine* established three ways to activate the constituent process: (1) periodically through constitutional law (in intervals of twenty years), (2) by individual citizens through their primary assemblies, and (3) by the national legislature after approval of a majority of primary assemblies. Condorcet’s multidimensional strategy to allow for the activation of the constituent power, which proceduralises individual, institutional, and constitutional methods, is perhaps the most radical, comprehensive proposal ever written to integrate the constituent power into the constitutional structure. Put together, Condorcet’s ‘popular branch’ composed of a network of primary assemblies and a popular Council of Overseers appears as a mighty counterpower to representative government, being able not only to prevent systemic corruption and the gradual decay of the republic into an indirect despotism, but also to allow for individual and collective flourishing.

Contemporary Republicanism: Pettit and McCormick

During most of the twentieth century, liberal democratic theory enjoyed a virtual monopoly over the study of political orders and their constitutions. While as a system constitutional democracy became “the only game in town,” with its dominance also came critique. Political philosopher Philip Pettit challenged the democratic theory mainstream by moving the boundaries of the interpretation of rights, criminal justice, and basic democratic institutions from the point of view of republican theory. In *Republicanism: A Theory of Freedom and Government* (1999), he reinterpreted liberal democracies as mixed constitutions and proposed to develop and strengthen the institutional checking power of the people from a non-material

perspective. Following Pettit's lead, neo-republicanism developed as an interpretative school that preserved the abstract form of the republic as a contestatory structure aimed at establishing liberty, but severed it from material conditions and the social hierarchies that are reproduced and deepened through a seemingly neutral structure. This reinterpretation of republicanism sparked critical responses around Pettit's lack of engagement with class and structural forms of domination, which in turn enabled the re-emergence of plebeian republican thought in the first decade of the twenty-first century.

For Pettit, republicanism is a 'social philosophy that is at once anti-collectivist and anti-atomist', and republican liberty is an 'intermediate between the ideals of non-interference and self-mastery' (Pettit 1999: 27). He proposes a constitutional model premised on his conception of liberty as the 'lack of arbitrary interference'. Following the hegemonic reverence for the rule of law as the mark of free government, in his framework individuals are free if they live in a constitutional democracy where they are subject only to interference that 'is not arbitrary and does not represent a form of domination: when it is controlled by the interests and opinions of those affected, being required to serve those interests in a way that conforms with those opinions' (35). The objective of the legal order is to reach this intermediate position between non-interference and self-mastery, allowing only harmless non-arbitrary interference, in which 'the interests and ideas of those who suffer the interference' are tracked and to stop 'people from dominating one another without itself dominating anyone in turn' (105).

Recognising the failure of the representative system to effectively track popular demands, in his more recent work, *On the People's Terms* (2014), Pettit proposes a 'contestatory model' that provides citizens with an 'individualized, unconditioned, and efficacious influence that pushes [government] in a direction that they find acceptable' (239). The contestatory nature of the model is based on an 'acceptability game' that enables 'shared policy-making norms' and guarantees multiple 'sites of opposition' – such as electoral debates, public justification of policy, and political exchanges in the media (261). In his model of republican democracy, the people can exert 'discursive control' to influence government in a decentralised manner. According to Pettit, this 'multi-dimensional, multi-centred system of popular interaction and decision-making' would

mean that ‘the people rule themselves’ to the extent that their influence is present throughout the system of checks and balances (286).

In addition to enhancing the contestatory nature of democracy, Pettit proposes a ‘dual-aspect model’ based not on the conflict between the few and the many, but rather premised on two temporal registers of popular influence: the short-term, in which the people – conceived as a ‘group entity, taking the form of a singular agency’ – can influence in different degrees law and policy, and the long-term, in which popular participation in the system ensures the compliance of the laws with the limits imposed on the exercise of power (309). Similar to the popular surveillance offices envisioned by Machiavelli and Condorcet, Pettit proposes institutions endowed with what he calls ‘authorial’ and ‘editorial’ forms of control. Through these institutions, citizens could exercise a ‘positive search-and-identify dimension’ as well as a ‘negative scrutinize-and-disallow dimension’ (Pettit 2001: 159), acting as both authors and editors of law and policy, and therefore exerting the type of popular control envisioned in mixed constitutional regimes. However, different from the plebeian institutions proposed by his predecessors, which were directed by common people, in Pettit’s proposal, institutions are either judicial or technocratic, and the burden of alerting them of instances of domination depends on citizens’ ‘virtuous vigilance’ rather than on direct popular exercise of a monitoring function.

Perhaps the greatest shortcoming of this indirect model of popular control derives from Pettit’s conception of liberty, which detaches domination from material conditions and conceives of individual rights (especially property rights) as absolute against the state (and others). Under this liberal normative framework, interference by the state to redistribute wealth, relatively depriving a minority to empower a majority, would be a form of domination because it would not track ‘the interests and opinions of those affected’ (Pettit 1999: 35). Consequently, the constitutional framework Pettit proposes does not offer new tools to control those who have become too powerful due to the extraction of billions in profits through legal means⁶ and prevent further oligarchic overgrowth and systemic corruption. The neo-republican model of indirect popular control is therefore as insulated from claims for the redistribution of economic and political power as the current liberal democracy system, which has been unable to control exorbitant

degrees of income and wealth inequality, and the oligarchic domination that comes with it.

As a response to Pettit's liberal and non-material interpretation of the republican mixed constitution, John McCormick developed in *Machiavellian Democracy* (2011) a strand of plebeian republican thought aimed at institutionalising the power of the common people. McCormick argues representative democracies lack two crucial elements: a political distinction between elites and the common people and extra-electoral institutions to control elites.

[T]he aristocratic effect and the privileged access to resources and information enjoyed by magistrates in modern republics render elections inadequate mechanisms of elite accountability and responsiveness; moreover, a sociopolitical definition of 'the people' that includes wealthy citizens, rather than one that sets the latter apart from or even opposed to the people, allows the wealthy to dominate common citizens in quasi-anonymous and largely uncontested ways. (McCormick 2011: 179).

Not only are elections inadequate to disable oligarchic domination but also they allow the few to exert covert domination with impunity while leaving plebeians vulnerable, with their class identity blurred and without effective collective ways to resist and combat oppression. As a solution to the plutocratic problem in the United States, McCormick proposes, in addition to appointment procedures for high office that combine lottery and election, 'a revived tribunate, combin[ing] elements of randomization, wealth-exclusion, and direct plebeian judgment' (2011: 171) as an institutional response 'to the hegemony of elections in contemporary republics' (172). Taking inspiration from Machiavelli's Provost office, designed both to control elites and 'place "rank-and-file" plebs in positions of political authority on a regular basis' (173), McCormick proposes to incorporate into the US Constitution a People's Tribune: a collective class-specific office composed of fifty-one non-wealthy citizens selected by lottery, with the power to veto, call referenda, and initiate impeachment proceedings against public officials.

As mode of selection, McCormick endorses lottery over elections because it 'keeps economic elites from monopolising public offices' and materialises 'the principle of equitable political participation among citizens' (173). Aleatory selection of members to the Tribune for short periods of time would not only make it

very difficult for this office to be beholden to political corruption, but also would offer equal (even if very slim) chances of exercising political power,⁷ allowing common citizens to see and experience political power. Regarding the constitutional prerogatives of the People's Tribune, McCormick proposes quantitative limits to plebeian power in terms of the number of items that could be vetoed at any time; the Tribune has the power to veto one law, one executive order, and one Supreme Court decision every year. To institutionalise the censor power of the Tribune, McCormick gives it the prerogative to initiate impeachment proceedings against one public official in each branch of government,⁸ while the prerogatives to judge and punish remain with the Senate, which could vote against impeachment – as it did twice in the cases of President Trump, despite the evidence against him.⁹

More recently, McCormick has put forward a highly controversial proposal that relates to Machiavelli's avenging power: to establish 'popularly judged political trials where public officials or private citizens, indicted for corruption or treason, face the penalty of death' (McCormick 2018: 18). These popular trials would be modelled on the 'capital trials by large citizen juries like those that convicted Socrates in Athens and Coriolanus in Rome' (18) that Machiavelli praises in the *Discourses*. Even if progressive liberals have moved away from capital punishment,¹⁰ McCormick follows Machiavelli's insight that the fear of death is the only way of 'detering socio-economic and political elites from steering public policy toward their own private, self-enrichment' (19). Imprisonment and exile are inadequate forms of political punishment given that wealthy citizens circumvent penalties by using 'their considerable resources to gain unwarranted pardons, to bust out of jail, or to return prematurely from exile' (19). Given the severity of applying the death penalty in cases of corruption, additional 'institutional modes' are needed to allow large number of common citizens to decide 'over the lives of elites indicted for political crimes' (19). McCormick also suggests applying a form of penal reparation by 'exempting the poor from the threat of execution'¹¹ and reserving capital punishment only 'for wealthy citizens or public officials found guilty of political or economic corruption' (20).¹²

Against Pettit's 'contestatory model', in which the people can only exert indirect control over government, and following the

plebeian path opened by McCormick's 'tribunician model' – even if departing from his propositions in significant ways¹³ – I have also offered new institutions to deal with systemic corruption and the relentless growth of oligarchic power within representative democracies (Vergara 2020). Since a well-ordered republic needs to incorporate a plebeian branch with the authority to curb oligarchic excess, building on Condorcet's institutional proposal, this branch is composed of a sovereign network of local councils and a subordinate Tribunate office to act as enforcer of the popular will and as an effective anti-corruption institution. Such a council system would allow the people to directly exercise political counterpower through prerogatives to initiate, veto, and repeal law and policy, recall representatives, propose constitutional reforms, and initiate a constituent process to write new basic rules. The 'people-as-network' would constitute an institutional deliberative popular sovereign with the strongest authority to judge the domination coming from the powerful few.

Combining features of Machiavelli's Provost office, Condorcet's Council of Overseers, and McCormick's Tribunate, the Tribunitian office I propose would be selected by lot, at each level of government, and subordinated to the network of councils in its role of overseer and enforcer, making sure mandates coming out of the assemblies are properly and promptly carried out. Building on the impeachment prerogative of McCormick's Tribunate and the anti-corruption function of Machiavelli's mass trials, the Tribunitian office would investigate complaints of political corruption, having the power to initiate impeachment and recommending a penalty. In cases in which there is discrepancy between the recommendations by the Tribunate and the relevant branch of government, all members of the Tribunitian office would pass final judgment in a mass trial, and in this way bypass the oligarchic gates that keep corrupt officials in power and out of prison.

Republican Political Economy: The Constitution as Regulation of Material Power

Within the republican tradition, the degree of socioeconomic equality in a given society is a crucial element to study and understand

constitutional structures. For republican thinkers, society is divided between the powerful few and the many, and there is a tendency towards the oligarchisation of power and the corruption of virtue that is seen as connected to an increase in material inequality. To get a full picture of our sociopolitical orders and their particular organisations of power, constitutions must be analysed taking into account the socioeconomic power structure in which they are set. Materialist republican constitutionalism is focused on how the state, through regulation, the lack thereof, and the selective enforcement of rules, far from a neutral mediator between citizens, plays an active role in enabling the ongoing oligarchisation process that corrupts the republic.

Analysed from the point of view of textual declarations and omissions, constitutions and their respective derivative legal structures are mechanisms of power allocation that enable some behaviours and prohibit others. Liberal constitutions have clearly enabled an obscene accumulation of wealth at the top, and liberalism – an ideology that sees the protection of private property as the main goal of the state – has been unable to offer useful tools to ‘fix’ the oligarchic problem. In the United States, the richest 1 per cent currently owns 40 per cent of the country’s wealth – more than the bottom 90 per cent combined (Collins et al. 2020). This pernicious inequality enables billionaires and the managerial class to live the life of feudal lords in mansions, surrounded by servants, having the power to hire and fire legions of workers who struggle to maintain a precarious standard of living in a society in which most basic services have been privatised.

Modern republican thinkers agree that great wealth inequality makes the establishment and maintenance of a republic almost impossible. For Machiavelli, relative equality is necessary for free government and drastic measures need to be taken before lords, ‘who without working live in luxury on the returns from their landed possessions’, become too powerful, and corrupt the republic; their ambition must be curbed as they are the beginners of ‘corruption and the causes of all evil’ (*D* I.55). This awareness of the corrupting effects that inequality has on liberty was also present within the elitist strand of republicanism. Even when hierarchies and elite rule are justified, most thinkers agree that the growth of material inequality is pernicious. In *Oceana*, James Harrington proposed

an ideal republic as a closed commonwealth of property owners in which an agrarian law setting a limit for the accumulation of land is entrenched as a ‘perpetual law’ because ‘without an agrarian law, government, whether monarchical, aristocratical, or popular, has no long lease’ (Harrington 2003: 13). Within Harrington’s framework, property is liberty and therefore it needs to be relatively evenly distributed (de Dijn 2020; Sabbadini 2020). Accumulation of wealth in the hands of a few means a loss of liberty for the many.

Picking up this materialist strand of republican thought, David Casassas and Jurgen De Wispelaere have proposed three main components that a republican political economic system needs to have to foster liberty as nondomination: an economic floor (Universal Basic Income; UBI), a wealth ceiling, and mechanisms of democratic control over the economy (Casassas and De Wispelaere 2016: 287). I would add that we need to think about these republican minimums not only in terms of law and public policy but also as constitutional norms, as anti-oligarchic basic rules to keep inequality and corruption under control, so to avoid the need for ‘extraordinary measures’ to curb the domineering ambition of the powerful few.

Entrenching in the constitution socioeconomic rights has not been sufficient to secure the material conditions for emancipation. Even if some liberal constitutions have declared the rights to housing, education, healthcare, and social security, these basic rights remain unfulfilled for the majority of the people living under so-called transformative orders. For example, the 1994 South African Constitution proclaimed that the state was committed to land reform and its equitable access, and that everyone has ‘the right to have access to adequate housing’ (Art. 26.1) and ‘sufficient food’ (Art. 27.1.b). However, after almost three decades since the end of apartheid, inequality and precarity are still rampant; 72 per cent of private farmland is owned by white people, who make up only 9 per cent of South Africa’s population, less than 10 per cent of agricultural land has been transferred through land reform, and 55.5 per cent of people live below the poverty line (Government of South Africa 2017). The justiciability of rights in South Africa and elsewhere has proved inadequate to materialise the constitutionally declared socioeconomic rights. Moreover, in societies without universal basic services, in which the enjoyment of basic rights depends on individuals’ income, the advantages of having a UBI to provide an

economic floor high enough to reach the ‘tipping point’ of emancipation and republican freedom would be rapidly eroded (Casassas and De Wispelaere 2016: 288–289). Consequently, it is necessary to think not only in constitutionally entrenching socioeconomic rights and a UBI, but also to envision a new institution in charge of overseeing the materialisation of rights at a systemic level.

Setting a limit to wealth accumulation in the constitution also seems as crucial as setting an economic floor; without limits to the accumulation of property, a UBI and universal services would be functional to the current capitalist, extractivist mode of production and accumulation, and therefore would be unable to break with the indirect dependence of the working classes on oligarchs who profit from consumerism and the exploitation of natural resources. Setting constitutional limits to wealth accumulation through a wealth tax and a cap on property to discourage rentier behaviour, as well as imposing minimum welfare conditions, are certainly necessary but not sufficient conditions for a well-ordered republic in which plebeians can be free from material deprivation and oligarchic domination. Juridical norms cannot change material conditions without proper enforcement, and the courts have proven ineffective in guaranteeing socioeconomic rights and disciplining the powerful.

The third basic element of republican political economy that needs to be included into the constitutional structure is the collective control over the means of production. Two intellectual strands have developed from the critique of wage labour: labour republicans, who have reckoned with structural domination in labour relations within Pettit’s contestatory republican model (Gourevitch 2013), and socialist republicans, who come from a Marxian tradition and conceive freedom more expansively as collective autonomy, which necessarily entails ‘processes of self-governance through which individuals exercise direct control over the central institutions of society’ (Muldoon 2022: 52). From a socialist republican point of view, having an institutional infrastructure, such as a council system, for the people to engage in these processes of self-governance and exert direct control over their collective destiny, is therefore a necessary condition to achieve a state in which all are free from present domination and protected against future oppression – and not only those who have unions and are able to resist the gradual encroachment of capital on their labour rights.

In addition to the establishment of a council system able to tackle structural forms of domination, it seems necessary to enshrine new principles to frame legal interpretation. Given that modern constitutions were originally designed to protect property owners from redistribution (Vergara 2020: 76–94), it is necessary to include in the current constitutional orders provisions to counteract their pro-oligarchy bias. To moderate the initial mandate of the state to protect the private accumulation of property, a material republican constitution would need to incorporate a pro-community principle, recognising informal popular organisations and their diversity, and forcing the state to protect and foster community life and self-management against the relentless logic of the private accumulation of property that currently dominates within the capitalist mode of production. To this end, in addition to an overarching pro-community principle, the republican constitution needs to recognise and regulate the different types of property and public goods, especially communal and collective rights to the use and benefit of land and other natural resources, as well as the inappropriable¹⁴ nature of unique ecosystems and public goods (Ostrom 1990; Ramírez 2020: 253–266). Only then, when ordinary people have the legal and institutional tools to reshape their orders and control the oligarchic and extractivist tendencies of the system, a republic can be considered well-ordered and free; ‘without the capacity to co-determine the terms under which we engage with each other as social and economic agents, republican freedom cannot but remain a mirage’ (Casassas and De Wispelaere 2016: 293).

Conclusion

Republican constitutionalism – a juridico-political tradition based on the institutional recognition of the liberty-producing division between the powerful few and the many – offers a fresh outlook on the crisis of democracy. It not only provides a necessary critique of the ability to achieve freedom as nondomination within liberal constitutional structures, but also proposes institutional innovations to empower the common people to resist domination and regain liberty. Given its materialist lens, focused on acknowledging and dealing with structural forms of domination, republican constitutional thought is an economically informed legal philosophy that sees constitutions as

regulatory frameworks that enable the distribution and maintenance of socioeconomic and political power. Consequently, the wisdom emerging from the ‘plebeian revival’ within republicanism studies, which seeks to dismantle structures of domination and erect new emancipatory ones, needs to be recovered and further developed as a valuable resource for the task of neutralising the current oligarchic overgrowth that has made republican liberty an impossibility.

Through a dynamic constitutional framework in which the few govern while their ambition is curbed by the common people, who have institutional means to exert direct control over government and amend the basic structure, republicanism brings new tools to transform the political order from within. In addition to new institutions such as the surveillance office and the mass trials prescribed by Machiavelli, the network of primary assemblies and the office of overseers envisioned by Condorcet, and the revived Tribune office proposed by McCormick, republicanism also proposes basic socioeconomic rules to guarantee an adequate material floor, a limit to wealth accumulation, and popular control over the economy. Even if for liberal constitutionalists questions of political economy should be left to ordinary politics and be subject to the pressures of party competition, for republican constitutional thinkers, adequate norms regulating matters of relative deprivation and accumulation of wealth are necessary conditions for republican liberty and therefore should be part of the basic structure of a well-ordered republic.

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Notes

1. He had so little faith in the virtue of candidates that he designed his electoral system to ‘ensure that the plurality of the votes will always be obtained by men who have a perhaps mediocre, but sufficient, amount of the qualities necessary to fulfil the functions entrusted to them’ (Condorcet 2007: 169).
2. Condorcet also proposed an independent public treasury able to contain “the greed or ambition of the leaders of the government” (2007: 207).
3. Even though there is no accurate record of the percentage of the population of voting age, for a population of 20 million, roughly 7 million are likely to have been males older than twenty-one.
4. One of the innovations he proposed is ranked voting, which has been recently adopted in New York and other states in the United States.
5. This was not included in the final draft of *Le Girondine* and thus is not as detailed in terms of its procedures. More research needs to be done on the reasons why this proposal was not included, and what Condorcet’s original constitutional proposal was before presumably being outvoted by the rest of the commission.
6. The combined fortunes of Amazon founder Jeff Bezos, Microsoft founder Bill Gates, and investor Warren Buffett are worth more than the total wealth of the poorest half of Americans (Forbes 2018). They doubled their wealth in the first year of the pandemic (Collins et al. 2020).
7. In the United States, about 220 million people would be eligible for the Tribunate, which means that each citizen would have a 0.000023 per cent probability of being selected.
8. Impeachment is today monopolised by the House of Representatives.
9. In 2019 for abuse of power and in 2021 for incitement to insurrection.
10. Especially given discriminatory sentencing and evidence of cruel and unusual punishment in the way in which criminals are killed. See, for example, Bernard Harcourt, “The Barbarism of Alabama’s Botched Execution,” *The New York Review of Books*, 13 March 2018. <https://www.nybooks.com/daily/2018/03/13/the-barbarism-of-alabamas-botched-execution/>.
11. Individuals from lower classes are currently overrepresented on death row.
12. Exempting the poor from execution in cases of corruption would place a pernicious incentive to bribe plebeians into corruption schemes, given the lesser penalty they risk if caught. Similar to what happens with gangs that use children to sell drugs because they cannot be tried as adults and thus do not risk jail time.
13. I reject wealth exclusion, capital punishment, and having an exclusively tribunitian institution for the people.
14. Something that cannot/must not be owned or made into property.

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