

Marco Geuna

The tension between Law and Politics in the Modern Republican Tradition

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In the title of our conference, Republicanism is associated to Rule of Law. In this paper, I would like to call into question this association, and slightly shift the focus: actually, I would like to emphasize the existence of a tension between politics and law, between rule of law and what may be defined as rule of virtue at the very core of the republican tradition.

Many contemporary scholars who have been concerned with rethinking the fundamental features of the modern republican tradition in order to re-propose it in the current theoretical debates, from Quentin Skinner to Philip Pettit, emphasize that modern republican thinkers have developed an extremely relevant notion of liberty, liberty as non-domination. They point out how individual and collective freedom are held together in republican theories; and how the ideal of the rule of law can be traced at the core of these theories, and of their criticism of monarchic institutions. In some of their works, scholars such as Pettit himself, bring together the rule of law and the rule of virtue in the republican tradition. Nonetheless, they do not sufficiently take into account the tensions between the two elements which are present in that tradition: law and virtue. My paper will be devoted to the exploration of these tensions.

When I speak of modern republican tradition, I mainly refer to that set of theories formulated between the beginning of the sixteenth century and the end of the eighteenth century: in a concise form, one could say from Machiavelli to the authors of the Federalist Papers; or from Machiavelli to Kant.

It is generally acknowledged that over the last few years, various scholars have distinguished different families of theories within the republican tradition: some speak of an aristocratic and a democratic republicanism; others underline the difference between those elaborations which follow Machiavelli and his praise of social and political conflicts, and those reflections which carry out Harrington or Rousseau's perspectives, and their attack against the moment of conflict in the *respublica*. In this paper, I will take into account a series of elements which are common to the various republican theories, and I will frequently draw attention to one family of theories, in particular: those theories which show to be the most loyal to Machiavelli's teaching.

After examining the tension between law and politics in modern republican theories, in the conclusions I will attempt to show how some of the questions which the modern republicans dealt

with, as well as some of their assumptions, can still represent a valuable starting point for the elaboration of republican theories which prove to be up to the problems of our time.

2. In modern republican theories, the republic is always considered from two perspectives: a static and a dynamic one, so to speak. The republican theorists are not just concerned with delineating in the abstract the characters of the best republic as opposed to those of principality and monarchy. But their works are devoted to the analysis of the orders and the magistracies of the republic throughout history. I will not insist on this issue which has been repeatedly pointed out by John Pocock. Thus, for the republican thinkers politics and history are strictly connected: politics and law are conceived in time.

This element is particularly apparent when we consider the structure of their theories, and we compare it, for instance, with that of modern social contract theories. Modern social contract theorists, from Hobbes onward, start from an ideal experiment, namely, from the position of a counterfactual such as the state of nature which results in a fundamental annihilation of the social relations, and more generally of history. In *De cive* Hobbes exhorts us to “to consider men as if but even now sprung out the earth, and suddenly, like mushrooms, come to full maturity, without all kind of engagement to each other”¹. Instead, the republicans do not take over this mental experiment, this sort of *annihilatio mundi* applied to the field of the political relations, but carefully think through the problems of the republic in time. Thus, they take into account the question of the genesis of the republic, the creation and development of its institutions, as well as the moment of decadence of those institutions and laws, the moment of the corruption of orders and men, when the citizens’ active virtue fails and the very end of the republic seems to be imminent.

It appears to me that a particular attention has been devoted over the last few years to the normative dimension of the republican theories: scholars tend to focus on the key -characters of the republic, and of the freedom that it allows, thus reading the republican theorists from a static or structural perspective. This has brought the aspect of the rule of law, and its prerequisites and consequences, to the fore.

Instead, in this paper I would like to draw attention to that other dimension of the republican theories: namely, to their study of the republics in time, and throughout history, and, especially, to the moments of the genesis and corruption of the republics. If one considers the pages devoted to the genesis and corruption of the republics, one clearly observes the great relevance which the republican thinkers ascribed to the element of virtue - be that the virtue of the individual or of

¹ T. Hobbes, *De cive*, VIII.1, ed. 1651, p. 127. See *De cive*, ed. Warrender, Oxford, Clarendon, 1983, p. 160: “Ut redeamus iterum in statum naturalem, consideremusque homines tamquam si essent iamiam subito e terra (fungorum more) exorti & adulti, sine omni unius ad alterum obligatione”.

collective bodies. It is possible therefore to detect a tension between rule of law and rule of virtue, between law and politics, which gives way to a variety of solutions, in their theories.

3. The birth of the republican orders.

When the republican thinkers tackle the question of the genesis of the republican political order, they are confronted, although in different ways, with two sets of problems which I intend to analyse, namely, a) the role played by the great legislators and the question of their virtue; b) the role played by social and political conflict in the creation of good orders and good laws.

When analysing the genesis of the republican orders in history – of the republics of Sparta, Athens, or Venice – and when delineating their ideal republics, most of the republican thinkers, even though not all of them, refer to the figure of the great founders and legislators (Solon, Moses). Their virtue is needed for the republic and its rule of law to exist. The characters of this virtue are worth exploring. To begin with, when Machiavelli starts reflecting on the experience of Rome, he dwells upon the role of its founder, Romulus, and questions his virtue. He points out that this virtue is imbued with violence: Romulus kills Remo, his brother. The foundation of the republic par excellence bears the marks of violence². When Machiavelli he takes into account the founders or the legislators (“the orderers”) of other past republics, he underlines two elements: firstly, the fact that the legislators can resort to ‘extraordinary means’, to forms of violence, in order to carry out their duty³; secondly, the fact that they are lead by their virtue to pretend they are in contact with the gods in order to persuade the people to accept the systems conceived by them⁴. The Legislator’s virtue can entail the resort to violence as well as the strategic use of lie.

Many modern republican thinkers, from Harrington to Sidney and Rousseau, dwell upon the virtue which is needed to give the right legal order to a republic. In *Oceana*, Harrington follows Machiavelli’s thought to the letter, almost paraphrasing a crucial passage from chapter nine of the *Discourses*. He claims that in order for a republic to become an ‘empire of laws’ it must be founded by a ‘wise legislator’. But he also adds that “any man that is master of reason [shall not] blame such extraordinary means as in that case shall be necessary, the end proving no other than the constitution of a well-ordered commonwealth”⁵.

In the chapter on the “Legislator” in the *Contract*, Rousseau directly refers to Machiavelli and cites with approval the passage from the *Discourses* where Machiavelli claims that the

² Cfr. N. Machiavelli, *Discorsi*, I.9, pp. 55-59.

³ Cfr. N. Machiavelli, *Discorsi*, I.9, pp. 56.

⁴ Cfr. N. Machiavelli, *Discorsi*, I.11, pp. 68: “E veramente mai non fu ordinatore di leggi straordinarie in un popolo che non ricorresse a Dio”.

⁵ J. Harrington, *Oceana*, Cambridge UP, 1992, p. 67.

legislators must necessarily call upon the authority of the gods to persuade the people. As everybody knows, according to Rousseau, the legislator or lawgiver “is in every respect an extraordinary man in the State. While he must be so by his genius, he is no less so by his office. It is not magistracy, it is not nor sovereignty. This office, which gives the Republic its constitution has no place in its constitution: it is a singular and superior function, that has nothing in common with human empire”⁶.

First conclusion: tackling the question of the genesis of the republican orders, and of the origin of the republics’ rule of law, the republican thinkers cannot avoid thematizing the existence of exceptional figures who do not hesitate to resort to forms of violence and lie and manipulation in order to accomplish their task.

The moment of the genesis of the rule of law represents a problem for the republican thinkers which is solved, in the first place, by thematizing the mythic figures of the great legislators. By delineating these figure, they indirectly theorize the existence of two distinct types of men with different capacities and virtues: this solution may be defined in the 20th century language as elitist.

In Machiavelli, as well as in various other republican thinkers, the problem of the genesis of the republican order is also, and especially, approached from another perspective, following a different line of reasoning. Discussing the history of Rome, Machiavelli stresses the fact that the early roman orders ‘were defective’, that is to say, inadequate and insufficient. The ‘good laws and the good orders’ which characterize the roman republic in its glorious phase are brought about thanks to disunions and tumults which have marked the republic’s existence for many centuries. Social and political conflict produces good orders and good laws: conflict generates law, politics gives birth to the juridical orders. From a genetic perspective, politics is a *primum*, law is a *posterum* or a *derivatum*.

Machiavelli develops his argument from a particular political anthropology: he claims that in all the republics, and, more generally, in all the political bodies, there are two types of men, or, as he calls them, two humours: the nobles who are only concerned with the acquisition of greater power, and oppress the people; and the people whose only aim, instead, is to live freely⁷.

I will not comment upon this kind of anthropology here: I would just like point out that the distinction between two humours is an unavoidable and insuperable evidence for all political

⁶ J.-J. Rousseau, *The Social Contract*, II, 7, Cambridge UP, 1997, p. 69. Remember: “Cette raison sublime qui s’élève au-dessus de la portée des hommes vulgaires est celle dont le législateur met les décisions dans la bouche des immortels, pour entraîner par l’autorité divine ceux que ne pourroit ébranler la prudence humaine”. Rousseau quotes Machiavelli, *Discorsi*, I, 11: ‘There has never been in any country a lawgiver who has not invoked the deity; for otherwise his laws would not have been accepted. A wise man knows many useful truths which cannot be demonstrated in a way that will convince other people’.

⁷ See N. Machiavelli, *The Prince*, IX, Cambridge UP, 1988, p. 34: “And this situation arises because the people do not want to be dominated or oppressed by the nobles, and the nobles want to dominate and oppress the people”.

community or political form. The disunion, the discord between these two humours brings good orders about in the first place: Machiavelli mentions the Tribunes of the Plebs which brought, so to speak, the roman mixed government to perfection. Then, he underlines the fact that, even when the roman orders had reached perfection, the conflict between the plebs and the senate, the people and the nobles, developing 'without sects and without partisans' and aiming at honors rather than property, produced good laws for the purpose of preserving liberty. Developing within specific institutional channels, conflict preserves the liberty of the republic even when this has become a form of rule of law. Thus, Machiavelli points out the pivotal role of the element of conflict in the genesis of the republican orders, as well as in the phase of their complete development and ordinary functioning, when a sort of constitutional balance among the parties has been reached.

Seemingly liberty is the result of orders and laws, but in the last resort it is the effect of the political conflict produced by those different natures, those humours aiming at different ends. If one considers this thesis in perspective, this means that Machiavelli formulates a tension between politics and law, recognizing a sort of logical priority of politics over law⁸.

As you all know, Machiavelli's "tumultuos republic" has not always been enthusiastically supported by modern republican thinkers. Important theorists, from Guicciardini to Harrington and Rousseau, did not follow Machiavelli in his attempt to keep order and conflict together, that is, in his effort to prove that conflicts can be regarded as physiological and not just as pathological. Nonetheless, I would like to point out that there have been other thinkers who followed in his footsteps, and consciously reformulated his thinking: from Commonwealth-men such as Algernon Sidney and John Trenchard, to a scottish philosopher such as Adam Ferguson, and to another Italian thinker such as Vittorio Alfieri. Different approaches and priorities in these two families of theories are particularly apparent when one deals with the question of the ordinary functioning of the republic, to which I intend to draw my attention now.

4. The republican institutions in time.

All the modern republican theorists of the most diverse families of the tradition repeatedly and firmly state the possibility of the dissolution of the republican orders, and of the rise of principality, absolute monarchy, despotism. The specter of tyrannical power, of absolute power, of despotic power, according to the different terms employed by these authors, recurs in all of them.

⁸ The crisis of liberty makes the logical, as well as genetic primacy of politics over law even more apparent. When the Nobles create parties, and sects develop in the republics, organized as interest groups; viceversa, when the people does not aim at honors any longer, but to property, namely, when the conflict ceases to be political and becomes exclusively social and economical, civil war breaks out and the republican orders break down. Then the republic is replaced by principality.

In order to avoid such possibility, the republican thinkers resort to different theoretical strategies: some of them rely exclusively on the republic's institutional architecture, on its peculiar institutions, above all, the mixed government; others, even though they recognize the importance of the institutions and of the rule of law guaranteed by them, in the last resort, insist on the crucial role of the citizens' active virtue and public spirit.

Scholars have extensively dwelled upon the fundamental characters of the republican institutions theorized by the modern thinkers, and upon the forms of rule of law and the type of liberty guaranteed by them. I will not insist on their analyses, here. I would just like to draw attention to the rich and complex institutional imagination of the republican thinkers. They work on the classical models of the republics of Athens, Sparta and Rome, but they also take into account the institutions of that *respublica hebraeorum* brought back to light in the studies of Sigonius and Cunaeus. Then, they systematically compare these classical Greek, Latin and Judaic models with the experience of the modern republics, from Venice to the United Provinces.

Some form of mixture, of the Aristotelian *mikté*, guarantees the balance between the various constitutional organs, and allows to preserve liberty. On this point, the claims of republicanism and the requirements of constitutionalism converge. Obviously, each thinker provides a particular interpretation of the idea of mixed or balanced government – some insist on the aristocratic dimension, others (probably a minority) on the democratic aspects. As a matter of fact, Machiavelli belongs to the latter: in his *Discourses* he emphasizes the importance of a series of magistracies or institutional procedures – public accusations, political indictments and appeals, deliberating assemblies – which constituted the people's power, as John McCormick has recently pointed out vigorously.

Among the other institutional remedies propounded by the republicans in order to preserve liberty, I would like to recall at least the idea of the small republic, and of a federation of small republics which started to circulate, for instance, in the English republicanism of the second half of the seventeenth century, from John Milton to Andrew Fletcher.

While all the republican thinkers dwell attentively upon the institutional architecture of the republic, the difference between the various families of republican theories fully emerges in the discussion of the overall relevance and ultimate significance of the institutions in their ordinary functioning. Theorists such as Guicciardini, Harrington or Rousseau who value order above conflict, show to rely entirely on the institutional architectures in order to guarantee the law and, by means of that, the citizens' liberty. Nonetheless, within modern republicanism, there are also other thinkers and families of theories which, even considering the ordinary functioning of the republic, lay stress on the importance of the active virtue of the citizens rather than on the institutional

remedies in order to preserve freedom. [In this sense, they reformulate Machiavelli's thinking.] This morning, in order to give an idea of this approach I will focus, especially, on the thought of a Scottish republican theorist, Adam Ferguson.

In his *Essay on the History of Civil Society*, Ferguson draws his argument from the recognition of the institutional and political relevance of the mixed governments, and cites Rome and modern England as paradigmatic examples⁹. He goes as far as declaring that England, in particular, “has carried the authority and government of law to a point of perfection, which they never before attained in the history of mankind”¹⁰. But he immediately becomes critical: Ferguson points out that liberty and justice cannot be preserved by relying exclusively on laws and institutions: ‘It is not in mere laws, after all, that we are to look for the securities to justice, but in the powers by which those laws have been obtained, and without whose constant support they must fall to disuse. Statutes serve to record the rights of a people, and speak the intention of parties to defend what the letter of the law has expressed: but without the vigour to maintain what is acknowledged as a right, the mere record, or the feeble intention, is of little avail’.¹¹ Ferguson insists on this idea in various other pages of his *Essay on the History of Civil Society* – he writes, for instance: ‘If forms of proceeding, written statutes, or other constituents of law, cease to be enforced by the very spirit from which they arose; they serve only to cover, not to restrain the iniquities of power. [...] [And the influence of laws, where they have any real effect in the preservation of liberty, is not any magic power descending from shelves that are loaded with books, but is, in reality, the influence of men resolved to be free; of men, who, having adjusted in writing the terms on which they are to live with the state, and with their fellow-subjects, are determine, by their vigilance and spirit, to make these terms observed’¹²]. The idea that liberty cannot be preserved only by political institutions is a sort of leit-motiv of his work. In another passage, he writes: ‘Even political establishments, though they appear to be independent of the will and arbitration of men, cannot be relied on for the preservation of freedom; they may nourish, but should not supersede that firm and resolute spirit, with which the liberal mind is always prepared to resist indignities, and to refer its safety to itself’¹³.

Ferguson's position is clear: in the last resort, virtue – ‘that firm and resolute spirit’ - is more important than political institutions, active political participation and power are more important than law. It is not a chance that Ferguson takes over another Machiavellian issue, developing a real praise of political conflict in various passages of his work: “When we seek in society for the order

⁹ A. Ferguson, *Essay*, Cambridge UP, 1995, p. 159: “Rome and England, under their mixed governments, the one inclining to democracy, the other to monarchy, have proved the great legislators among nations”.

¹⁰ A. Ferguson, *Essay*, Cambridge UP, 1995, p. 159.

¹¹ A. Ferguson, *Essay*, Cambridge UP, 1995, p. 160.

¹² A. Ferguson, *Essay*, Cambridge UP, 1995, p. 249.

¹³ A. Ferguson, *Essay*, Cambridge UP, 1995, p. 251.

of mere inaction and tranquillity, we forget the nature of our subject, and we find the order of slaves, not that of free men”¹⁴. Or even: “The rivalship of separate communities, and the agitations of a free people, are the principles of political life, and the school of men”¹⁵.

5. The problem of corruption.

The question of corruption of the institutional orders, as well as of the citizens’ active virtue is the pivot of the republican thinkers’ analyses in all time and culture. How do the orders become corrupted? And what determines the crisis of the republic? What processes determine the weakening or dissolution of public virtue and of the citizens’ devotion to the common good? These questions lead the republican thinkers to develop increasingly more detailed accounts of the great historical transformations which were taking place at the time.

Machiavelli devotes a large part of his work to the analysis of the different ways in which the republics become corrupted. In the *Discourses*, in particular, he explores the transformation of conflicts in Rome from strictly political to social and economical enmities. He draws attention to the reaction of the Nobles against the Gracchi’s proposals for an agrarian reform which attacked their control over land property. In the *Istorie fiorentine* he denounces the way in which political conflict was led in Florence: the oppositions gave birth to ‘sects and partisans’ which degenerated into violent actions.

At the end of the seventeenth century, the English Commonwealth-men consider the creation of permanent (standing) armies a definite cause of corruption; in the early decades of the eighteenth century, others detected in patronage and, more generally, in the Crown’s attempts to control the Parliament, definite threats to liberty. Finally, other republican thinkers denounced the creation of large-sized States, and the republics’ tendency to expand, as a definite cause of corruption and a threat to republican liberty. The typologies of institutional, political and moral corruption are extremely articulate.

I am not interested in drawing your attention to these typologies, but rather, on the remedies detected by the republican thinkers to put a stop to these corruptive processes, because they attest the existence of a tension between law and politics, between rule of law and rule of virtue, in their reflections.

Magistracies are conceived by the republican thinkers in order to hold corruption in check: for instance, censorship which is exercised over the citizen’s conduct¹⁶; dictatorial authority which

¹⁴ A. Ferguson, *Essay*, Cambridge UP, 1995, p. 254, footnote 97.

¹⁵ A. Ferguson, *Essay*, Cambridge UP, 1995, pp. 62-63.

must be instituted in extraordinary conditions of political crisis¹⁷. In my view, both these magistracies are interesting for they require the existence of particularly virtuous individuals within the body of citizens. Again, many republican thinkers thematize the exercise of virtue by extraordinary individuals or groups of individuals in order to restore the rule of law. One can describe this position as an elitist one, non democratic in the proper sense. The overall mechanism of a republican government includes elements which are not strictly speaking democratic, but which can be defined as aristocratic or elitist.

From this perspective, I find it even more relevant to re-consider Machiavelli's reflection upon what he calls the republics' 'return to the beginning'. The return to the beginning is necessary when the republics start to become corrupted, when "men begin to change their customs and transgress the laws"¹⁸. Although, according to Machiavelli, the return to the beginning can be expected and realized by the orders of the republic itself, or brought about by the good men's virtue, one should not forget what he writes in that crucial opening chapter of the third book of the *Discourses*: in order to have an authentic change and return to the beginning, "the orders need to resume new life from the virtue of a single citizen"¹⁹. In order to put a stop to corruption, and bring the institutions back to their function and original 'goodness', the virtue of remarkable individuals is necessary.

A virtue which is also carried out by sentencing to death and executing the 'sons of Brutus', and all other enemy of the Republic. Those sentences and executions act as examples, somehow reviving the citizens' virtue. Machiavelli is extremely crude in this respect: the memory of punishment produces fear in those who intend to attack the republic. "Unless something arises which recalls the punishment to their memory, and revives the fear in their minds, so many delinquents will soon come together that they cannot any longer be punished without danger"²⁰. Machiavelli repeatedly points out that these executions must take place at least once every decade in order to keep fear alive, and to keep the respect of the law constant among the citizens, that is to say, in order to avoid the spreading of corruption.

Machiavelli raises a problem of an unquestionable relevance: the problem of the renewal of the institutions and customs for the survival of the existing republic. "If one wishes a sect or a republic

¹⁶ On censorship, see N. Machiavelli, *Discorsi*, I. 49 and J.-J. Rousseau, *Social Contract*, IV. 7, pp. 141-142.

See also F. Hutcheson, *Institutio*, Glasgow 1745, p. 309; *Short Introduction to Moral Philosophy*, Glasgow 1747, p. 301: «A censorial power too would be of the highest use, to reform, or prevent the corruption of manners». In *A System of Moral Philosophy*, London 1755, vol. 2, p. 265, Hutcheson argues it is better to give the censorial power not to a single individual, but to a «censorial council for a set term changed by rotation».

¹⁷ On dictatorship, e.g., J.-J. Rousseau, *Social Contract*, IV, 6, pp. 138-140.

¹⁸ N. Machiavelli, *Discorsi*, III.1, p. 359: "gli uomini cominciano a variare con i costumi e trapassare le leggi".

¹⁹ N. Machiavelli, *Discorsi*, III.1, p. 358: "I quali ordini hanno bisogno di essere fatti vivi dalla virtù d'uno cittadino, il quale animosamente concorra ad eseguirli contro alla potenza di quegli che gli trapassano".

²⁰ N. Machiavelli, *Discorsi*, III.1, p. 359: "E se non nasce cosa per la quale si riduca loro a memoria la pena, e rinnovisi negli animi loro la paura, concorrono tosto tanti delinquenti che non possono più punire senza pericolo".

to live long, it is necessary to draw it back often toward its beginning” is, precisely, the title of that chapter. What is at stake here, above all, is the conduct of the individuals which tends to destroy the laws and orders, rather than the renewal of the orders themselves. Thus, the way in which such conduct may be changed by those who are interested in keeping the republican orders [– translating this in a different context, and in a different language, one can say that what is at stake is the relation between democratic institutions and democratic education of the citizen].

Machiavelli’s solutions are extremely distant from our contemporary sensitivity, nonetheless the problem he raises is crucial. And it is not a chance that it attracted the attention of many later republican thinkers, starting, for instance, from a commonwealth-man such as Algernon Sidney.

I would like to add a further remark, before passing to the conclusions. When one considers on the whole the modern reflection on the republic in time, and, especially, on its genesis and corruption, it appears that the republican thinkers appealed to virtue (of the individuals or of small elites) in order to tackle extremely relevant questions. Thus, it is not surprising that later thinkers and men of action – I am thinking in particular of the French revolutionaries, especially, the Jacobins – focused their attention on, and referred to this specific dimension of their thought. I think that Hannah Arendt’s remarks in *On Revolution* concerning the possible origin and indirect sources of Rousseau’s ‘despotism of freedom’ are still valid and evocative²¹. I am persuaded that they are thought-provoking in years when we are tempted by stylized reconstructions of the history of republicanism for our own use that select and bring to the fore themes which are closer to our sensitivity.

5. Elements for a conclusion.

What lessons can we draw from the history that I have summarised? I would like to conclude with three remarks.

a) The constitutive tension between law and politics.

The first remark concerns the constitutive and insuperable tension between law and politics. I emphasised how the modern republican thinkers refer to the virtue of single men or small elites in order to explain the birth of the republics, and to thematize the remedies to their internal corruption. When taking into account figures such as those of the States’ founders or legislators, magistracies

²¹ See H. Arendt, *On Revolution*, tr. it., p. 238.

such as censorship or dictatorship, moments such as the return to the beginning, they associate the rule of law with the rule of virtue.

Furthermore, I have shown how those republican thinkers who follow Machiavelli's teaching on the positive role of conflicts go even further, and trace a tension between law and politics, between rule of law and rule of virtue in the ordinary functioning of the republic itself. When they refer to the tumultuous and conflicting virtue of the citizens, they seem to delineate an almost logical and genetic priority of politics over law.

I believe that it is extremely important, today, that we are aware of the tension between law and politics, between rule of law and rule of virtue, and that we do not forget the modern republicans' lesson: politics cannot be totally translated into law. Law cannot completely absorb the *Zuidersee* of politics.

a) The heritage of conflictual republicanism.

The second remark concerns the possibility of fruitfully combining republic and conflict. As I said at the beginning of my paper, there are various families of republican theories: those which value the moment of order in the republic, and take over the perspective, for instance, of Guicciardini or Harrington, on the one hand; and on the other, those theories which appropriate and develop Machiavelli's thought, recognizing the role played by social and political conflict within the life of the republic.

Firstly, I argue that this specific dimension of Machiavelli's thought can play a relevant part in rethinking a form of conflictual republicanism today. In other words, this dimension / heritage of Machiavelli's work could concur in formulating an agonistic conception of democracy, namely, one which does not exclusively focus on consensus. Allow me to further elucidate my interpretation of Machiavelli's thought.

To begin with, conflict appears to be rooted in anthropologies, in two different humours. There are men who are constantly concerned with increasing their power, and others who prefer to live freely without entering the logic of power acquisition and accumulation. Furthermore, conflict seems to be rooted in society and history: there is a difference of interests, to put it mildly, or, to state it more precisely, there is a radical difference in the access to and control over property. Machiavelli is explicit about the fact that in Rome conflict degenerates, precisely, when it starts concerning property ('*la roba*'), when the agrarian law questions the control over property. It follows that, in Machiavelli's view, conflict is a constitutive dimension of politics which cannot be renounced.

Both realistic premises can be reformulated in contemporary language, and placed at the core of a republican or democratic theory for the present time. A realistic anthropology can be redefined which avoids both the mythicizing of the people and the sanctification of the multitude. Thus, one can take over the Machiavellian lesson of the unsurpassable and fruitful dimension of conflict, without embracing Antonio Negri's conclusions.

Moreover, it is possible to ground our political theory on a social theory which admits the existence of radical differences of access to and control over the most diverse goods (from capital to culture) in contemporary society. This political theory can be developed from the premises of a constitutively divided society without necessarily having to accept the conclusions of a Schmittian theory of the political.

Given that society is constitutively divided, according to various cleavages which are rooted in anthropological and social conditions, a republican theory which is up to the present times could admit, on new grounds, the role of social and political conflicts in the creation of the 'orders and laws in defence of liberty'. That is to say, it could acknowledge the role played by conflicts in widening the framework of existing law, and making richer and more complex that table of rights guaranteed by the rule of law.

A republican theory which is up to the present times, a seriously agonistic theory of democracy, should admit the relevance of social and political conflict – a much greater relevance than the one accorded to it, for instance, in the contestatory democracy approach.

In the contestatory democracy propounded by Philip Pettit, citizens have an 'effective opportunity to contest the decisions of their representatives': the actors of conflict are the citizens – without any further anthropological or social characterization – and the representatives, the "government agents wielding discretionary authority". Conflict has a vertical nature, so to speak, between citizens and representatives, and it takes place after law is created, and when it is applied by the government's representatives. Threats to liberty come only from above, from the political representatives.

The type of conflict that I am thinking about, and which should be admitted and valued in a republican theory up to the present times, has both a horizontal and vertical dimension: it is both social conflict and political conflict. It includes both the social conflict between citizens belonging to different social groups, and the more political conflict between citizens and representatives. Moreover, the role played by conflict should not be restricted to the moment of the application of the law, but should also be traced back to the moment of its creation, elaboration and discussion. From this perspective, threats to liberty come from the sphere of society, as well as from the sphere of politics.

c) The republic in time: corruption and de-politicization.

It is possible to draw a third set of considerations concerning the problem of corruption from the reconstruction of the tensions between law and politics in modern republicanism which I proposed. I would like to conclude by mentioning the importance of the modern republicans' analyses on corruption. Although their remedies are distant from our contemporary democratic sensitivity, the problems which they attempt to solve are still relevant today.

The problem of corruption - especially, of the citizens' virtue – concerns us directly. In our language, the problem of corruption can be defined as the problem of de-politicization. With their recourse to the extraordinary virtue of great men, and often to violence, the republican thinkers propound a series of remedies to corruption which could not be more distant from the contemporary democratic spirit. But their analyses of the various forms of corruption is worth retrieving.

The republican thinkers investigate the cultural, ideological and institutional elements which lead individuals to withdraw from the political sphere, and refuse to participate in collective events: consider Machiavelli's diagnosis of Christianity as a radical factor of de-politicization and moral corruption or the analyses of the eighteenth century thinkers on the institutional transformations of the sphere of the State; [the affirmation of standing armies, the development of increasingly bureaucratic administrative systems, and the primacy of representation as the only channel for political expression].

I would like to point out that modern republican thinkers develop a critical perspective on the modern world. Beside the normative elaborations on the features of republican liberty or the institutional structures of the well-ordered republic, their reflections also include a critical analysis of their time. One detects a research of the pathologies of their contemporary times, one could probably say: an aspect of critical theory.

So, I wonder whether this critical dimension should be re-proposed and should receive new emphasis in our reformulations of the republican themes. A reflection on what the modern republicans called the processes of corruption, perhaps, could lead us to focus our attention on the contemporary forms of corruption. Perhaps it could lead us to question the contemporary forms of depoliticization and press us to investigate the old and new factors which determine it. But this is another story. Thank you for your attention and patience.