

THE REPUBLICANISM OF PHILIP PETTIT IN TIMES OF CRISIS

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THE REPUBLICANISM OF PHILIP PETTIT IN TIMES OF CRISIS

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ABSTRACT

The Republicanism of Philip Pettit in Times of Crisis

The literature on the long tradition of republicanism has burgeoned in the past few decades. Republicanism with its distinctive theoretical and historical features distinguishes itself from other familiar political theories such as populism and liberalism. The idiosyncratic element in Philip Pettit's idea of republicanism is its special concern for liberty as non-domination. The concept of domination simply denotes arbitrary interference of one's affairs and differs from the liberal definition of liberty as non-interference. It is the central republican concept that determines many aspects of republicanism, including its understanding of the law. In western political theory on republican ideals, there are some missing points regarding the relationship between law and republicanism. Therefore, the theoretical relationship between domination and law should be established. I argue that this conceptual relation can only be understood in terms of critical thinking that could possibly be directed against both republicanism and its hegemonic rival, liberalism. In this respect, we must have recourse to a controversial figure, Carl Schmitt in order to assess the vulnerability of republicanism to his criticisms of liberalism. Thus, the thesis question is the following: To what extent Pettit's republicanism is vulnerable to the two criticisms of liberalism addressed by Schmitt. The first one is that liberalism as a neutral worldview has no existential enemy. Second, liberalism has no ideological capacity to respond to the state of exception. From Pettit's republican perspective, I will conclude that Pettit's neo-republicanism is not as sensitive as liberalism to the Schmittian criticisms and has substantial theoretical resources to defy such criticisms via stressing its ideological and conservative character.

ÖZET

Kriz Anlarında Philip Pettit'in Cumhuriyetçiliği

Cumhuriyetçilik geleneğine ilişkin literatür, son yıllarda artmaya başlamıştır. Cumhuriyetçilik, kendine özgü kuramsal ve tarihsel özellikleri ile, popülizm ve liberalizm gibi kendisi ile ilişkilendirilebilecek düşünce akımlarından farklılığını ortaya koyabilmiştir. Philip Pettit'in cumhuriyetçilik fikrinde adem-i tahakküm olarak özgürlük özel bir öneme sahiptir. Tahakküm kısaca bir başkasının eylem alanına keyfi iradenin hakimiyet kurmasını ifade eder. Cumhuriyetçi düşüncede temel kavram olan keyfilik, cumhuriyetçiliğin hukuk ile olan ilişkisi de dahil olmak üzere birçok yönünü görünür kılmaktadır. Cumhuriyetçi idealler üzerine batı siyaset teorisinde, hukuk ile cumhuriyetçilik ilişkisi üzerine birçok eksik noktalar mevcuttur. Cumhuriyetçilik ile hukuk arasındaki teorik ilişkinin hem cumhuriyetçilik hem de liberalizme yöneltilebilecek ortak eleştiriler sayesinde anlaşılabilirliğini ve açıklanabilirliğini savunuyorum. Bu bakımdan, Carl Schmitt'in liberalizme yönelttiği iki temel eleştirinin cumhuriyetçiliğe de yöneltildiği ihtimali üzerinden Cumhuriyetçiliğin bu eleştirilere karşı kırılganlığını ölçebiliriz. Bu açıdan tezimin sorusu, Pettit'in cumhuriyetçilik anlayışının ne ölçüde bu eleştirilere açık olduğudur. Liberalizme yönelik ilk eleştiri onun tarafsız, nötr bir dünya görüşü olduğu ve varoluşsal bir düşmana sahip olmadığı iddiasıdır. Schmitt'in ikinci temel eleştirisi ise liberalizmin istisna haline karşı cevap verecek ideolojik temele sahip olmadığı iddiasıdır. Tezimde Pettit'in cumhuriyetçi siyaset kuramının ideolojik ve muhafazakâr ruhuna vurgu yaparak bu eleştirilere karşı liberalizm kadar kırılgan olmadığı ve cevap verecek teorik temele sahip olduğu sonucuna varacağız.

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CHAPTER 1

REPUBLICANISM: A CONSERVATIVE READING

The republican political tradition goes back to as old as Ancient Greek city-states and the republican era of Rome. In European political theory literature, *Politeia* of the Greeks and *Res Publica* of the Romans are both used to indicate the concept of a republic as a specific type of government. However, the roots of republican regimes and proponents of republicanism can be detected mainly in the Roman tradition, whereas the Greek political tradition and history are associated with the democratic tradition. Therefore, we concentrate our focus especially on the Roman political tradition, throughout the thesis.

Republicanism generally refers to a family of philosophers, politicians, statesmen, and scholars. In the republican tradition, from Cicero to Skinner, we can designate many historical figures such as Machiavelli, “the English republicans” Milton, Harrington, Sidney;” the French philosophers Montesquieu, even Rousseau; the founding fathers of American Republic Jefferson, Madison, and Adams (Lovett, 2018). Since a wide array of politicians and intellectuals belong to the republican tradition, it is somewhat difficult to locate its place accurately within the history of western political thought. Nevertheless, there are some common points and concerns shared among these writers such as the importance of a mixed constitution, the primacy of the rule of law, civic virtue and patriotism, liberty as a prerequisite for political community, the evil of corruption and the equal and active political participation (Lovett, 2018).

The theoretical borders between republicanism, communitarianism, and liberalism are blurred. It needs to be emphasized that liberals and communitarians

also emphasize and endorse some of these allegedly republican values, although often in a different manner. Liberals, for instance, also advocate freedom, the rule of law, and the idea of a mixed constitution. On the other hand, republicans also promote some values, which are often stressed in communitarian tradition, such as patriotism and the collective presence of people. For this reason, one needs theoretical scrutiny from philosophical and historical perspectives in order to understand what makes the republican tradition distinct in contemporary political theory.

Republican theories and practices principally endorse the division of power among social forces. For instance, the Roman republican era was dominated by three main governing sources that represent respectively three socio-political powers: the tribunes of the people as representing the power of the *plebs*; the Roman senate as representing the *patrician* (nobles); and lastly the one-man rule as representing the consul, dictator or king. The Roman political constitution combined harmoniously these three socio-political orders in a mixed and hierarchical governmental system of the Roman Republic.

The Roman constitution combined the senate and the tribunes as two counsels within a hierarchy and restricted their political powers with centralized leadership. Whereas the Senate exercised the political authority of the patricians, the people enjoyed freedom via the tribunes. The senate that was mainly composed of ex-roman officers acted both as an advisory and legislative body. The tribunes of the popular assembly, by contrast, could contest the senatorial proposals via its power of veto. In this respect, Manjeet Ramgotra (2014) defines a republic as “a mixed constitution that incorporates political power of one, with the political authority of the few and

the political liberty of the many” (p. 23). This definition gives us a simple trilogy of a republican regime and how it unites three competing social powers.

The Roman lawyer and aristocratic statesman, Cicero who was the fervent advocate of this system both in theory and practice can be viewed as the first systematic defender of republicanism in history. He constructed his political thought during an era in which the Roman Republic was decaying while the Roman Empire was rising. Consequently, he developed his republican ideas as a reaction to the rise of the empire and the corruption of the existing political system, fighting against what he saw as the rise of tyranny. Therefore, republicanism arguably can be read as historically and inherently both reactionary and conservative, defending the old republican order against the rise of the new empire.

Cicero convincingly argued that political hierarchy maintains political stability since each person in each social order acknowledges their social position in this mixed constitution. He called this a *Concordia Ordinum*, which translates roughly as the mutual harmony among people, the harmony of the orders or the peace between social forces, which creates balance and stability among the social forces. He defines “the state, through the reasoned balance of the highest and the lowest and the intervening orders, is harmonious in the concord of very different people” (as cited in Ramgotra, 2014, p. 36).

In the modern and pre-modern era of the republican tradition, we encounter the two great republican philosophers: Machiavelli and Montesquieu. They both aspired for an expansive republic, though with different components of classical republicanism. While Machiavelli tried to establish a strong republic via the strong rule of one-man due to the tumultuous political situation in Italy, Montesquieu wanted to re-establish the declining authority of nobles via separation of powers. It

wouldn't be false to say that modern and ancient republicanism form a historical continuum. In this respect, the resemblance between early modern and ancient republicanism is much more salient. They were both "layered hierarchical status orders" (Ramgotra, 2014). However, the stress of modern republicans on the equality of citizens, especially after the French Revolution, is a crucial element distinguishing it from its early modern and ancient predecessors. My aim, in this thesis, is to focus on the modern Republican tradition which tries to combine the traditional republican values with commitment to political equality.

The need for expanding the traditional approach with a commitment to political equality is clearer when it comes to the third political order. That is, the third political order, namely the political stature of one-man is one of the apprehensiveness of the republican stance, as it becomes hesitant on that point. Although the republican scorn against the rule of one-man is crystal clear, republicanism does not prerequisite the non-existence of a monarch. For instance, the United Kingdom was sometimes referred to as a monarchical republic by early modern republicans. As a matter of fact, the minimal imperium of the government is essential for an enduring political order. The *imperium* of one-man can be seen as the equivalent of the executive branch of government in the system of separation of powers in modern constitutional systems. In this respect, I define republicanism as a midway between the all-inclusive rule of the people, e.g., populism or mob rule, and the capricious rule of one-man, e.g., tyranny or dictatorship.

As for the distinguishing features of modern republicanism, we can observe equality as against the inegalitarian nature of its premodern varieties and the total abandonment of the rule of man in favor of the rule of law. These two modern values, i.e., individual equality and the rule of law are conventionally attributed to

the liberal tradition. But they are the modern values that fall into a set of values shared by both liberals and republicans. However, there are substantial differences between both parties' conception of the rule of law that I will mention later in the thesis.

The republican tradition lost its aristocratic, inegalitarian character and gained its absolute loyalty to the rule of law thanks to the universal values and ideas spread by the French Revolution. Nevertheless, the difference between classical and modern republicanism does not bring an end to the “inherently conservative and elitist” nature of the republican tradition (as cited in Ramgotra, 2014).

The republican tradition existed before the liberal tradition and other traditions in democratic theory such as communitarianism or populism. However, in contemporary times, republicanism is often seen or depicted as an alternative to the theoretical hegemony of liberalism. While they both stress the primacy and importance of liberty, there is a substantial difference, which is pointed out by Philip Pettit (1999). It is also clear that the history of ideas still shapes the contemporary debates on republicanism and its relation to other ideologies. This compels any scholarly study on the republican tradition to be at the same time a historical and comparative study. In this respect, Pettit is deeply concerned with the theoretical confusion among republicanism, populism, and liberalism. He stresses the need for a taxonomy among these approaches in order to place neo-republicanism on “the historical and philosophical map” (Pettit, 1997, p. 3-10, 19). Every now and then, he attempts to clarify the blurred distinction especially between republicanism and communitarianism in relation to populism. Although what signifies liberalism is clear for most of the researchers in the political theory literature, populism is a vague concept to be elucidated before our scrutiny for the taxonomy. In addition, the

evasive concept of populism compels us to define what we mean by populism and which form of populism we will contrast with republicanism.

Before all, we should note that a comparison between populism and republicanism would strictly be made in terms of their differing understanding of democracy. For Pettit discusses populism, mostly, in terms of its belief in unmediated democracy. Populism as commonly and widely understood as anti-elitism denotes basically a political ideology or stance in democratic theory. Populism advocates the primacy of direct democratic rule by the people as a whole either via “assembly or plebiscite” (Pettit, 1997, p. 8). Thus, populist democratic views at times might be construed as majoritarianism or anti-pluralism in general understanding of the terms.

In political theory literature, many writers justifiably condemn republicanism as elitist. In this context as well, we clearly see the opposition between republicanism and populism because the latter precisely roots itself in anti-elitism. The republican distaste for populism is clear because they sometimes define it as mob rule. A “scenario in which the people dissolve into a mob” is always imaginable (Pettit, 2012, 291). While republicanism posits the primacy of the rule by the ‘citizens’ populism advocates the rule by the ‘people’ or their representatives in its entirety. Therefore, to go further in our discussion, we should establish the conceptual distinction between the citizenry and the people. In the modern theories of democracy, the definitions of the people and the citizen are similar, although in ancient wisdom citizenry was taken to be mainly limited to an isolated group of people. In the roman republic, the term *civitas* describes principally those who are subject to the *ius civile*, i.e., the Roman law as different from *Populus Romanus*, i.e., the people of Rome.

Furthermore, it explicitly promotes the equality of the citizens, as a major distinction from ancient republicanism. Pettit, for instance, endorses the ideal of numerical equality as opposed to inegalitarian classical republicanism. Modern republicans along with liberals assume that everyone shall count for one, no one for more than one, which “marks off” the neo-republicanism “from premodern varieties” (Pettit, 1997, p. 110). Pettit (1997) states that “given such an assumption of equality, any ideal for government would have to present itself as a universal ideal, not just as an ideal for an élite citizenry” (p. 49). Establishing the peculiarity of neo-republicanism in the republican tradition is not enough for my purposes in this thesis. Throughout this thesis, I will both systematically and occasionally underline the distinctiveness of the neo-republicanism compared to populism and liberalism. It is convenient to sketch the plan of the thesis after this brief historical and comparative introduction on republican tradition.

In the second chapter of my thesis, following this introduction, I will first explicate the differing points of populism and republicanism. Then, I will focus on Pettit’s critical elucidation of Rousseau’s popular sovereignty. Having shown how Pettit distances his theory from Rousseau’s, I will contrast Hannah Arendt’s political views and Pettit’s republicanism in terms of their interpretation of the Roman political system and its understanding of citizenship. At the end of the second chapter, I will examine in detail the contestatory spirit of Pettit’s republicanism as an alternative to populist participatory democracy.

In the third chapter, I will elucidate republicanism and liberalism via stressing their differing conception of freedom. After explaining the liberal dichotomy between positive and negative freedom and its rejection by Pettit, I will explain the republican understanding of freedom as non-domination in profound detail. In the

following chapter, I will give a concise explanation of Schmitt's criticism of liberalism from the lenses of political philosophy that might be relevant for a critique of republicanism. Then, I will try to give an answer to rightwing criticisms of Republicanism on the grounds that Pettit's republicanism is not vulnerable to these criticisms. Thereafter, I will elucidate jurisprudential criticisms of Schmitt against the liberal understanding of the rule of law and liberal legalism in terms of the idea of the state of exception. Then, I will focus on how republicanism might deal with the problem of the state of exception via stressing its conservative character and its goal-based understanding of the law.

CHAPTER 2

REPUBLICANISM AGAINST POPULISM

In this chapter, I will first briefly define populism in terms of democratic theory and its rejection by republicanism. Then, I will pass onto Rousseau's theory of popular sovereignty and how Pettit distinguishes Rousseau's political ideas from the republican tradition as the Franco-German tradition. Further, in this chapter, I will contrast the political ideas of Hannah Arendt, who was criticized by Pettit as being populist, and of Pettit in terms of the function of a proper legal system in the Roman Republic.

Before going any further in my discussion, I shall clarify, in general terms, my interpretation of populism that I will refer to in this thesis. On my understanding populism is a species of communitarianism as a political philosophy that stresses the priority of communal values over individual commitments. Populism as a communitarian ideal tries to put forward the idea that the ultimate ruler in a democratic society should be the majority the people regardless of what the rational truth about public policies is. It favors popular sovereignty and majoritarianism.

For Pettit, the republican tradition with which he identifies himself, strenuously rejects the populist tradition that, as Pettit (1997) puts it, "hails democratic participation of the people as one of the highest forms of" political good and that express an enthusiasm, "in a communitarian vein, about the desirability of close, homogeneous society ..." (p. 7). Instead, the republican tradition advocates democracy not for the sake of people or community itself which is the ultimate value for both communitarians and populists, but for the sake of freedom as non-domination. For Pettit, democratic participation is not intrinsically a good. Therefore,

Pettit's (1997) republican theory "is not inherently populist [and] not particularly communitarian" (p. 8). Although republicanism gives importance to democratic participatory politics it does not treat democracy as a "bedrock value"; for the ultimate republican good is the liberty as non-domination" (Pettit, 1997, p. 8).

Although republicans reject populism, republican political theory has certain communitarian elements. In particular, the non-domination ideal is, by nature, a communitarian ideal (Pettit, 1997, p. 120). For this ideal suggests that domination is a specific bad that is to be avoided universally by all. Although accepting that republicanism has rather a collectivist approach to human relations, it does not disregard individualism as something redundant. "More generally, however, republicans affirm an individualist ontology or an ontology which is family-based or relationship-based but lean towards a collectivist advocacy" (Brugger, 1999, p. 2). In short, the collectivist element preponderates in republicanism.

In this context, Republicanism replaces the concept of the individual with a more communitarian concept of the citizenry. It has also an individualist ontology like liberalism, however with a substantial political definition. For republicanism, the concept of the individual cannot be detached from the concept of the citizen which stresses the idea of belonging to a political community. Thus, Brugger (1999) rightfully argues that while all liberals advocate an individualistic ontology, a holist ontology is the characteristic of republicanism. He continues that "... collectivist rather than individualist advocacy is more frequently found at the communitarian point of the republican triangle" (Brugger, 1999, p. 3).

However, the communitarian aspect of republicanism should not lead us to think that communitarianism and republicanism have no substantial differences. On the contrary, there is a fundamental opposition between republicans and

communitarians, which at the same time marks the distinction between liberalism and republicanism. The fundamental difference between the republican approach and the communitarian and liberal approach lies beneath their understandings of the covenant between the people and the state. While the latter represents the people as master and the state as its servant, the former sees the people as trustor and the state as its trustees (Pettit, 1997). In this context, liberalism also joins with communitarians, however from the opposite side, in their conception of the social contract. Arguably, the liberal state also grounds itself on the assumption that the state is the servant, with a strong emphasis on impartiality, of individuals and of different social groupings.

Communitarian or populist approaches, by contrast, see the state as the servant of the collectivity (i.e., people, community) not individuality (i.e., citizens, individuals). In this sense, both liberalism and communitarianism conceive the relation between the state and its subjects as a relation of subordination or domination. The covenant of master and servant in any social relation conceptually presupposes the existence of domination between agencies of slavery and mastery. However, domination is degraded by republicans as being such that “republican or commonwealth tradition” wants to reject or minimize, instead of taking it for granted (Pettit, 1997, p. 8).

In contrast with the role of master and servant as human agencies, the roles of a trustee and trustor is of a different nature. The relation between a trustor or a trustee theoretically involves the volitions of the parties to enter into a contractual relationship. Moreover, it provides a legal constitutional ground protecting the trustor from the arbitrary will of the trustee. On the contrary, in the theoretical master and servant relation, a contract of slavery is at hand. Moreover, the master may act on his

own will, where a trustee can do so on behalf (and with permission) of the trustor. In short, communitarians and liberals implicitly, and perhaps unwittingly, presupposes a domination relation between the people and the state. This causes a fundamental gap between their conceptions of constitutional state and democracy.

The second major difference between the communitarian populist approach and the republican approach lies in their differing understanding of democracy. Pettit (2012) explicitly tries to reject the understanding of democracy as popular sovereignty; instead, he suggests a contestatory democracy. When Pettit (2012) discusses on Jean Jacques Rousseau's approach to democracy, he "describe[s] this approach as communitarian, for reasons that will become clear shortly, though it is often described as republican" (p. 11-12). However, one should not assume that the republican tradition dismisses democratic values, instead, it does not merely regard democracy as "be-all and end-all of good government" (Pettit, 1997, p. 8). As it is the case in populist democracy.

Pettit dramatically distinguishes his neo-republicanism from others by suggesting contestatory democracy as opposed to participatory democracy. The latter is the secondary position in Pettit's democratic theory. The contestatory democracy basically denotes a specific conception of democratic participation which stresses people's eligibility to challenge public decisions instead of making them. To illustrate our point, suppose that the municipality wants to build a new parking lot in front of your house and the decision is of public benefit and it is the most relevant place for a parking lot is in front of your house. You have two options to affect the public initiative. You can directly or indirectly take part in the public decision-making process or you can contest the outcome of the initiative, regardless of whether the procedures are legitimate or not. Whereas in the first case, the

participatory element of democracy is present, in the second case, the contestatory spirit of democracy is salient. The contestatory democracy suggests that one should be able to have effective institutional and material instruments to contest any public decision.

Liberty is interpreted occasionally as democratic self-rule or as a specific regime for individual or collective common good. The authors of *Federalist Papers*, for instance, construed representative democracy in terms of a republican regime (Pettit, 1997, p. 29-30). At the same time, however, they accepted that democratic control is one of many ways of promoting liberty. Hence, Pettit (1997) asserts that the importance of democratic self-control is “not from any definitional connection with liberty, but from the fact that it is a means of furthering liberty” (p. 30). In short, in the republican tradition, we could say that democratic values signify a necessary condition but not sufficient one. In fact, the contention that republican liberty is equivalent to democratic self-rule is a populist twist in the tradition for which Pettit (1997) holds Rousseau responsible (p. 30).

2.1 Rousseauvian popular sovereignty and republicanism

Rousseau’s definition of freedom resembles Pettit’s with a slight difference. The former defines liberty as non-dependency, the latter as non-domination.¹ Rousseau more radically understood liberty as non-vulnerability to the will of the others. It seems that Rousseau’s criterion for freedom as non-dependency is much more demanding and radical than the Republican criterion of non-domination because a non-dependent agent cannot be in need of others' help. Thus, no one can possibly interfere with an independent agent. Rousseau makes mutual interference, whether

¹ One can argue that Pettit’s interpretation of Rousseau’s views on the definition of liberty is somewhat mistaken. For instance, Rousseau (1997) gives more than one definition of liberty.

arbitrary or not, impossible. It is normal to find a radical solution to guarantee the liberty that is understood in a radical way. In Rousseau's thinking, the remedy for the protection of liberty as non-dependency (or non-vulnerability) in general will be internalized by all. In other words, Rousseau suggests that the freedom of the citizens can only be guaranteed under the law enacted by the will of all via full democratic participation, namely *volonté general* (Pettit, 1997, p. 252-253). In this respect, Rousseauvian popular sovereignty can be both identified with populist democracy and communitarianism. In fact, Pettit identifies Rousseauvian popular sovereignty with communitarianism instead of republicanism as opposed to the literature that mistakenly describes his theory as republicanism (Pettit, 2012, p. 12).

Rousseau's direct populist democracy rejects the two essential republican values: the idea of a mixed constitution and contestatory citizenry.² Pettit (2012) takes Rousseau's theory of sovereignty to be in the traditional line of thought represented by "Jean Bodin in the sixteenth century, and Thomas Hobbes in the seventeenth" (p. 13). Pettit argues that Rousseau advocates one, absolute, undivided sovereignty in line with Bodin and Hobbes that no such agency should operate under the pretext of coordination among checking powers of government like envisaged in a mixed constitution (Pettit, 2012, p. 12-13). Accordingly, Rousseau conveys his derision via attacking directly those who advocate the republican thought of a mixed constitution. Rousseau states that those who advocate the mixed constitution "turn the Sovereign into a being that is fantastical and formed of disparate parts; it is as if they were putting together man out of several bodies one of which had eyes, another arms, another feet, and nothing else" (as cited in Pettit, 2012, p. 13).

² It is arguable that Rousseau is not an advocate of direct majoritarian democracy. In *The Social Contract*, Rousseau states: "It is against the natural order that the greater number govern and the smaller number be governed" (Rousseau & Gourevitch, 1997, p. 91).

Pettit distinguishes between two different schisms in republican political tradition: one is the Italian-Atlantic tradition with which he associates his theory and the other is the Continental form of republicanism with which he identifies Rousseau. Although he does not give a detailed account of the meta-theoretical difference between the two, he on purpose wants to build his neo-republican theory in line with the Italian Atlantic tradition (Pettit, 2012, p. 12). The Italian Atlantic tradition promotes three main conditions of republicanism, which are a mixed constitution, contestatory citizenry, and freedom as non-domination.³ The continental tradition, by contrast, omits the first two republican ideals, while remaining faithful to the ideal of the freedom as non-domination (Pettit, 2013, p. 169-172).

After the major displacement of classical republicanism by liberalism in the history of political thought, notably in the English-speaking world, another opposing line of thought suggested by Rousseau and Kant has emerged also as republicanism (Pettit, 2012, p. 11-12). Pettit (2013) describes this new approach to republicanism as communitarianism and designates it as being the new Franco-German doctrine (p. 169). At the origin of this new doctrine, we found Kant and Rousseau. In addition, Pettit identifies also the critics of liberalism such as Hannah Arendt and Michael Sandel with this version of republicanism.

Pettit summarizes the positions of Kant and Rousseau with the two republican ideals: the mixed constitution and the contestatory democracy; arguing that they both opposed these two republican ideals. Pettit (2013) states:

... while Rousseau and Kant kept faith, in their different ways, with the republican conception of freedom as nondomination, and with the commitment to the equal freedom of citizens, they broke with that tradition on the two institutional ideals In place of the mixed constitution, they

³ In this thesis, I will not focus on the republican component of a mixed constitution. For it is also one of the common ideals between liberalism and republicanism. Although Pettit (2012) stresses the importance of a mixed constitution for a republican regime, it is hard to say this is one of the distinguishing features of republicanism

hailed the idea of a popular or representative sovereign. And in place of the contestatory citizenry, they installed the idea of a people whose primary job was to participate in the creation and sustenance of that sovereign assembly (p. 179).

Against the republican idea, Pettit (2013) argues, while Kant proposed representative popular sovereignty, Rousseau proposed participatory popular sovereignty. However, it is very well known that Rousseau makes a distinction between the sovereign and the administration; and argues that while people are the sovereign the administration may be allotted to the magistrates, which might constitute a “mixed government” (Pettit, 2013, p. 184). Pettit discards the mixed government suggested by Rousseau as consistent with the indivisibility of sovereignty, thus argues that the mixed government is totally different from the mixed constitution. The latter requires the sovereign as the source of law to be divided into three parts, while the former still presupposes the indivisible, “single will” of the people that cannot be divided in any way (Pettit, 2013, p. 185).

In addition, Pettit discusses in detail the rejection of contestatory citizenry by the communitarian Franco-German republican tradition. He justifiably argues that Rousseau and, with a reservation Kant, both opposes the right to the resistance of the people and their right to contestation against the acts of the sovereign. Rousseau shifts the role of people suggested by the classical republicanism “from the role of contestor to that of participant” (Pettit, 2013, p. 193). In the Rousseauvian view, since the citizens participate in the making of laws, they have consequentially no right to contest those laws that they legislate on their own. The people as being the sole corporeal body of legislation in Rousseau’s political theory, they cannot oppose laws supported by the general impartial will “can be unjust, since no man can be unjust toward himself” (Pettit, 2013, p. 194).

Pettit puts a significant amount of effort to interpret Kant's view on the contestatory citizenry in line with Rousseau. In his interpretation, he emphasizes Kant's casting of the republican citizenry as 'colegislator' in virtue of their elective rights (Pettit, 2013, p. 194). In a slightly different vein from Rousseau, Kant argues that any individual or collective right to resistance against the will of the sovereign would be self-contradictory. Since the sovereign is the highest authority of the state, the self-contradiction of assigning the right of contestation became "evident as soon as one asks who is to be the judge in this dispute between the people and sovereign" (Pettit, 2013, p. 195). Pettit (2013) concludes on the republicanism of both Kant and Rousseau that according to their view "there is a communitarian emphasis on the ideal of citizens in legislating for themselves, whether directly or indirectly, although the communitarianism is universalist in character, not particularistic" (p. 199).

In this context, we should elucidate the place of civic virtue or the vigilant citizenry in both the Italian-Atlantic and the Franco-German republican tradition in line with Pettit's classification. One is justified to interpret in a way that for the Italian Atlantic republican tradition, contestatory citizenry and civic virtue, as they provide citizens with the power of controlling the government acts, is a good in itself, not for the sake of some other goods. In contrast, for the communitarian Franco-German republican tradition, civic virtue is not intrinsically good but instrumentally good. It is a political good in so far as it promotes freedom as non-domination and political participation. Kant, for instance, though rejecting the right to resistance of the people, accepts that people should have a hearing in respect of their right to criticize the decisions of the sovereign and its agents. Pettit (2013) states the following via quoting from Kant:

a citizen must have, with the approval of the ruler himself, the authorization to make known publicly his opinions about what it is in the ruler's

arrangements that seems to him to be wrong against the commonwealth” on the grounds that the head of state might “err or be ignorant of something” (p. 196).

Kant hesitantly provides a ground for citizens to challenge the acts of the sovereign that seem to breach their interests or rights in a way that it has connotations reminding us of a contestatory, vigilant citizenry. However, Kant’s position is more of a correction of governmental acts rather than contestation, because the approval of the ruler is a condition for criticizing the acts of the sovereign. The republican virtue of active and civic political participation that is hailed by Rousseau and Kant, though in slightly differing forms, rather guarantees the freedom of the citizens from non-domination. However, in neo-republican ideals, the freedom as non-domination and contestatory democracy reinforced by civic virtue are two equally different goods envisaged by a republican regime.

In the context of the vigilant citizenry as an intrinsic good, Pettit contrasts the two republican approaches in terms of their differing definitions of the citizen as well. The free-man or citizen in the Italian–Atlantic tradition corresponds to the *liber* of Roman thought, who has jurisdiction over his own domain. The *liber* did not operate in *potestate domini*, ‘in the power of a master’, he is a legal person on his own *sui iuris* (Pettit, 2012 p. 17). However, in communitarian republican approach started by Rousseau, the definition of a free person or citizen dramatically differs from the definition portrayed by the classical republicanism and the neo-republicanism. Pettit (2012) states:

“the image of the free person assumes a different cast in the Rousseauvian tradition. According to the new, communitarian, way of thinking, the free person is the active political figure whose highest fulfillment consists in participating with others, at whatever level of community, in activities of shared deliberation and decision-making” (p. 18).

Pettit interprets Rousseau's depiction of the political participation of people in its entirety as populist. In that respect, neo-republicanism is wary about people's position in the democratic influence. It fears the fact that direct popular democracy has the tendency to turn into a mob rule. The communitarian approach to the definition of the citizen has collectivist political connotations; while neo-republicanism suggests rather a legal definition of the citizenry. The neo-republican suggests a passive position for the people in collective legislation but active position in individual contestation. Pettit stresses the individualistic character of a contestatory citizenry. He argues that in order for each to exercise equal democratic influence over government, individual contestability is a must. Equal access to contestatory "influence over government requires the introduction of procedures for the individualized testing of" the acts of government so as to ensure contestatory citizenry "has an individualized and not just a collective dimension" (Pettit, 2012, p. 217-218).

Pettit continues to scrutinize the overemphasis on the collective participation of the people made by the Franco-German approach via explicitly including Hannah Arendt in this tradition. He claims that "[i]n Hannah Arendt's (1958) favorite phrase, [the free person] is the citizen who embraces the *vita activa* rather than the *vita contemplativa* ..." in the realm of public affairs (Pettit, 2012, p. 18). He denounces this depiction of the free man by Arendt, who he identifies with the Franco-German approach to republicanism, as both romantic and populist. Implying Arendt's conception of the citizen in *vita activa*, Pettit (2012) claims that this "tirelessly engaged public figure stands in stark opposition to the image of the free-man in older republicanism" which promotes freedom not only in the public domain but in the

private domain as well (p. 18). I believe Pettit's effort to distinguish the neo-republicanism from the populism of Arendt needs to be discussed further.

2.2 Arendt and Pettit on the Roman republic

We should distinguish first the political theories of Arendt and Pettit for clarifying - and thus better positioning- Pettit's neo-republicanism in the blurred investigations in the literature of both Arendt and Pettit. Arendt's theory was also defined sometimes as republicanism or civic republicanism (Lovett, 2018). Pettit (1997) criticizes the association of Arendt's political theory with the republican tradition, and he explicitly blames Arendt for this "communitarian and populist approach" to be linked with the republican tradition (p. 8). Brugger (1999) also contended that this "populist communitarianism" has often been represented as republicanism (p. 12).

The historical resemblance between neo-republicanism and Arendt's is that they both emerged as an alternative to liberalism in the twentieth century. However, Arendt's propositions, though not too direct, are much more radical than Pettit's in terms of her promotion of political activism and freedom. In fact, Arendt builds her political theory upon the political tradition of ancient Greek democracy in which individual freedom in the political sphere is essential. On the other hand, Pettit draws rather on the Roman republican tradition and their understanding of freedom in the legal sphere. In order to understand better Arendt's allegedly republican ideas, we should scrutinize the main tenets of her political ideas. Then, we can search for the Roman republican reminiscent in her ideas so that the intersection between Pettit and Arendt can be salient.

The theory of action, *vita activa*, by Arendt (1958) stipulates that there are mainly three types of human activities whereby human beings enjoy being in the

world: labor, work, and action. Labor denotes human behaviors in the realm of the economy to sustain the production and consumption cycle. Man, as *animal laborans* are determined to behave in such a way that the biological necessities of life compel them to behave so. Labor creates nothing permanent, and its never-ending cycles make human beings close to being slaves. The human activity of work, by contrast, signifies the human ability to create a temporary artificial social world in which he or she can live by and in. What distinguishes work from labor is that the outcome of work subsists in time more than its own duration.

Homo faber, the man of work, fabricates things for his or her use out of natural beings and distances the world of man from that of animals. *Homo faber* is “the builder, the architect, the craftsperson, the artist and the legislator” (Yar, n.d.). Neither labor nor work implies a world of freedom because none of them is an end-in-itself. Labor has the purpose of enduring life, whereas work aims at creating an artifact. Both types of human activity do not provide man with the freedom he can enjoy fully. Then, it only remains for Arendt to define the type of human activity that truly has the characteristics of liberty.

The last and the most important concept in Arendt’s theory of action is ‘action proper’, which is the only human activity as an end-in-itself. Action that strictly occurs in the political realm has two defining features: irreversibility and unpredictability. It is unique in the sense that it cannot be taken back in any manner. It is unpredictable for its outcome is unknown to everybody including the actor himself. “To act, in its most general sense, means to take initiative, to begin (as the Greek word *archein*, 'to begin,' 'to lead,' and eventually 'to rule' indicates), to set something in motion” (Arendt, 1958, p. 189). In this regard, action and freedom are

one and the same. As freedom also is not “an inner, contemplative or private phenomenon, ... [instead of an] active, worldly and public” (Yar, n.d.).

Arendtian concept of *vita activa* and political philosophy as a part of *vita contemplativa* can be helpful to scrutinize Pettit’s political philosophy as not an action but a thought. Arendt makes a clear distinction between thought and action. For her, there is no place for thought or political normative theories in general in actual political life because politics are all about the action the end of which is always unknown and unpredictable.

The different conceptions of law, politics, and freedom between the political theories of Arendt and Pettit might be enough to justify Pettit in denouncing Arendt as communitarian instead of republican. Their genuine difference lies in their elusive conception of law. As we have explained above, the role of a legislator in ancient Greek can best be understood as ‘work’ in the Arendtian sense like the works of craftsmen. In the Arendtian theory, “law is not regulative but constitutive” (La Torre, 2013). Arendt stresses Romans’ ability to create a permanent world via law, which “provides a "lesson in the art of foundation" and a solution to the "perplexities inherent in every beginning” in the sense of action proper (Hammer, 2012).

In contrast to the Greeks, the Romans have ensured the determinacy of human action, in the sense of action proper, via law. The unpredictability of human action was eradicated, and its adverse effects were compensated by the Romans via civil law. For Arendt, the human faculty of making promises was a fundamental idea for the Roman legal system to master the indeterminate nature of human affairs, thus, to ensure the stability of the world (Arendt, 1958, p. 243-247).

Legal principles in particular and law in general, create a world in which human action can be predicted and, if necessary, corrected by punishment or

indemnification. What ceases the chaos and indeterminacy of the human realm of action was the fundamental civil law principle of *Pacta Sunt Servanda*. This general principle of law simply denotes that ‘agreements must be kept’ or ‘one has to realize one’s oath and be a man of his word.’ This Latin formula was the main social instrument that served to create a determined world in which the citizens of Rome could freely act. It was not like in an ancient Greek polis where individuals act in the chaos of the city without being restricted by any legal principle.

The *Pacta Sunt Servanda* principle is still the prevailing principle in all contemporary legal systems. More specifically, it states that if a legal personality gives the oath to create an action in the futurity of social reality such as paying the debt or giving credit and in case of non-performance of the promised act that he or she will be liable for punishment or defame. In the chaotic state of nature, specifically reading the human nature, Roman civil law functioned as a determinant of a promised future via giving an order to the indeterminacy of the future. The words of the honorable man regarding the fulfilling of a promise to certain action in the future were grounded by a legal system in which roman citizens had faith.

In contrast to the Romans, the Greeks saw freedom, as depicted by Arendt, in the non-restraining of the human action in *Koinon*, i.e., the public sphere. And, they saw determinacy in the *oikos*, i.e., the household. Whereas in the former, as it is the realm of freedom, man is chaotically free to non-violent act and speech in its own way without any external interferences, in the latter, world as it is the realm of necessity, the master is free in the sense that he can exercise violence and force over his subjects.

However, regarding the promotion of political participation, we find theoretical resemblances between Arendt and Pettit. Arendt sees the action proper as

the sole political activity. On contrast, Pettit's depiction of political participation lays the civic virtue burden on the citizens. Pettit's contestatory citizenry, for instance, suggests that citizens must be vigilant and active in terms of political participation and that there has to be a contestatory culture of political control against governmental abuse of power (Pettit, 2012, p. 225). Both philosophers understand democracy in terms of political activism, though Arendt sees politics as being a pure action without thinking as in Ancient Greece. Pettit states that "while not everyone need be an activist, vigilance requires a high aggregate level of civic engagement" (Pettit, 2012, p. 226).

Besides, Pettit sees contestatory vigilance as a civic virtue that allows one to overcome political apathy and assure democratic control over the government; for the nature of democracy necessitates constant struggles of people to oppose domination by the rulers. As Pettit (2012) puts it "democratic life, ..., has to have an agonistic – better perhaps, an antagonistic – character" (p. 226). "In this Roman way of thinking, as one writer puts it, 'full libertas is coterminous with civitas'; being free and being a citizen are essentially equivalent" (as cited in Pettit, 2014). Therefore, civic virtue as the classical republican value compels Pettit's neo-republicanism to devise a different theory of participation to democratic government. This is the contestatory democracy, which I will elucidate in the following section.

2.3 Neo-republicanism and contestatory democracy

Pettit argues that both classical republicanism and neo-republicanism shared the three common core components of a republican regime, which are freedom as non-domination, the mixed constitution, and the contestatory citizenry. These three core ideas, Pettit (2012) argues "were all represented in Roman republican thought and

practice, ...” in the historical continuum of republicanism (p. 6). Here, we are concerned with rather a contestatory citizenry envisaged by neo-republicanism.

For Pettit, a democratic government must have two dimensions in order to realize the goal of bringing political power under the control of those governed: electoral dimension and contestatory dimension. Citizens have always been able to control via electing their representatives. This necessary condition is not sufficient for the realization of the targeted ideal. And, it must be supported by contestatory dimension in which people should have eligibility to challenge government decisions. This contestatory dimension has its roots in the Roman republic where the tribunes of the *plebs* had the right to veto against the decisions made. Pettit argues that the implementation of (group and individual) veto system is impossible since the worst negatively affected group can obstruct or curtail to realize any public initiatives “in the hope of inducing others to bear the costs” (Pettit, 2013, p. 99).

Therefore, he suggests, for neo-republican democracy, the power of contestation as distinct from the right to veto applied in classical republicanism. One should note that the former is virtue-based whereas the latter is rule-based. In the virtue-based understanding of the right to challenge against public decisions, civic virtue, and active political participation are essential. In contrast to free, unregulated contestation, a veto right is rule-based, because it is determined via constitutional rules. In this respect, the role of the contestatory citizens in the neo-republican theory is a virtue-centered approach. The virtue of contestation constitutes the peculiarity of neo-republicanism. Brugger (1999) states that:

Amongst republicans at the communitarian point of the triangle, however, there is often a virtue-centered approach which is absent in liberalism. ... central question in a virtue-centered approach is not ‘what should I do?’ but ‘what sort of person am I to be?’ The common good, therefore, depends on *enough people* having the appropriate virtues and virtuous motivations (p. 3).

Contestatory citizenry presupposed by the contestatory democracy distinguishes neo-republicanism from not only its premodern or modern predecessors but also from liberalism. Instead of veto -which proposes a set of normative procedural arrangements to block decision-making processes or to reject the public decisions- contestatory citizenry offers civic vigilance as a character that the people are to possess. In the rule-centered approach to people's right to challenge sovereign acts, a legal duty is at hand, whereas the virtue-centered approach insinuates civic vigilance as a political duty.

In the corridors of the three branches of government, people may not have a contribution or participation with their direct and open consent in decision-making processes. The reason might be that the people already share the same values, habits, and goals (the same civility) with the rest of society and with those on governmental duties. For Pettit (1997), "democracy may be understood ... contestatory rather than consensual" (p. 185). For the non-arbitrariness of public decisions originates from the fact that they meet with the expectations and interests of the people, and not from the fact that they are produced by the consent and volition of the people. Even when people are not aware of the situation -like in our current democratic societies-, public decisions have been produced in the absence of those that are subject to it, it does not necessarily mean that they are against the democratic will of the people.

A public decision may well meet with the collective and individual will of the people thanks to the decision-makers who know better of their societal needs and individual expectations. However, since a republican political theory is to be vigilant against the potentially arbitrary public decisions and those public decision-makers who have the power of arbitrary interference, it must devise some institutional

instruments for the benefit of the people. The instrument of the contestatory citizenry is one of them.

The republican preference of contestatory democracy over consensual one is the radical differing point from the populist and liberal understanding of democracy. However, the republican ideal of contestatory citizenry and democracy might be more demanding than consensual democracy. The contestatory element advocates that “citizens of the republic should be able to see their interests furthered and their ideas respected in the public decision” (Pettit, 1997, p. 184). The simple idea that lies behind the conception of contestatory democracy is that if the outcomes of public decision-making go against the ideas and interests of some individuals, then there have to be legal or political instruments and other means (forums, public places) whereby these offended interests are proclaimed.

Pettit emphasizes at least three preconditions that have to be satisfied in order to achieve democratic contestability. The first one is that the deliberative character of democracy should be accentuated. He distinguishes between two possible forms of the decision-making process: the bargain-based and the debate-based. While in the former, people gather around a table with predefined interests and preferences for a trade-off, in the latter, the preferences are established with rational consideration of available choices. While Pettit clearly rejects the market-based understanding of doing politics in the liberal tradition; at the same time, he supposes the republican understanding of democracy is inherently deliberative, or say discursive, rather than populist direct democracy or representative democracy.

Here it should be noted that Pettit’s deliberative democracy should not be understood in the conventional sense because it promotes mainly deliberative regulation rather than deliberative legislation. The difference between the two is that

while the former is about the compliance of existing procedural norms of decision-making, the latter suggests that people should gather and make legislation via substantial decision making. However, Pettit (2012) argues otherwise: subjects of democracy “may not come to a common mind on the particular issue on hand but that will not be a problem so long as the final decision is made on the basis of norm-compatible process” (p. 266). Hence, the role of the people does not change in Pettit’s democratic theory. People as citizens play their contestatory role instead of the participatory one.

The second precondition is the inclusiveness of republican democracy. Accordingly, any public decision-making process should somehow include all parts of society. In the constitution of legislature will, no legislative act should be hostile to a particular group of people. In the administrative and judiciary, all the seats and positions should be allocated proportionally and fairly so they are “not statistically dominated by one religion, one gender, one class,” or ethnicity, etc., (Pettit, 1997, p. 193). In so doing, all walks of society will be enjoying a voice for contestation in the three layers of government, namely legislative, adjudicative and administrative.

The third is the responsiveness, namely the requirement of creation of public forums and implementation of procedures for contestation. There should be determined procedures, perhaps commonplaces, for giving a proper hearing to those people who do not welcome a public decision. Bureaucrats, the police, the judges, namely all governmental agents from administrative or judiciary must respond, and cannot ignore, these contestations and challenges against their decisions (Pettit, 1997, p. 195-197).

The republican ideal of the contestatory citizenry, to simply put it, provides us with a highly different idea of democracy and democratic society. According to

Pettit, the central position of the people in a democratic-republican regime is not to directly make the laws or participate in lawmaking and decision-making processes. Instead, the state should provide and make available to the people those necessary instruments and institutions to contest public decisions. One can see how different and secondary (auxiliary) the democratic position of the people in a republican government. It totally differs from the populist and the liberal view of democracy.

CHAPTER 3

REPUBLICANISM AGAINST LIBERALISM

The hegemony of liberalism in our contemporary times compels Pettit to carefully differentiate his political theory from liberalism. In order to establish the differing tenets of republicanism from liberalism, I will first elucidate Pettit's account of liberalism and how and when the historical rupture between the ideologies has occurred. In the following section, I will move on to the examination of the liberal dichotomy between positive and negative freedom in contrast to the freedom as non-domination. Then, I will scrutinize the freedom as non-domination in detail trying to explicate the arbitrariness. In the last section, I will explain the theoretical instruments devised by Pettit whereby we can detect the elusive concept of arbitrariness.

Pettit emphatically criticizes liberal individualism, from a communitarian side. Classical liberalism, in general, takes the individual liberty and the property as being the ultimate values. Instead of approaching social reality as the relation among human beings, liberalism wants to unrelate, thus, to isolate the individual from the rest of society. Notably, Pettit rebukes liberalism for isolating individuals from their communal values. In words of Pettit (1997), liberals see "the people as an aggregate of atomized individual" (p. 9). Therefore, he wants to distinguish republicanism from liberalism in terms of having a non-individualist more collectivist ontology.

Pettit makes a clear abstract distinction among liberal schools of thought. For him, there are two types of liberals: Left-of-center liberals and Right-of center liberals. The Left-of-center liberals promote non-interference as a substantive value and support it with embracing values like the elimination of poverty, free healthcare,

education, etc. On the other hand, the right-of center liberals -classical liberals or libertarians- advocate and establish non-interference as just a formal, legal reality (Pettit, 1997). And, Pettit (1997) depicts left-of-center and right-of-center liberalism as one “broad church” (p. 10).

After explaining his reading of the contemporary situation of liberalism, Pettit searches for the historical sources of dissection between republicanism and liberalism. In Pettit’s understanding, the historical rupture between republicanism and liberalism emerged exactly in the eighteenth century during the times of American revolution in western political thought. Before that time, freedom once was understood as freedom from non-arbitrary interferences, as having no master. During eighteenth century, liberal tradition explicitly had shifted its definition of liberty to freedom as non-interference. A liberal line of thought in political thought has started to interpret freedom as non-interference regardless of arbitrary or non-arbitrary. In this respect, they also start to define law as pure restriction to liberty on the grounds that law is a type of interference, whether arbitrary or non-arbitrary.

Pettit (1997) states:

... it is domination or slavery, not just any sort of coercion, that is presented as the opposite of liberty. And in [the Republican] tradition, as a consequence, there is little or no suggestion that law necessarily reduces the liberty of those who live under it; on the contrary, the right sort of law is seen as the source of liberty (p. 39).

Pettit’s republicanism is absolutely a sort of Roman republicanism in which legal freedom or freedom with laws is essential. Besides, the law as a specific type of interference is deemed to be the very source of freedom. Thus, in republican understanding law provides a ground of actions that agents can enjoy freely. Republican idea suggests not every interference restricts freedom. Before the change in the definition of liberty occurred, Locke also understood liberty as liberty within

the boundaries of the law. He also believes that law does not impede freedom but promotes and creates it. The rupture in the conception of freedom in the liberal tradition can be taken to be begun, as argued by Pettit, after Locke. Thus, Pettit (2012) claims that:

who remained faithful in this respect to republican thinking, spells out the message clearly. Arguing that ‘where there is no law, there is no freedom’, he says that everyone should be provided only with a liberty to act ‘within the allowance of those laws under which he is, and therein not to be subject to the arbitrary will of another, but freely follow his own (p. 93).

From this passage, Pettit is justified in pointing out the shift in liberal theory regarding the definition and understanding of the relation between law (in the stricter sense, legal norm) and liberty. Neo-Republicanism, at least theoretically, builds upon this theoretical rupture in the history of ideas between both republican and liberal political theory.

The theoretical relation between Locke and Pettit requires more detailed scrutiny for it will convey to us how and why the rupture between the republican and liberal political theory regarding the definition of freedom had arisen. Therefore, we should explore Locke’s reasoning as how he reaches the republican definition of freedom as non-domination. Locke uses the logic of *a contrario* with which he looks first for the antonym of freedom. The opposite of freedom, for him, is slavery, namely being subject to the will of another person. In order to bring an end to being a slave, namely being under the mercy of a superior person, one should take over the current human mastery over herself, then submit herself to the mastery of something else which is not human being or is not from the natural order of man. The mastery shall be law, a construction of human beings. Locke states:

“The natural liberty of man is to be free from any superior power on earth, and not to be under the will ... of man, The liberty of man in society is to be under no other legislative power but that established by consent in the commonwealth, nor under the dominion of any will, or restraint of any law,

but what that legislative shall enact according to the trust put in it. Freedom, then, is not what Sir Robert Filmer tells us: ‘A liberty for every one to do what he lists, to live as he pleases, and not to be tied by any laws’; but freedom of men under government is to have a standing rule to live by, common to every one of that society, A liberty to follow my own will in all things where that rule prescribes not, not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man, (Locke, J., & Shapiro, I., 2003; 2008, p. 109-110)

The conception of freedom, as independence from absolute and arbitrary power under the law, shows us that law is constitutive of freedom, not restraining it as it has been argued by classical liberals. The latter argued, with interesting reasoning, that law is a restraint of action because it stipulates not to act or act in such a way. Therefore, liberals argued that since the law is a prescription or proscription of a specific action, it interferes with the freedom of an agent. However, Locke’s position is the direct opposite of this liberal approach to freedom. Locke (2003; 2008) states “however it may be mistaken, the end of law is not to abolish or restrain, but to preserve and enlarge freedom” (p. 123-124).

The concept of *libertas* in roman republican times clarifies the main tenets of republicanism as having no master instead of self-mastery or slavery. The purpose of *libertas* is not to act freely but security against arbitrary interference: “The Roman plebs struggled not for democracy but for protection, not for public power but for private security. ... But *libertas* . . . was "passive", "defensive", "predominantly negative" (as cited in Pettit, 1997, p. 27). This historical determination that Pettit has drawn upon will be an argument for him to support that liberty as non-domination is neither positive liberty nor negative liberty in a liberal sense devised by Berlin. Therefore, on my understanding, the modern liberal tradition, which Pettit is criticizing, actually begins after John Locke. Thus, it is in this sense that I now aim at elaborating on the modern liberal tradition and its distinction between positive and negative freedom.

3.1 Liberty as posited or negated: liberty as non-domination as the third alternative

In this section, I will first elucidate negative freedom by comparing it to positive freedom. Then, I will explain concisely positive freedom and liberal preference of negative freedom over positive freedom. Further, I will elucidate republican understanding of freedom as non-domination is neither negative nor positive. The salient position of republican liberty will lead us to the next section on the concept of non-domination as a cultural substance.

Before our comparison of the forms of liberty, we should discuss in length two forms of liberty defined by the liberal political tradition. We should also note that freedom and liberty are used interchangeably throughout the text. Negative liberty, in a nutshell, defines the absence of constraints and obstacles either by natural or human physical sources. On the other side, positive liberty defines one's possibility of acting in such a way as to pursue one's own goal and to be able to realize it (Carter, 2018). One is positively free such an extent that one takes control of his own desires, purposes, aspirations, namely his own life as a whole. While negative liberty sometimes is construed as being left alone or isolation from the collective presence, the positive liberty has always been understood individuals' relation to collectivities. In this sense, positive liberty defines rather one's liberty among the collective values or the collective presence of others.

Founders and forefathers of classical liberalism such as Hobbes, Locke, Bentham, and J. S. Mill can be associated with the idea of negative liberty, a term coined also by another liberal, though modern, Isaiah Berlin. Berlin has extensively examined both positive liberty and negative liberty. He suggested that positive and negative conceptions of liberty "are not merely two distinct kinds of liberty; they can

be seen as a rival, incompatible interpretations of a single political ideal” (Carter, 2018).

The well-known distinction described by Berlin between positive and negative liberty represents the distinction of being the sole legislator of your own territory of action and of living under someone else’s already legislated rules in which you have no authority or participation. In this respect, I am free, in the negative sense, to the extent that no human beings (government or third persons) do interfere, and thus negate my action or omission, with my realm of activity and thought. In the sense of positive freedom with which Berlin identifies Hegel, Marx ... etc., I am free to the extent that I myself laid down to rules that abide by me.

If a person posits his or her own rules and legal prescriptions for the sake of his or her well-being, he is presumed to be his own master; and, if someone is the master of his own realm of freedom, then he or she is positively free. As it became clear here that the distinction of positive and negative freedom finds its roots in the dichotomy of a master and slave. In the case of positive freedom, which is not true freedom according to Isaiah Berlin, a person is free to the extent that he or she “achieves self-mastery” (Pettit, 1997, p. 17).

The liberal ideal of negative liberty simply denotes the non-existence of impediments or of society’s propensity to compel its own rules and values over individuals. This simply creates a human environment in which man thrives on his own rules legislated solely by and for himself or herself. The negation of all inhibitions and interventions by others is to create an environment in which man strives on his own terms. As against the negative idea of liberty positive liberty defines a self-mastery of individuals or in other words enjoying freedom via oneself.

The liberal tradition has always favored negative liberty over positive liberty. Notably, the classical liberals and Berlin defended that for societal development, individual freedom should be at the maximum. Negative liberty seems limitless. As Mill puts it: “the only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs” (as cited in Lovett, Summer 2018). The limit of one’s negative freedom is negative liberty of another. However, this is not the case if we take into consideration this quotation that, bluntly put it, one’s freedom ends where other’s freedom begins. The harm principle advanced by proponents of liberals like John Stuart Mill is the more refined articulation of this expression of freedom. In that respect, a contrast between liberal negative freedom and republican freedom is a must.

The negative freedom hailed by liberals ideally does not allow any interference whether by the state or other individuals except that the state interference is justified only if the interfering individual harms others. Notably, John Stuart Mill’s harm principle stipulates that individual action can only be prevented by the state if it is harmful to other individuals. In other words, the only justified interference by the state to the affairs of human beings is in the cases where one individual gives harm to another.

For liberals, harmful acts of an individual to others serves as a theoretical benchmark of state interference. Therefore, no conception of the good can be imposed on individuals. On the other hand, in the republican tradition, the theoretical benchmark for a justified interference is non-arbitrariness. If the interfering party acts on a non-arbitrary basis, then the interfered party is deemed to be free according to the republican ideal of freedom as non-domination. In this respect, whereas negative freedom suggests that individuals can only be free to the extent that they are

left on their own, the freedom as non-domination leaves great room for the freedom in collective presence.

This distinction of positive and negative freedom is, in fact, equivalent to the theoretical historical distinction described by one of the proponents of classical liberalism, Benjamin Constant. In his famous theory of freedom, he defines two types of liberty. One is the liberty of ancients in which human beings are free to the extent that they share some sort of a sense of belonging to a democratically self-governing state and community (Pettit, 1997, p. 18). The other type is the modern liberty thanks to which individuals are isolated and abandoned to their own rules with a disregard for the rules of society that they identify themselves with.

In that respect, the liberal tradition of thought follows a path of a straight line in which they depict liberty clearly in the same way. Neo-republicanism tries to propose a different definition of freedom, though liberalism and republicanism share many theoretical resemblances. Pettit interprets modern liberty as being left to the rule of your own private will, ancient liberty as sharing in the rule of a public, democratically determined will. Pettit (1997) claims that the modern ideal is characteristically liberal, the ancient characteristically populist (p. 18). And, he argues that liberty as non-domination is neither positive nor negative freedom. Pettit (1997) simply defines liberty as not to be dominated, namely not being subject to the arbitrary will of man.

Liberty as non-domination provides us with the ability to lay down rules for others and at the same time for ourselves, thus constantly checking whether we are truly free or not. In the case of negative liberty, in which one pursues his or her own ideals, benefits, values ...etc., with a disregard of other's interests, values, etc., man lives in his isolated freedom where intervention seemingly impossible. However,

knowing whether you are free or not cannot be measured by one's own standard but can only be commensurated by the actions, thoughts, interests of others.

An example of a well-intentioned, non-interfering master defines better the Republican position on freedom than any other. Imagine a slave or employee or woman who lives under the mercy of her husband with a master who has always good intentions towards his slaves, employees, etc. In this case, slave or the one who lives under the mercy of another will always be subjected to arbitrary interference of his or her master. Therefore, arbitrariness is always a danger to the individual. Populist or communitarian tradition along with liberal tradition apparently are not able to get out of the dichotomy of slave and master. In that respect, Pettit's republicanism tries to remedy the side effects of the dichotomy between slave and master, which is the evil of domination.

We shouldn't confuse this with the dialectics of slave and master and assume that Pettit tries to overcome this dialectic. Pettit's should be scrutinized in a very different vein and approach, and this can only be achieved in different academic work. However, Pettit's contribution to the republican tradition makes available to the theoretical instruments with which we can alleviate the dangers and hazards of this dichotomy of master and slave, which is the source of domination. For this purpose, non-domination defined as arbitrary interference should be clearly distinguished from pure interference. In addition, we should point out that Pettit does not define explicitly and extensively what interference and arbitrariness mean. However, he gives us some heuristic tools to understand it. Therefore, in the following section, we will first elucidate the concept of non-domination, then what arbitrariness might denote.

3.2 Non-domination in detail

So much for discussing the dichotomy of positive and negative liberty. We have demonstrated that while negative liberty is the absence of interference, positive liberty means simply the self-mastery. Pettit rejects Berlin's dichotomy and argues that the republican conception of liberty as non-domination should be understood neither as positive nor negative liberty. It is a distinct third possibility (Pettit, 1997, p. 22). In theory and practice, there is always a possibility that someone is interfered with on an arbitrary basis, thus dominated, for the fact that he or she can be interfered with on an arbitrary basis at any time. It is possible for someone to enjoy non-interference in the actual world while suffering from the domination as in the case of a servant who has a well-intentioned master. It is also possible to suffer from interference without actually being coerced by external domination. The interference but no domination situation represents an actuality in which non-dominating interferer acts upon my interests thanks to my voluntary transfer of will as in the case of a doctor who says to me what to do or as in the case of an attorney who acts on my behalf.

The ideal of non-domination has the purpose of not letting the weak at the mercy of the goodwill of the powerful. In a sense, the concept of goodwill as a moral concept or in Kantian understanding sole moral premise does not play any role in constraining and obstructing the domination in social relations. On my understanding, the republican ideal of non-domination has more legal and political nature. Pettit (2012) states that “[f]reedom [as non-domination] requires independency on the will of others, even the goodwill of others” (p. 184). More strongly, Pettit (1997) describes the non-dominating interferer as someone who “relates to [us], not as a master, but more in the fashion of an agent who enjoys a

power of attorney in my affairs” (p. 23). The relationship between a trustee and a trustor is characteristically different than the relationship between master and slave. In the first case, the trustee acts upon a power of attorney, a document given to a lawyer or a trustee in order for him or for her to act on behalf of the one who issues it. With a power of attorney, someone else has the authority to act not just in the legal abstract world but in the actual world (buy a real estate, rent a car, take the delivery of your ID card), thus the one who holds the power of attorney interfere with me via doing my affairs in order to enhance my interests. In this case, the interference is not arbitrary.

Pettit (1997) detects three aspects of every domination relation: “[S]omeone dominates or subjugates another, to the extent that

1. they have the capacity to interfere
2. on an arbitrary basis
3. in certain choices that the other is in a position to make” (p. 52).

In our discussion, the second clause is of crucial importance because the concept of arbitrariness should be clarified. The concept of interference is two types: one arbitrary the other one is non-arbitrary. Interference would be arbitrary if it stems solely from the judgment and discretion of the interfering party. If the party who suffers from the interference has no right to challenge or control over the interfering decision and the procedures whereby the decision of interference is produced, then the interference is purely arbitrary. An interference is non-arbitrary if it is subject to the control of the interfered party via institutional arrangements or some other ways. Since not all but some interferences are arbitrary, the ideal of non-domination suggests, by definition, the ideal of non-arbitrariness.

The purpose of the ideal of non-domination is to erase once and for all the existing relationships of domination in social relationships or to diminish it to the lowest point in both intensity and extensity of arbitrariness. Another point worth mentioning in Pettit's thought is that there are two dimensions of non-domination enjoyed: intensity and extent of non-domination. The intensity of the enjoyed non-domination defines one agent's enjoyment of non-domination in one area of life such as work, family, politics ...etc., while the extent of the enjoyed non-domination defines overall non-domination enjoyed by an agent in general areas of social life (Pettit, 1997).

In order to elucidate more on non-domination and interference of human beings to one another, Pettit draws upon the free will debate, discussing the texts of Hobbes and Berlin. He asks the following question: May we reduce freedom in a choice by a hindrance to any option among those available or only by a hindrance to the option we prefer? Hobbes argues that you can still be free even if the option you do not prefer is hindered by external factors. Berlin, by contrast, argues that freedom in a choice can only be truly free if all available options, regardless of whether the agent knows it, are not hindered. Pettit (2012) also adheres to this view by stating that:

In a free choice, all the doors must be open, not just the one you push on; otherwise you could make yourself free in a choice by adapting so as to make sure that what you want you can get (p. 295).

In short, freedom in a choice requires knowingly having the necessary resources to be able to satisfy your will as among the options available to your choice. There are two ways in which those resources may be affected, and the choice hindered; "one is by invasion, the other by vitiating" (Pettit, 2012, p. 295). The former denotes the hindrance by the obstacles set by human beings or other agencies, whereas the latter

signifies the hindrance by external natural factors. Invasion denotes the imposition of the will of another, whereas vitiation comes about natural obstacles, not the will of human agency (Pettit, 2012). Therefore, invasion of one's choices is the true cause of domination if it is arbitrary.

The political language to be used in politics and political philosophy has played, Pettit argues, a crucial role and he proposes a republican language (Pettit, 1997). Other than his advice on language, he draws upon the historical language of the seventeenth and eighteenth centuries in order to disclose existing social forms of domination. There are, and were, words and phrases that define and accentuate the existence of domination or unequal social status such as 'to walk tall and straight' 'to bend the knee' 'to kowtow' 'to tug the forelock' 'live under the thumb of someone' 'toady or kowtow, 'to fawn or flatter' (Pettit, 1997, 2012).

The phrasing used to explain the different facets of the relations of domination indicates the inequalities existing among human agencies. Pettit's frequent references to these idioms stress the republican valuation of non-domination and its relation to equality. For Pettit, social relations are human relations of mutual respect not of interests or opportunities as suggested by liberals. The status equality favored by republicanism as against the idea of material equality basically proves that freedom and equality are conceptually intertwined. The non-existence of freedom as non-domination reveals itself in the political language as mentioned above.

The idea of material equality can be associated with left-of-center liberals like Rawls. Pettit (1997) distinguishes his republican understanding of social justice from Rawlsian conception of justice (p. 77-92). Rawls's second principle, which prescribes material equality among citizens is vulnerable to the leveling down objection.

Notably, increasing the material well-being of one individual or of one section of society conversely means the leveling down the prosperity of others. However, the neo-republican egalitarian ideal of equal status is not vulnerable to such critiques because increase in one's enjoyment of non-domination does certainly not increase another's domination. Republicanism advocates each citizen to enjoy the same free status as others, not necessarily material equality. Pettit (2012) states that "the state ... should act on the principle that all are entitled to respect" (p. 78).

Since the non-existence of status equality, namely of being equally respected, is domination itself and the domination means arbitrary interference, there seems a direct connection between the arbitrariness and the social manners conveying inequalities of mutual respect. In fact, the existence of domination shows the quantity and quality of the arbitrariness existing in a society at a time. In this respect, Pettit suggests three main heuristic tools to detect the level of arbitrariness in social relation, although he does not give a detailed account of what arbitrariness exactly mean. Throughout his discussion of domination, Pettit does not define what he theoretically means by arbitrariness. However, he fills this gap in his theory by suggesting rather empirical heuristic tools that I will now discuss.

3.3 What makes interference arbitrary?

Pettit does not give a detailed account of what arbitrariness is, though this concept occupies the central position in his theory. However, Pettit explicitly suggests heuristic tools to observe the existence of domination, thus arbitrary wills, among human agencies. Pettit describes three dimensions among the types of human relations in which the non-domination ideal should be achieved. These are the social dimension, political dimension, and external, international dimension. Furthermore,

there are three types of theoretical test to assess the level of domination for each of three different dimensions, respectively the eyeball test for social dimension (relation among people), tough-luck test for political dimension (relation between people and their government), and straight-talking test for international dimension (relation among nations).

In the social dimension, either in a workplace, public place or in a familial relation, the republican goal is to ensure that individuals do not suffer domination via subordination relation, both in extent and in intensity. If someone, especially those vulnerable to domination by those who have more powerful social tools like capital, gender, age ...etc., is not subject to domination, then he or she consequently could be able to look directly into other people's eye "without a reason for fear or deference." (Pettit, 2012, p. 72). The standard of looking people in the eye is to be understood as pure rational social interaction independent of natural inclinations like timidity and cowardice.

This sociological tool of the eyeball test will serve as both an assessment tool for the level of existence of domination or benchmarking for determining the adequacy of governmental protection from private social domination in a given societal relation. Thanks to the eyeball test, a republican government may assess its policies, in order to determine how much resourcing and protection should be spared to secure basic rights like right to employment or free speech in public sphere from domination (Pettit, 2012, p. 85).

The second test is the tough-luck test to measure the vertical dimension of domination level between the people and their governing bodies or the state in general. Tough-luck test, which is parallel to the eyeball test in the public sphere, "is a good index of whether the guards against public domination are efficacious" (Pettit,

2012 p. 176). We can understand this test in the following way. If you are to think that certain local or governmental policies just happen to directly affect your social or personal position not as a matter of asymmetric power relations or unjust lobby influence but of tough luck not something of arbitrary will, then, according to the tough-luck test, you are free from domination. In this case, you are to blame yourself because of your bad luck or your disinterestedness to political decision-making process (Pettit, 2012, p. 177).

Pettit gives many examples to depict the situations where tough luck test can be applied. Imagine, for instance, the local government has decided to construct a prison in backyard “under the equally shared, suitably efficacious control of” you and your people, and plus regardless of your personal discrimination (Pettit, 2012, p. 177). Surely, construction of a prison in your neighborhood is against your liking or approval and it legally necessitates confiscation of some of your property. From a liberal perspective you may argue that this interference is against individual liberty of property.

However, a republican point of view suggests that if it is a bit of tough luck that the decision goes that way under the non-asymmetric equally shared influence of all subjected to this decision, then you are not justified in feeling resentment towards that publicly justified decision. For if you and your fellow citizens have a say in that decision and it happens by mere chance to affect you, then as a citizen you can only blame yourself or your fellows (Pettit, 2012, p. 178). This point of view applies also in the cases where legislation of not your choice is in question or where a public officer does not meet your criteria or approval.

Pettit reverses, however implicitly, the perspective towards public policymaking; and, to define it juridical terms, he shifts the burden of proof

regarding the justification of public decision and their internal processes. It implicitly also suggests citizens be altruistic if a public decision is satisfied with the tough-luck test. This anti-liberal but communitarian nature also proves that republicanism is a distinct alternative middle path ideology.

The third test has the purpose of globalizing republican ideals and spreading it in both intensity and extensity all around the world. Pettit suggests straight-talking test to measure whether the external freedom as non-domination is adequate. To assess the level of domination between nations, thus their states, the representatives of different states and peoples should be able to talk and negotiate in mutual and equal recognition in global forums.

This global republican ideal has two aspects that it wants to protect: first states and second their subjects, namely individuals. This requires also that states should not dominate their people.

First, human beings should be organized into free peoples – peoples whose members count as suitably undominated – with everyone belonging to at least one such group. And, second, free peoples should constitute corporate bodies that enjoy freedom as non-domination in their relations with one another and with other global bodies (Pettit, 2016, p. 48).

The straight-talking test, of course, should be used by a neutral point of view as an international organization, not by the dominating or dominated party. What Pettit calls the straight-talk test is the equivalent of being able to look at others in the eye, namely the eyeball test in the international arena. The ability of the representatives of states to communicate and exchange within an unsubordinated relation of international status may convey the existence of non-domination among states or other international agencies. Even strong influential individuals may dominate states and their agents (Pettit, 2010).

These three theoretical tests might not give the true meaning of the concept of arbitrariness, but they can function as an empirical tool for us to show how arbitrariness manifests itself among human agencies. The existence of arbitrariness in the three dimensions of human relationships hinders republican goal of creating a world of non-domination. The non-existence of domination denotes in some sense denotes a world deprived of arbitrariness where no human agents can act on an arbitrary basis. Such a world would be a totally normatively determined world in which the existence of level of arbitrary will is zero. The opposite of this imaginary world would be a world replete with uncompromising arbitrary wills of human agencies. This dystopia reminds us of a chaotic realm where no one is there to arbitrate between human wills that aspire to dominate one another. In such a world, where all wills are arbitrary, the state of nature prevails.

One might intuitively ask: are there wills that are by nature arbitrary? The decision and will of an arbitrator, who has to settle down the disputes between two human agencies, is by definition arbitrary. What Pettit fails to consider in his republican theory is not just the elaborate definition of the concept of arbitrariness but also the possible existence of human will that can never be arbitrated somehow. Thus, such a will of the human agents shall necessarily be arbitrary. In other words, there are, will always be, arbitrary human wills that can neither be mediated nor adjudicated by an authority. For this reason, a republican political theory should also account for human wills that are characteristically arbitrary, thus dominating. This would be a republican theory of sovereignty.

CHAPTER 4
SCHMITT'S CRITICISMS OF LIBERALISM ADDRESSED TO
REPUBLICANISM

The purpose of this chapter will be twofold. First, we will assess whether criticisms addressed to liberalism by the rival rightwing ideology of German political theorist and legal scholar Carl Schmitt applies to republicanism as well. Second, what would be the possible answers to be directed to these criticisms at the theoretical disposal of republicanism? The first one is whether republicanism complies with the concept of the political, namely whether it is able to find for itself an existential ideological enemy or not. The second one will concern the decision on the state of exception: whether the republican regime may ensure the political order in times of crisis. My argument against these two questions will be positive via stressing both dynamic and conservative character of neo-republicanism.

We will in the first place enumerate criticisms of liberalism suggested by Schmitt, only those that might be relevant and feasible for a probable criticism of republicanism. We should note that we are not concerned here whether Schmitt's criticisms of liberalism are valid or not. And, we should also disregard the philosophical answers made in the liberalism literature to these criticisms because it is not relevant for our discussion. Our purpose simply is to search for a solid theoretical basis in contemporary republican theory for a right-wing or left-wing Schmittian criticisms of republicanism, which is likely in the near future of the republican literature.

In order to proceed further in our discussion, we should first define in a detailed way the two Schmittian philosophical concepts and their central role in

critiques of liberalism: first, the concept of the *political* and second, the state of *exception*. These two concepts not only play the central role in Schmitt's political and legal theory but are also relevant for potential critiques against republican ideology. For, as we have shown above, republicanism and liberalism have too much in common like promoting the neutrality of the state and the rule of law to such an extent that republicanism might be vulnerable to the same critiques as liberalism. Therefore, the thesis question is, to what extent the republicanism of Philip Pettit is vulnerable to the criticisms addressed by Carl Schmitt against liberalism? In answering this question, I believe, we can really conclude whether republicanism is, as has been argued in the literature, a strong candidate to overthrow liberalism from its hegemonic position both in global political reality and western political theory.

For this purpose, in the first subchapter, I am going to concisely explicate criticisms of Schmitt against liberalism in the context of his seminal book *The Concept of the Political*, which mainly denounces liberalism as a neutral, non-political ideology. Then, in the following section, I will discuss how a republican answer would likely be if these criticisms of liberalism are addressed to republicanism. Further, in the second subchapter, I will also elucidate Schmitt's jurisprudential criticisms addressed to liberalism in terms of his book *Political Theology*, which stresses the weakness of the liberal ideal of the rule of law. Then, in the following section, I will examine how Pettit's political theory might answer these criticisms.

4.1 Liberalism and the concept of the political

In the scientific age, in which autonomy of different realms of social life was highly discussed, theorists generally had accepted the autonomy and distinctiveness of,

especially aesthetics and economics. Schmitt also constructed a different interpretation of the political as contrasting it to the other realm of thought and action such as economics, morals, aesthetics. Schmitt (2008) states:

In contrast to the various relatively independent endeavors of human thought and action, particularly the moral, aesthetic, and economic, *the political has its own criteria which express themselves in a characteristic way*. The political must therefore rest on its own ultimate distinctions, ... (p. 25-26).

His search for a specific theoretical criterion aims at abstracting and defending the political sphere as opposed to other independent social realms. In so doing, he will suggest that the political cannot be reduced to especially economics, law, and aesthetics. His intention for a profound critique of liberalism manifests itself at the very beginning of his book *The Concept of the Political*. Accordingly, in the realm of aesthetics, the conceptual distinction between beautiful and ugly is the sovereign, in morality the distinction between good and bad, in economics the distinction between profitable and unprofitable. One might intuitively ask, what would be, by analogy, the conceptual political distinction for the realm of politics, which would truly capture the nature of the political? Schmitt (2008) answers to this question by the following:

The nature of such a political distinction is surely different from that of those others. It is independent of them ... The specific political distinction to which political actions and motives can be reduced is that between friend and enemy. ... the antithesis of friend and enemy corresponds to the relatively independent criteria of other antitheses: good and evil in the moral sphere, beautiful and ugly in the aesthetic sphere, and so on (p. 26).

After establishing the political as a substantively independent sphere of value as opposed to economics and other realms, he argues that the political life cannot be rationalized, thus neutralized because the distinction between friend and enemy is inevitable. The political as a specific term coined by Schmitt is essentially different from the general concept of politics which defines party politics or public debates on

compromising between interest groups. However, for Schmitt, the political, as compared to politics, is inherently antagonistic, not being amicable. However, liberalism suggests even antagonism can be mediated via political bargaining, which is an inherently economic concept. Schmitt (2008) criticizes the liberal endorsement of neutrality for ignoring the friend and enemy distinction, which is inescapable “antagonistic moment” (p. 30). For one cannot avoid the vicinity of the political polarizations, which is basically a public, not private matter.

One’s enemies in his or her private life are different from one’s public enemies. Schmitt uses the term *hostis* for the personal enemy and *inimicus* for defining the public enemy (Schmitt, 2008). One’s personal friend (wife, colleague, classmate, companion) can be, potentially or actually, one’s public enemy if the intensity of the friend and enemy distinction is at its extreme, like in times of political crises. Thus, Schmitt (2008) states that “the distinction of friend and enemy denotes the utmost degree of intensity of a union or separation, of an association or dissociation” (p. 26).

The motivations for political polarization might vary from the conflicting economic interests to the differing cultural judgments. However, what stays as a social reality is the friend and foe groupings, which might potentially undermine the political integrity of a state. The most extreme friend and enemy groupings is a civil war during which new people or a political community emerges out of domestic political polarization. Schmitt (2008) argues, if the internal strife among the citizens of a state has “become the sole political difference, the most extreme degree of internal political tension is thereby reached ... [And] this conflict no longer refers to war between organized nations but to civil war” (p. 32).

Schmitt's (2008) well-known proposition that "the concept of the state presupposes the concept of the political" denotes, in some sense, every state is built upon and as against the existence of a public enemy, i.e., *inimicus* (p. 19). What unites people under a political community is their willingness to distinguish themselves from others due to the potential threat of offense by others. The existential threat that comes from others for subducting or annihilating one's collective existence is the constituting cause of the people.

The state as the ultimate and sole bearer of the political is to be as decisive as to eliminate, not, for instance, to adjudicate as liberalism suggests, the internal political conflicts that cause social disruption and destroy the very existence of the political unity, i.e., the state itself. In this respect, no state, if it is a truly a state, can be neutral as suggested by liberals among combatting political groupings. On the contrary, liberalism "transform[s] the enemy from the viewpoint of economics into a competitor and from the intellectual point into a debating adversary" (Schmitt, 2008, p. 28). Notably, the neutral liberal states of 19th century embraced their neutrality as their political legitimacy contrary to their nature of being state which presupposes the political, thus neutral (Schmitt, 2008, p. 80-96). Moreover, liberalism, Schmitt (2008) argues, has never had an existential enemy to negate, but "attempted only to tie the political to the ethical and to subjugate it to economics" for the sake of neutrality of state (p. 61). However, the political is the characteristic of human nature on the contrary to the individualistic assumptions of liberalism which always negated the political. In other words, liberal ideology allegedly ignores the reality of friend and enemy groupings, thus the antagonistic nature of political life (Schmitt, 2008, p. 69-70).

At first glance, the republicanism theoretically subscribes to non-exclusive, thus the all-embracing character of liberalism and its advocacy of state impartiality towards all ideological views. Therefore, one can legitimately assume that republicanism is also a neutral ideology and ignores the undeniable existence of the friend and foe polarization. And, Schmitt's criticisms of liberalism apply to republicanism. However, this view overlooks the oddity of republicanism and ignores its idiosyncrasies which distinguish it substantially from liberalism. As I have tried to establish its peculiarities throughout this thesis, in the following section I will argue that republicanism takes a different position on state neutrality and establishes itself as a realist political ideology.

4.2 Republican community as a political community

We can make some analogies between the political theories of Pettit and Schmitt in order to convey that republicanism is not vulnerable to these liberal critiques on political neutrality. Schmitt criticizes liberalism as denying the fact that man is, by nature, antagonistic, not friendly and morally dangerous. Hence, every political theory, if it is *political*, should assume this fact in order to start to establish itself as a political theory. Schmitt (2008) claims that "the sphere of the political is ... determined by the real possibility of enmity, political conceptions and ideas cannot very well start with an anthropological optimism" (p. 64).

The resemblance between the theoretical assumptions in Pettit's political theory and Schmitt's liberal critiques becomes clear when Pettit's implicitly and realistically assumes that there will always be human agents who are willing to negate, thus dominate, others. For, since his entire political theory rests upon the purpose of eliminating or diminishing domination in the lives of people, he must

assume that domination as a social fact must always be given. Otherwise, his entire republican theory and his definition of freedom as non-domination would lose its theoretical value and purpose. The ideal of non-domination is conditioned to the actuality and potential existence of domination, which is the ultimate evil according to the neo-republican political theory. The inclination to dominate others is the justification for Schmitt to assume that man is by nature evil. Schmitt (2008) argues that pessimist anthropological views, which assume that human beings are by nature evil, is the basis of all true political theory. If the existence of dominating human agencies, thus the concept of domination, is inevitable, then Pettit can continue to construct his political theory aiming at the purpose of eliminating the evil of arbitrary interference. The ideal republic is “where arbitrary will is at a minimum” (Pettit, 1997, p. 234).

Another inquiry will be whether the republican state is neutral in the sense that Schmitt means in his book *the Concept of the Political* where he criticizes liberal advocacy of state neutrality. By answering this question, we will also be able to find out whether the Republican state is theoretically able to defend itself against its internal and external enemies. The ideological aspect of the concept of the political is mainly having the ability to distinguish enemies from friends, not taking an impartial position towards political polarizations (Schmitt, 2008, p. 20-26). And, I will argue, in the following lines, that republicanism is not neutral in Schmittian sense. I will observe that the potential tyrant is the ideological enemy of republicanism. A republican state is not neutral with regard to tyranny and domination.

Pettit (1997) also concedes the Schmittian assumption that liberalism proposes a totally neutral and depoliticized state that will be impartial towards all collective commitments (p. 120). In this respect, he compares liberalism to

communitarianism and observes that liberalism detaches individuals from their communal affiliations while overemphasizing the importance of the individual. Therefore, Pettit is eager to exhibit peculiarity of republicanism in terms of neutrality of state towards communitarian conceptions of good. The theoretical place of neo-republicanism is to be found exactly with its different abstract features in just between the philosophical assumptions of liberalism and communitarianism:

... a relatively neutral brief for the state—a brief that is not tied to any particular conception of the good—republicanism joins with liberalism against communitarianism. But ... communitarians may be attracted by the republican project. ... freedom as non-domination is an inherently communitarian ideal. Communitarians focus on communitarian goods, assuming that such ideals are invariably tied up with particular, sectarian conceptions of how people should live. I argue that freedom as non-domination is precisely the sort of communitarian ideal that ought to appeal to them, while rejecting the assumption that it must, therefore, fail on the count of neutrality; (Pettit, 1997, p. 120).

Pettit's remarks show that the neutrality of the republican state totally differs from both liberal and communitarian views of neutrality. Political communitarian nature of republicanism became also clear when we put it in contrast with liberalism, especially liberal individualism, as Pettit does. Advocating that the state should be neutral among competing conceptions of the good in society, except Republican conception of the good of non-domination, is an intersection of liberal and republican tradition while communitarianism dissects itself from the two. We can also interpret communitarian nature of republicanism in terms of not having common good but a common bad as it does not suggest a specific communal conception of the good. Instead, republicanism hints us at avoiding a communitarian conception of the bad, which is the domination. Therefore, communitarian character of republicanism is limited to its refusal of domination. It does not, for instance, give a substantial definition of a good life or of a republican individual. Moreover, the republican ideal

does not dictate individuals how to live. In contrast, it assumes that living under domination is the worst of all ideal for each and for all.

I will account for the neutrality debate closely in the context of Schmitt's criticism of liberalism. Here, however, we should clarify the difference between the neutrality of the state and a neutral ideology in order to understand better where republicanism posits itself in the theoretical line of communitarianism and liberalism. I observe that although republicanism as with liberalism advocates the neutrality of state, it has its own communal conception of the good, that is, freedom as non-domination. As I have mentioned above, this communitarian conception of the good can be reversed and construed as a communal conception of the bad from which ever political community should avoid. Therefore, one can conclude that, for republicanism, the sole communitarian value that is to be favored and ultimately protected, to the detriment of political neutrality, by the state is freedom as non-domination. On the other hand, the ideological enemy with which republicanism can never compromise is the rule of one-man and of all-men.

Liberal ideology suggests that the state should not promote any social value or any societal group interests to the detriment of others in society. It should be neutral towards all collective values. For liberals, the main duty of a state is to protect individuals. For Pettit, it is to increase overall non-domination existing in human social relations. In this respect, whereas liberalism is ultimately individualistic, republicanism is inherently collectivist or social as to belong to certain status among others. Republicanism stresses the social nature of human beings, and it emphatically repudiates the conception of individual who lives alone, isolated from the rest of society. For republican understanding, there is no freedom where there is no human presence.

Although Pettit (1997) accepts that liberalism and republicanism share the idea that the state should be neutral among competing individual or collective claims, his neo-republicanism suggests, to mildly put it, partial or hierarchical neutrality:

while republicans and liberals both agree that the state is neutral, the republican conception of neutrality differs from the liberal: Contemporary liberals claim to satisfy neutrality by looking for a state in which each individual is enabled to pursue their own conception of the good. Republicans satisfy neutrality through having the state acknowledge only the ecumenical or non-sectarian good represented by the freedom of its citizens (p. 96).

We have pointed out that communitarianism and republicanism meet at the intersection that they both promote, or allow human beings to promote, one conception of the good. For, the non-domination ideal is one specific communitarian conception of the good. The direct opposite of the non-domination ideal is the ideal of arbitrary interference. Therefore, the enemy of a republican state would be a community wanting to establish the rule by an arbitrary interference, which connotes the two conceptions of government: tyranny and populism. The two are actually true ideological enemies of the republican order. In this line of thought, Ramgotra (2014) contends that the “[o]pposites of the republic are the despotic (absolute and tyrannical) government of one man alone and the licentious rule of the many” (p. 23).

The first and foremost ideological enemy of a republican regime is the rule by one-man as in the case of tyranny or dictatorship. The assassination of the consul Julius Caesar, who declared himself the dictator for life marks as a historical fact of republican animosity towards the domination of public life, i.e., imperium by one-man. His murder stems purely from political motivations of the senators, among them the ardent republican Cicero, who are opposed to the rule of Caesar. The conspirator, which did not include Cicero, willfully and collectively killed him in a

public space. “Cicero, always the staunch supporter of the republic, was undoubtedly relieved at the removal of a tyrant” (Adam, 2014, p. 63). As the free citizens of Rome, they were worried about the Roman *imperium* as a public place in which citizens can do politics without domination would turn into a *dominium*, a private place, namely a household, where a master, *dominus*, governs on an arbitrary basis. Pettit (1997) argues, in similar motivations with old republicans, that “[t]he public abuse of *imperium* implicit in such an initiative does far more damage to the case of non-domination than the private abuse of *dominium* (p. 112). Then Pettit (1997) asks about the ways whereby free citizens might be able “to stop the imperium of government representing a form of domination” (p. 183). In response, he suggests the contestability or contestatory citizenry, as the ultimate way of preventing domination in public sphere by the mob. The main dominating political force other than the rule by one-man is populism, political advocacy that sets people as the ultimate ruler. The ideological and historical relationship between popular democratic views, especially rightwing populism, and authoritarianism is obvious. The Republican tradition and their scholars do not address as straightforwardly as, for instance, rightwing ideologists did, the questions and concerns of the existential threat to political body and constitutional order. Although this is the case, the contemporary and non-contemporary republicans, beyond any doubt, Pettit (1997) continues: “The distrust [in popular and pure democracy] evinced in this remark is echoed in contemporary republicans such as John Milton, who actively shuns ‘the noise and shouting of a rude multitude” (p. 29).

In this respect, neo-republicanism finds the idealistic connection between the contestatory spirit in a democratic society and the republican value of patriotism. The former is;

not the sort of contrarian or sectarian disposition that opposes compromise and accommodation. It is the virtue of citizens who embrace the ideal of a republic in the community in which they happen to live – they are in that sense patriots (Pettit, 2012, p. 228).

However, this equation of patriotism and civic contestatory virtue should not be interpreted as nationalism. Instead, republican patriotism suggests, in Pettit's (2012) terms, being "patriots at home" not only towards international audiences (p. 228). Republicanism affirms itself with its value-based components of civic vigilance and civic virtue that it is the total opposite of pacifism and anarchism.

4.3 The state of exception as a critique of republicanism

In this section, I will elucidate Schmitt's legal theory of decisionism as the critique of liberal legalism and the rule of law. After explaining the main tenets of liberal legalism in terms of the value-free proceduralism of lawmaking, I will give a concise account of Schmitt's decisionism as a response to the state of exception. Then, in the following section, I will try to discuss how a republican legal theory might be possible in order to respond to Schmittian criticisms.

Schmitt starts to criticize liberal ideology, principally its incapacity to respond to extreme political situations. The intensification of the political tensions and polarizations within a state, in Schmittian sense of the friend and foe groupings, can weaken its political well-being to the extent that its unity ceases to exist and starts to disintegrate. There are tumultuous times or crises such as revolutions, political upheavals, strikes, civil war, etc., in which socio-political stability is extremely unsteady and feeble. Of the various terms used to define such political situations as the extraordinary situation, political instability, the state of emergency, the state of exception, etc., the latter is much more common in the political and legal theory language. And, thanks to its connotations regarding the distinction between

the exception and the norm, it gives the most accurate and nuanced meaning for our discussion.

The state of exception denotes both an aberration from the normal and the overwhelming chaotic circumstances in socio-political order as a whole. In the first sense, every legal norm might have an exception at the micro level when it is to be applied to a particular case. On the other hand, in the second and more general sense, the state of emergency signifies, at the macro-level, a total disorder and lawlessness to be eliminated by the highest political power, i.e., the sovereign. Therefore, we can detect the aspects of exceptional situations: one is micro level and the other is macro level.

Schmitt's legal decisionism as a critique of liberal legalism and the rule of law encompasses both aspects of emergency situations. Schmitt criticizes liberal legalism for ignoring the place and importance of juristic decisions in micro-level cases even during normal times when the general social order is not threatened. In his view, there are mainly four appearances of modern state: adjudicative state, executive state, administrative state, and lastly legislative state (Schmitt, 2004). One can see the separation of powers advocated by the liberals disintegrated absolutist state into four distinct branches. However, the fundamental nuance is between the legislative and administrative state. The legislative state is the branch of sovereign for neutral lawmaking, it includes mainly the bureaucracy that creates the legal norms to be applied by administration. On the other hand, administrative state represented by the head of the state has the authority to apply the law (Schmitt, 2004). It concretizes what is abstracted by the legislative state. Since for liberals the neutrality of state is an ultimate value, they solely favor legislative state in which parliament is the ultimate lawmaker and sovereign.

The legal norms legislated through the value-free processes of the parliament fail when they are necessarily to be applied by the administrative state. Schmitt rebukes liberal legalism for ignoring the dichotomy between legislation and application of a legal norm (Schmitt, 2004). Moreover, Schmitt argues that this view overlooks the fact that every “general legal norm” requires “considerable interpretation and interstitial legislation” to be applied to specific cases (Vinx, 2019). Therefore, Schmitt continues to argue, every legal norm necessitates a personal or real medium to relate itself to the case to which it applies or to eliminate any dispute over the interpretation via an adjudicative and administrative decision. All legal norms require a “homogeneous medium” by which they can realize themselves (Schmitt, 1985, p. 13). For, the law cannot “establish itself” (Schmitt, 1985, p. 14). Every legislative content, after turning into a legal norm, should acquire the concreteness, realization via passing through a moment of decision.

Schmitt’s legal decisionism launches an attack at the neutrality of the legislative state and the impartial mechanisms of parliamentary democracy hailed by liberalism on the grounds that liberal legalism ignores the fact that a corporeal or real human body applies the law. Schmitt puts his legal decisionism against normativist legal theories devised by liberal legal scholars, especially against Hans Kelsen’s pure theory of law, which is widely accepted as neo-Kantian. Kelsen theorizes a mechanical legal system whose rules are fixed and predetermined, thus intelligible and predictable. Schmitt would argue against the mechanization of politics and law because it turns “legislator humanus” into a “machina legislatorial” (Schmitt & Schwab, 2008). Liberalism and liberal normativist legal theory not only fail to account for the application of law in micro-level exceptional cases but also in the state of exception in which an emergency envelopes all social reality.

The state of exception is, in contemporary constitutional states, “the correlate of every juridico-political order” (Goupy, 2018). Notably, during the interwar period social and economic crises gave rise to constitutional ideas regarding strong emergency powers in both Germany and other European states (Goupy, 2018). One of the main purposes of constitutional emergency decrees is to reestablish deteriorated socio-political order and to ensure political stability. This historical situation gave rise to the left-wing and right-wing critiques that liberal states fail to prevent the rise of totalitarian and authoritarian regimes because of its ideological and theoretical weakness to respond the state of exception. Notably, the liberal dogma of the rule of law, which does not allow for the exception, was one of the main targets of the liberal critics.

Liberal constitutionalism typically argues that every individual should be subjected to the determinate and predictable rules of the law. Therefore, the liberal constitutional legal system does not give any space to the arbitrariness or indeterminacy of the sovereign decision. Liberal position presupposes that for each concrete case there is always an applicable law. Liberalism shares normativism’s casuistic understanding of the law. However, the state of emergency can neither be anticipated or predicted. Furthermore, the emergency cannot be codified in legal prescriptions. Schmitt concludes that there are no legal norms that can be “applied to a chaos” (Vinx, 2019).

Schmitt’s (1985) famous statement that “the sovereign is he who decides on the exception” explicates the implicit logic behind the idea that there is no sovereign where there is no possible decision on the exceptional situation (p. 1). We can continue his critical, logical reasoning as follows: Since there can be no functioning legal order without the sovereign authority, no liberal attempt to “dispense with the

concept” of sovereign can be successful (Vinx, 2019). No legal system, whether liberal or not, cannot avoid the rule of man even though it promotes the rule of law up to the limit. Hence, the liberal view that law can be automatized and fully impersonalized is impossible. Therefore, a corporeal or personal sovereign needs to apply legal norms via jurisprudential interpretations or referring social values or a baseless, nihilist decision on the state of exception.

To sum up, Schmitt endeavors to blame the liberal principle of the rule of law and the liberal legalism, respectively, for its inability to decide on the state of exception and for ignoring the primacy of the decision over the norm. These criticisms of Schmitt are also relevant to be directed against republicanism because the latter suggests a similar position in terms of the primacy of the rule of law by devising the empire of laws for the precondition of a republican constitutional regime. However, though the criticisms of liberalism are relevant to republicanism, I argue that the latter is not vulnerable to them. First, because republicanism suggests the empire of law condition as a necessary but not sufficient condition. Second, republicanism is not defenseless against such theoretical critiques because the constitutional entrenchments devised by Pettit in a way that it aims at hindering political polarizations, thus obstruct the occurrence of the state of exception. In this context, I will stress the conservative character of republicanism and its overemphasis on the primacy of order over the legal norms. The quick answer to critiques of liberal legalism when they are directed to republicanism would be that republicanism is not value-free ideal. Besides, I will show that Pettit explicitly gives a substantial, value-laden definition of law. In this respect, I will conclude that republicanism does not join with liberal legalism.

4.4 Republican constitutionalism against the state of exception

In times of crises, in which facts of life overcome every moral, ethical or legal norm of life ideologies, values or worldviews lose their importance and necessities of life prevail. For this reason, every political philosophy should also foresee what the processes and procedures are to restore the political order and re-establish legal norms while they are being abused or ineffective. Schmitt suggests a nihilist decision by a sovereign dictator instead of institutional or procedural arrangements. The main reason for this is that the state of exception is, by definition, unpredictable and so extreme that only a pure decision aiming at ensuring the order can eliminate it in the social reality. In contrast to the Schmittian position on the state of exception, which proposes a pure decision for the elimination of the state of exception, I will argue that it is feasible to reconstruct Pettit's political theory in such a way that it might suggest complex legal institutions to avoid the state of exception.

It seems Philip Pettit's republicanism does not explicitly address the problem of the state of exception and how to deal with it. The main point in this thesis will be that Pettit, though he does not directly address the problem of exception and extraordinary situations, he in his insightful writings has many things to say on this subject matter. I argue that Pettit's republican constitution-making has the purpose of providing constitutional entrenchments for avoiding and warding off the exceptional situations instead of eliminating it directly via the rule of one-man. It is because it was, all along from Cicero, the traditional republicanism inherently despises the rule of one-man instead of citizens. Therefore, it is impossible for a republican political theory to concur with Schmitt's decisionism and theory of sovereignty, which advance the rule by a dictator to cope with the state of exception. The fact that Pettit does not explicitly address the state of exception does not imply that it ignores it as

liberalism does. Instead, it tries to avoid it via constitutional arrangements. It devises an understanding of political order the permanency of which depends on the conservative republican values of patriotism and ideological scorn against the one-man rule. Republican political constitutional institutions are to be arranged so that the intense political polarizations do not lead to extraordinary situations.

A reason why the neo-republican theory does not address the problem of the state of exception is that this issue mainly relates to a legal theory problem. And, the contemporary republican literature lacks a proper republican legal theory that might theorize a genuine republican answer to emergency situations. Therefore, I will try to construct Pettit's political ideas from a legal theory perspective.

Modern and premodern republicans put special emphasis on law. For instance, Montesquieu, Tocqueville, and even Rousseau put emphasis on constitution-making, people's rights, and order supported by legal institutions (Pettit, 1997, p. 19). This alone provides us with the clue that republican tradition rests mainly on the advocacy of law, a determined realm of action in which man acts freely. However, Pettit does not take the importance of law in the republican tradition for granted. He explicates the role of law in the republican tradition in the context of both history and history of political ideas (Pettit, 1997, p. 18-21). In the following lines, he stresses the importance of law in modern republican tradition:

This legal background may have been as important in the development of the eighteenth century commonwealthman tradition as the independent republican ideas for which it provided such a nurturing climate. It meant that the newer republicanism always had a juridical cast in which a central place was given to the notion of rights—customary, legal, and constitutional rights—as bulwarks against absolute power (Pettit, 1997, p. 21).

Republicanism tries to diminish arbitrary will existing both in private and public space. The examples from daily life generally consist of one dominated and one dominating party. For instance, an employee in a workplace or a woman in a family

can be dominated by a well-meaning boss or husband. In other words, a husband or a boss could dominate not contingently but consistently his or her counterparts although he or she has acted with good intention. The threat of being dominated at any time shall be eliminated by legal protection. That is why the relationship between the trustor and the trustee should always be a legal relation, not a personal one. In addition, a specialization in law has always been needed from the legal perspective supported by republicanism. For instance, the family law aims at protecting the dominated, i.e., women or children from the misuse abuse of those who are in a higher position to dominate them, namely father or husband. The dominating party either can be a father or husband but always someone who has more economic, social power.

Likewise, labor law has the purpose of safeguarding laborer from the potential exploitation by the supervisor or a boss. Pettit, for instance, advocates that an employer should not fire an employee at will and strongly criticizes American law for stipulating otherwise in their labor law. From a teleological perspective, the legal areas of specialization suggest that we can construe every specialization as a distinct legal instrument that aims at diminishing the existing quantity of domination to reach the ideal of non-domination in both *dominium* and *imperium* both in extent and intent. It is the same for the social relation between the people who are the trustor and the state who is the trustee via a covenant of constitution. The constitution of a political body along with its legal institutional designs and human rights clauses aims at protecting the dangers by bureaucracy and government.

The commitment to non-domination might be understood as a type of communal value among other commitments. However, republicanism should not be mistakenly construed as a moral and social worldview. Pettit (1997) complains that

“the traditional republic is described in a moral language” (p. 129). He wants to protect his texts from this moral language and aims at embodying these republican ideals into legal and political institutions. This neo-republican purpose is determined by Alasdair MacIntyre as well (Pettit, 1997, p. 129). In this respect, setting the institutions required for a republican society according to republican ideals complies with Pettit’s view of the political theory. He regards political philosophy and political theory as evaluative disciplines with which we can test our existing institution and create new ones. The task of political philosophy mainly is to assess alternative frameworks for political institutions already created by other political ideals that have some practical and theoretical defects like liberalism. Pettit (2012) states: “In arguing that the state ought to promote freedom in this manner [as non-domination], I endorse a broadly teleological or consequentialist view of the state’s task” not the task of government (p. 74). Nevertheless, as we have explained before, what republicanism suggests is not a moral foundation for a policy-making suggestion from the political science perspective, but it is a state-making project suggested via the lenses of political philosophy and constitutional law.

A consequentialist political philosophy leads a way necessarily a teleological legal philosophy so as to institutional arrangements suggested by Pettit has the sole purpose of the reduction of domination. Here republicanism’s inherently conservative character became clear again. For republicanism, the very existence and the subsistence of constitutional order and political community are much more valuable than for liberalism. We do not say that liberalism does not value the order of the political community. But republicanism and republican political theory concern more about the survival and continuing of the political system than liberalism does. This preference prevails all over the republican tradition. And it is very clear in those

republican texts on popular democracy and the republican trust in it. For instance, Pettit (1997) quotes from classical republicans the following: “The spirit of the people is no wise to be trusted with their liberty, but by stated laws or orders; so the trust is not in the spirit of the people, but in the frame of those orders” (p. 29). The distrust in people and in their popular political judgments finds its place in neo-republicanism itself. Pettit (1997) states in favor of order as the following:

Machiavelli holds out in this vein against 'the common opinion, which says that the people, when they are rulers, are variable, changeable, and ungrateful'. But even those who were happy to make the laws democratically responsive, such as Machiavelli, still thought it important that besides the laws or *leggi* that the people were likely to change there were the institutional or constitutional arrangements—the *ordini*— that offered a relatively fixed and constraining framework for legislation (p. 182).

One can interpret these passages referring to Machiavelli as Pettit devalues the changeability and indecisiveness of the majoritarian and populist rule and values the institutional or constitutional arrangements as the order (*ordini*). Pettit’s implicit preference of order *ordini* over law *legi* corresponds with the republican tradition. In this respect, the republican constitutional provisions and structuring republican state at which Pettit’s republican theory aims are prone to be interpreted as building blocks against those forces that threaten the political order. Ramgotra emphasizes this aspect via quoting from Cicero the following lines: “there is no reason for revolution when each person is firmly set in his own rank, without the possibility of sudden collapse” (Ramgotra, 2014, p. 36).

Further, the republican theory proposes more strong constitutional arrangements like the value-laden definition of law and integrative jurisprudence. The latter denotes a type of conservative jurisprudence that ascribes “to law the authority of a tradition that had been historically tested for its answerability to the expectations of the community” (Pettit, 1997, p. 182). From this passage, one can

observe the conservative character of republicanism, which proposes an integrative change not a revolutionary or subversive one in politico-legal order. Integrative jurisprudence would serve to slowly integrate the social change into all sections of the state so that no sudden change arises.

When the resemblance between republican theory and liberalism in terms of the rule of law, the former suggests the empire-of-law condition instead of the rule of law. The empire-of-law is extending the rule of law condition while rejecting the rigid understanding of law and codification. Further, it must give some flexibility to the bureaucratic decision-making processes. Pettit (1997) says that law must “allow a substantial degree of discretion,” even those that “reduces predictability” (p. 176). Moreover, the empire-of-law condition avoids liberal proceduralism and legalism that Schmitt criticized. Pettit (1997) advocates that “[t]he republican case for having an empire of law ... need not commit us to an extreme proceduralism” which is the main critiques against liberal legal theories (p. 176). However, the discretion of public agents that might amount to arbitrariness is to be alleviated by the contestability condition of the republican government (Pettit, 1997). In this respect, contestatory democracy is a necessary condition to impede the state of exception, which also might be brought about by manipulation by state agents. For republicanism, the rule of law condition is a necessary but not sufficient condition of political order. Other conditions are, as we have shown, the contestability and the liberty non-domination. These three altogether are both necessary and sufficient conditions for the republican political ideal. Liberalism clearly lacks the other two necessary conditions existing in republicanism.

The other two conditions for the non-manipulability of constitutional government are the dispersion-of-power and the counter-majoritarian condition.

These two republican conditions are also shared legal instruments with liberal constitutionalism, with some differences. While the dispersion of power means in general terms well-defined concept of separation of powers, the counter-majoritarian condition can be depicted as the equivalent of the protection of pluralism as in the tradition of liberal parliamentarism. However, the dispersion-of-power condition is more flexible than the populist view of separation of powers, which is more exacting. Pettit implicitly joins with Schmitt's criticisms of parliamentary democracy and legislative state on the grounds of the rigidity of the constitutional system. Pettit (1997) criticizes those "who believe... that the people should be the only makers of law; ... are of a parliamentarian mentality, for example, and think that the people's representatives are the one and only legal sovereign" for not allowing other political powers to join in lawmaking (p.179). Another point worth mentioning is that he also suggests hesitantly bicameralism and decentralization for promoting the dispersion of power (Pettit, 1997, p. 178 - 179). The reason for this is mainly because Pettit (1997) wants to distance republicanism from populist way of law-making according to which the people are the ultimate lawmaker (p. 180).

In this respect, Pettit's criticisms of populism and Schmitt's criticisms of liberalism have much in common. What Pettit tries to implicitly find in populism as setbacks of democracy are those criticisms that Schmitt directs to liberalism. Notably, as I have explained above, Schmitt criticizes the strict liberal ideal of the rule of law for ignoring the lawmaking capabilities of the administrative state and the adjudicative state. Liberal legalism does ideally allow for neither administrative discretion nor adjudicative lawmaking power. Pettit (1997) blames populism on the very same grounds when he states that "...the courts will effectively wield a degree

of law-making power so that they can integrate the contestatory spirit of the people into lawmaking system and law (p. 179-180).

Pettit devises another constitutional entrenchment that might serve to impede populist views because leftwing and rightwing populism might abuse the constitutional system as Nazi populism did before WW2. Pettit's (1997) last suggestion is the counter-majoritarian condition for the non-manipulability of republican constitution. This condition resembles pluralism's ideal of liberal parliamentarism. But there are also different substantial insights peculiar to republicanism, which also differentiates republicanism from liberal legalism, thus making it immune to criticisms of liberalism of Schmitt. Pettit (1997) states:

The belief in counter-majoritarian protections requires a jurisprudence under which good law—*good law, not necessarily law as such*—is identified by some criterion other than the benchmark of having majority support. Republicanism, of course, finds such a criterion in the ideal of freedom as non-domination. *Good law is law that promotes overall non-domination: law that reduces the domination to which dominium may lead without introducing the domination that can go with imperium* (p. 182).

This explicit value-laden definition of law and of legislative content is the point where the ways of liberalism and republicanism are sharply parting from each other. Idealistic and substantive definition of law as a reduction of domination emphatically opposes the formalistic proceduralism of liberalism. For the liberals, as we have mentioned in the preceding sections, state cannot take sides with any worldview on the substance of law during legislative processes. Any communal commitment such as non-domination would be illiberal. Besides having a consequential definition of law, Pettit also tries to reject static, neutral lawmaking procedures of the liberal legislative state. Thanks to the contestability condition of the republican government, the neo-republicanism is promoting an active political life of political agencies. For instance, Pettit (1997) states that republican ideal “must be a dynamic ideal that is

always rich in further possibilities of extrapolation and development, not a static ideal that is tied mechanically to a fixed pattern of institutional life” (p. 146).

CHAPTER 5

CONCLUSION

Among other traditions of thought, republicanism has a salient position. Notably, in contemporary political theory literature and in political practices, the hegemony of liberalism is an established fact. Search for new political ideas for the purpose of replacing liberalism or eliminate its imperfections was one of the main themes in the political theories of the twentieth century. Pettit's neo-republicanism is a fledgling political theory, which is the product of long republican tradition. Therefore, one needs to distinguish republicanism from liberalism. In order to do this, we need to find resemblances and weak points of both theories. In so doing, we can truly capture the true peculiarity of republicanism and assess whether it will be a promising alternative to liberalism.

The pitfalls in liberal tradition were severely discussed by leftwing and rightwing theorists. None of the critiques raised against liberalism was as influential as Carl Schmitt's. His critical insights had inspired leftwing theoreticians such as Chantal Mouffe. Thus, it might also inspire a republican theory to assess its immunity to Schmittian criticisms so that it proves to be a theoretical alternative to liberalism. Therefore, in this paper, I have tried to show republicanism is a promising substitute for liberalism. In order to prove this claim, I have argued that two main liberal critiques addressed by Schmitt to liberalism are relevant to republicanism as well. Furthermore, I have concluded that neo-republicanism is not vulnerable to these critiques thanks to its conservative and ideological character and its emphasis on contestation.

Thanks to this elaborate study on republicanism, I believe I can further my studies on specifically the relation between liberalism and republicanism. It is also possible to examine republicanism from a historical perspective, considering its practical aspects. For future research, it is suitable to study Locke's political theory as a republican theory. I believe individualism, liberalism, and republicanism are three substantially different ideals. However, in order to establish their peculiarities, one should also draw upon theological aspects of these three ideals. In this respect, the intrinsic relation between political theology and political philosophy might be a subject matter of my future academic career.

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