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Introduction

CRISIS OF THE REPRESENTATIVE REPUBLIC

TODAY THE IDEA that democracy is failing, not only in the United States but around the world, has become ubiquitous.¹ Even if it was only after the 2016 presidential election that the “crisis of democracy” narrative went mainstream,² this particular cycle of political decay in our constitutional regimes appears to have begun in the 1970s and 1980s with the first neoliberal experiments led by General Augusto Pinochet in Chile, Margaret Thatcher in the United Kingdom, and Ronald Reagan in the United States.³ Increasing income inequality and immiseration of the working classes were effectively depoliticized and naturalized to the point that today it is considered legitimate that three individuals in the United States own more wealth than the bottom 50 percent; that while the wealth of the superrich has grown 6,000 percent since 1982, median

1. The rise of far-right supremacist parties in many European countries, which are forming alliances at the supranational level; a government in India that is building concentration camps for religious minorities; and a government in Chile that represses mass protests, violating human rights, to protect a neoliberal model imposed in dictatorship: all show that democracies are malfunctioning. On the totalitarian experiments in India, see Jeffrey Gettleman and Hari Kumar, “India Plans Big Detention Camps for Migrants. Muslims Are Afraid,” *New York Times*, August 17, 2019, <https://www.nytimes.com/2019/08/17/world/asia/india-muslims-narendra-modi.html>. On the popular uprising in Chile, see my article “The Meaning of Chile’s Explosion,” *Jacobin*, October 29, 2019, <https://www.jacobinmag.com/2019/10/chile-protests-sebastian-pinera-constitution-neoliberalism>.

2. For an elitist republican interpretation on the crisis of democracy, in which elites are the culprits of decay, see Levitsky and Ziblatt, *How Democracies Die*.

3. For a partial historical account of neoliberalism, see Slobodian, *Globalists*. A Euro-centric viewpoint prevents Slobodian from taking into account the illiberal origins of neoliberalism, first implemented in Chile under Pinochet with the help of the so-called Chicago Boys, trained in the United States in the 1960s.

household wealth has gone down 3 percent over the same period; and that one out of five children currently lives in poverty in the richest country in the world.⁴

Because patterns of accumulation of wealth at the top, in which corporations pay zero taxes despite high profits while their employees have to rely on public assistance to make ends meet,⁵ are far from natural—but rather enabled by existing rules and institutions—part of what this book sets out to accomplish is to extend the horizon of analysis so we can better appreciate our political regime as an experiment that has led to acute inequality and a dangerous oligarchization of power, and therefore in need of structural reform. Representative democracy is an artificial political infrastructure that we have designed for ourselves, and that, as it was first established, it can similarly be overhauled. Structural innovations to political systems, even those considered radical or extreme, have been achieved in the past, and there is no reason to believe they cannot be attained in our lifetime.⁶

I theorize the crisis of democracy from a structural point of view, arguing that liberal representative governments suffer from *systemic corruption*, a form of political decay that manifests itself as an oligarchization of power in society. I trace and analyze the concept of political corruption in Plato, Aristotle, Polybius, Cicero, and Machiavelli and then offer a critique of our current juridical and individual understanding of corruption. I argue that we need to move away from the “bad apples” approach, the view that corruption exists only because there are corrupt people in office, and look at the structure in which these corrupt elites are embedded. We must entertain the possibility that if a tree consistently produces “bad apples,” it might be a “bad tree.” Systemic corruption refers to the inner functioning of the system as a whole, independent of who occupies the places of power. A democracy is a political regime in which an electoral majority rules, and therefore it makes sense to think that “good” democratic government would benefit (or at least not hurt) the interests of the majority. When the social wealth that is collectively created is consistently and increasingly accumulated by a small minority against the material interests of the majority, then it means that the rules of the game and

4. Chuck Collins, “The Wealth of America’s Three Richest Families Grew by 6,000% since 1982,” *The Guardian*, October 31, 2018, <https://www.theguardian.com/commentisfree/2018/oct/31/us-wealthiest-families-dynasties-governed-by-rich>.

5. Louise Matsakis, “The Truth About Amazon, Food Stamps, and Tax Breaks,” *Wired*, September 6, 2018, <https://www.wired.com/story/truth-about-amazon-food-stamps-tax-breaks/>.

6. My viewpoint originates in a deep-seated constitutional skepticism rooted in the experience of having lived in Chile, under an illegitimate constitution that entrenched a neoliberal economic model and a small, subsidiary state as well as religious and patriarchal social norms.

how they are being used and abused are benefiting the powerful *few* instead of the *many*. This trend of oligarchization of power within a general respect for the rule of law, regardless of who controls the government, is what I conceive as systemic corruption in representative democracy.

As a response to this political diagnosis, in which the crisis of democracy is due to an overgrowth of oligarchic power, I propose to retrieve the constitutional wisdom of past republican experiences with oligarchic domination to find an institutional solution to structural decay.⁷ Based on an in-depth analysis of institutional, procedural, and normative innovations proposed by Niccolò Machiavelli, Nicolas de Condorcet, Rosa Luxemburg, and Hannah Arendt, I propose to institutionalize popular collective power in a mixed constitution as the most effective way to deal with systemic corruption and oligarchic domination.

A mixed constitution necessarily entails opposing institutional powers for the few and the many. From the realist and material perspective of the republicanism of Machiavelli, society is seen as divided between the powerful few and the common people, and therefore the political order needs to include institutions both to allow a selected elite to rule within limits and to enable the common people to push back against the inevitable domination that eventually comes from the government by few. Recognizing this oligarchic tendency and the asymmetry of power between the few and the many, mixed constitutions set up *plebeian* institutions to resist the overreach of the few. Constitutional frameworks today have nothing of the sort and therefore have left the many vulnerable to oligarchic domination. Democracies contain only institutions through which representatives govern and check each other (e.g., Congress, the president) and elite institutions supposed to censure their decisions (e.g., the Supreme Court), effectively leaving the elites to police themselves. Common people do not have an exclusive political institution through which they can veto oppressive measures coming from representative government or directly censor their representatives. We thus have much to learn from ancient and modern republics about the kind of plebeian institutions—empowering the common people who do not rule—that are necessary to effectively counter the relentless oligarchization of political power.

7. I approach the decay of constitutional democracies and possible institutional solutions from the perspective of radical republican thought, and therefore I will not engage with other diagnoses and solutions offered from within democratic theory—most prominently coming out of participatory and deliberative democratic theory—but rather focus only on the republican tradition and its model of mixed constitution.

I take therefore as a given that representative democracies are not mixed orders but *monocratic* regimes with separation of functions:⁸ a form of government in which the selected few, authorized by the people, exert ruling power through different institutions, and the collective power of the many is not institutionalized. While legislative, executive, and judicial powers are the virtual monopoly of the selected few⁹—who exert legitimate power based on citizens' consent—the many—common citizens who do not effectively govern—do not have a collective institutional role in the political decision-making process,¹⁰ and therefore there is no effective counterpower to an increasingly corrupt and oligarchic representative government. The many are today atomized, and their power has been reduced to selecting representatives and sometimes proposing and voting referenda through the aggregation of individual preferences. The high degree of political corruption in most representative systems evidences that elections are not an effective means to control public officials who write corrupt laws or support policies that benefit powerful corporations to the detriment of the common welfare.

Political power is today *de facto* oligarchic. Materially, the people who get to decide on policy, law, and the degree of protection of individual rights—the president, members of Congress, and Supreme Court justices—are part of the richest 2 percent and therefore tend to have the same interests and worldview of the powerful few who benefit most from the status quo.¹¹ Moreover, the control of special interests over politics via campaign finance has allowed money to influence lawmaking and public policy, which has in turn allowed the building of legal and material structures that disproportionately benefit the wealthy at the detriment of the majority. In the United States, the richest 1 percent currently owns 40 percent of the country's wealth—more than the

8. Pasquino, "Classifying Constitutions."

9. All modern constitutions today lack a popular institution in which citizens can collectively participate in the decision-making process by proposing, deliberating, and deciding on law, except for the Swiss "cantonal assembly" system (*Landsgemeinde*), one of the oldest surviving forms of *direct* democracy, which is practiced in only two of the twenty-five Swiss cantons. They are nevertheless subject to Swiss federal law.

10. Elections, recalls, referenda, and citizen initiatives are powers of the individual, not the many as collective subject. In addition to being weak, in my view, these political instruments (or "methods" as Machiavelli calls them) have already been (ab)used as weapons of domination by the better-organized parts of civil society. See, for example, Proposition 8 in California banning same-sex marriage.

11. This material structural analysis of elite institutions does not exclude, of course, the few social justice advocates, such as Justice Ruth Bader Ginsburg, who, despite sharing material conditions with the rest of the elite, has ruled consistently in favor of the *many*.

bottom 90 percent combined.¹² This pernicious inequality enables billionaires and their CEOs to live the life of feudal lords in mansions, surrounded by servants, having the power to hire and fire legions of workers who struggle to maintain a precarious standard of living in a society in which most basic services have been privatized and the minimum wage is not enough to cover basic housing, food, health-care, and education costs. To tackle this problem of systemic corruption, in which the structure consistently works to enrich the few and oppress the many, I argue we need to go beyond legal reform and partial fixes—especially in countries where oligarchy has become too powerful to allow for meaningful legislative change—and establish a new plebeian institutional counterweight strong enough to keep elites in check.

The plebeian branch I propose to add to current constitutional orders would be autonomous and aimed not at achieving self-government or direct democracy, but rather at serving anti-oligarchic ends: to judge and censor elites who rule. The plebeian branch, which is designed to be incorporated into already existing democratic regimes, is composed of a decentralized network of radically inclusive local assemblies, empowered to initiate and veto legislation as well as to exercise periodic constituent power, and a delegate surveillance office able to enforce decisions reached in the assemblies and to impeach public officials. The establishment of local assemblies not only would allow ordinary people to push back against oligarchic domination through the political system but also inaugurates an institutional conception of the people as the many assembled locally: a collectivity that is not a homogeneous, bounded subject but rather a political agent that operates as a network of political judgment in permanent flow. The *people-as-network* would be a political subject with as many brains as assemblies, in which collective learning, reaction against domination, and social change occurs organically and independently from representative government and political parties.

I begin by providing in chapter 1 a diagnosis for the crisis of democracy based on systemic corruption. After reconstructing from the works of Plato, Aristotle, Polybius, and Machiavelli a notion of systemic political corruption particular to popular governments, I then engage with recent neorepublican and institutionalist attempts at redefining political corruption within our current political regimes. I argue that we still lack a proper conception of systemic corruption comparable in sophistication to the one offered by ancient and modern philosophers because we are as yet unable to account for the role that procedures and institutions play in fostering corruption through their normal functioning. The chapter concludes by proposing a definition of systemic

12. Wolff, "Household Wealth Trends in the United States."

corruption as the oligarchization of power transpiring within a general respect for the rule of law. This conception of corruption appears as intrinsically connected to increasing socioeconomic inequality, which enables inequality of political influence and the drift toward oligarchic democracy: a regime in which the many empower, through their ballots, the powerful few, who enable the dispossession and oppression of those many.

The recognition of systemic corruption as a relentless process of political decay prompted ancient and modern political thinkers to study existing constitutions and engage in efforts to design the perfect regime: a political order immune to the degradation of its institutions and procedures, and thus insulated from social decay and regime decline. Chapter 2 traces the intellectual history and institutional iterations of the theory of the mixed constitution, which originated as a critique of pure, monocratic constitutions and offered a realist redress for systemic corruption based on the institutionalization of different forms of social power. I offer a genealogy of two main strands of interpretation: (1) an *elitist-proceduralist* strand commenced by Polybius and Cicero, reinterpreted by Montesquieu, constitutionalized by Madison, and recently brought perhaps to its highest level of philosophical sophistication by Philip Pettit; and (2) a *plebeian-materialist* strand originating in the political experience of the plebs within the ancient Roman republic and continuing in Machiavelli's interpretation of this experience in light of the political praxis of the *popolo* during the Florentine republic. I make the distinction between elitist and plebeian constitutions based on who has final decision-making power in a given framework: the selected few or the common people. Throughout the book I provide a visual representation of constitutional orders based on this basic distinction between the few and the many, to allow for a better spatial understanding of the distribution of powers in any given constitution as well as for a comparison between different models of republics.

To rethink the republic from a structural perspective implies not only the need to theorize the crisis of democracy at the systemic level, and to find adequate institutional solutions, but also the necessity of approaching constitutionalism from a point of view that allows us to acknowledge ever-expanding systemic corruption and oligarchic domination. Chapter 3 proposes a novel methodological approach to the study of constitutions that goes beyond the written text and jurisprudence, to incorporate the material structure of society. This material interpretation originates in the factual organization and exercise of power that is allowed and enabled by foundational institutions, rules, and procedures—or lack thereof. What I term *material constitutionalism* is premised on the idea that the organization of political power cannot be analyzed without taking into account political and socioeconomic power structures, and it therefore establishes a constitutional ideology that stands opposed to

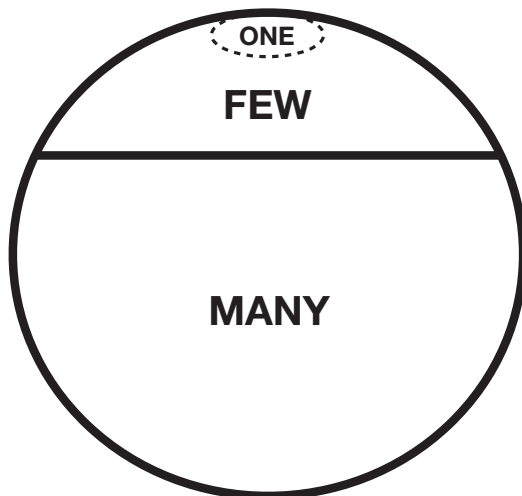


FIGURE 1.1. The material constitution. Basic structure of spatial representation of the constitution as distribution of power.

legal positivism, formalism, and proceduralism. The chapter begins by putting forward this material approach, which I trace back to Machiavelli, and distinguishing two strands: one *institutionalist*, developed by Condorcet, Thomas Jefferson, and Arendt, and more recently by John McCormick and Lawrence Hamilton, and another, *critical*, developed by Karl Marx, Evgeny Pashukanis, and Antonio Negri, and more recently by Marco Goldoni and Michael Wilkinson. Within this taxonomy, Rosa Luxemburg's materialist critique of law and her proposal for institutionalizing workers' councils are a bridge between the critical and institutionalist traditions.

I dedicate the second part of the book to reviewing the constitutional thought of those who dared propose the institutionalization of popular power and endowed it with supreme authority to protect political liberty: Machiavelli, Condorcet, Luxemburg, and Arendt. These thinkers have all suffered reactionary backlashes, and therefore their work has consistently been misunderstood, instrumentalized, demonized, or neglected. Consequently, part of what I want to accomplish is to offer a serious engagement with their ideas and proposals using a plebeian interpretative lens under which they fit together, as part of a plebeian constitutional tradition. This sort of "B side" of constitutionalism is therefore composed of those who support the institutionalization of the power of the many as the only way to achieve liberty for all, misfits in an elitist tradition dominated by the impulse to suppress conflict in favor of harmony, stability, and security.

I begin chapter 4 by presenting Machiavelli's constitutional thought as the foundation of a type of constitutionalism that is material in its analysis of law and procedures, and anti-oligarchic in its institutional design. Recognizing the influence that socioeconomic inequalities exert over political power, Machiavelli embraces conflict as the effective cause of free government and strives to empower and channel emancipatory, plebeian energies through the constitutional order. The chapter focuses on Machiavelli's most important contribution to materialist constitutionalism: the plebeian nature of constituent power. I argue that the constituent power in Machiavelli serves not as a bridge between basic principles and politics, but rather as the power exerted to resist oppression and establish plebeian and anti-oligarchic institutions. While in democratic theory the constituent power has been conceived as the *autopoietic* power of the community, a republican theory of constituent power is defined functionally, determined by the goal of achieving liberty as nondomination. Because for Machiavelli liberty demands the productive channeling of the plebeian desire not to be dominated, the preservative power of free government is the power the people have to periodically redraw the boundaries of what is considered permissible and what is deemed oppressive. Only the many—who desire not to be oppressed and do not partake in ruling—are the guardians of liberty. I analyze Machiavelli's proposal for reforming Florence through his theory of institutional renewal aimed at redeeming corrupt republics, focusing on his proposal to normalize instances of constituent creation and punishment in ten-year intervals as an antidote for systemic corruption.

Chapter 5 is devoted to the constitutional thought of Nicolas de Condorcet, the challenge of representing the sovereign demos, and his proposal for considering the people in its institutional character rather than as an atomized collective subject that can never be made fully present and therefore properly represented. As an alternative to the liberal constitution established in the American colonies, Condorcet proposed a republican framework in which the ruling power of making laws and decisions about administration is concentrated in a representative assembly, which is legally responsive to an institutionalized popular power—a network of primary assemblies—aimed at checking its laws, policies, and abuses. The chapter presents an in-depth analysis of the 1793 constitutional plan for the French republic proposed by Condorcet, read through the lens of his egalitarian tracts on education, slavery, and the rights of women.

While Condorcet was writing at the birth of modern representative government and was concerned with preserving the revolutionary spirit to protect the republic from corruption, Rosa Luxemburg proposes to embrace workers' councils as a political infrastructure of emancipation at a moment when the modern party system had begun to consolidate. It is when the Social

Democratic Party—a party in support of the interests of the working class—had gained partial control of the German government that she realized that the liberty of the working class demanded a different political infrastructure. The betrayal of the revolutionary party proved to her the truth of Marx’s argument that the “working class cannot simply lay hold of the ready-made state machinery and wield it for its own purposes,”¹³ and therefore she proposed to alter “the foundation and base of the social constitution”¹⁴ from below by institutionalizing workers’, soldiers’, and peasant councils and establishing a national council of workers as part of a revolutionary constitutional political order.

The final chapter in this section analyzes Hannah Arendt’s intellectual relation with Luxemburg’s work, her critique of the American founding, and her proposal for establishing a council system. According to Arendt, the moment the founders focused on representation and neglected “to incorporate the township and the town-hall meeting into the Constitution,” the revolutionary spirit was lost, and government became mere administration.¹⁵ Arendt embraces the council system as an alternative form of government aimed at the continual reintroduction of freedom as action in a public realm dominated by administration. I argue that we should understand Arendt’s proposal as a novel interpretation of the mixed constitution, one in which the division between the few and the many is replaced by that of *parties* dedicated to administration, and *councils* dedicated to political judgment.

In the third and final part of the book I survey the development of plebeian thought in the twenty-first century, its philosophical foundations and institutional proposals. In chapter 8 I analyze plebeianism as a political philosophy in the works of Martin Breugh and Jeffrey Green and then provide an in-depth analysis of two recent attempts at retrieving the mixed constitution and proposing institutional innovations by John McCormick and Lawrence Hamilton. I first engage with McCormick’s proposals to revive the office of the Tribune of the Plebs and bring back plebeian power to exert extraordinary punishment against agents of corruption, and I argue that his radical republican interpretation of Machiavelli places class struggle, the threat of plutocracy, and the need for popular institutions to control the rich at the center of material constitutionalism. I then problematize the illiberal nature of his proposals and the legitimacy problems arising from lottery as mode of selection. The chapter then analyzes Hamilton’s proposal to combine consulting

13. Marx, “Manifesto of the Communist Party” in *Marx and Engels Reader*, 470.

14. Luxemburg, “The Socialization of Labor,” in *Rosa Luxemburg Reader*, 343.

15. Arendt, *On Revolution*, 224.

participatory institutions with an “updated tribune of the plebs” and a plebeian electoral procedure and discusses the challenge of proliferating sites of popular participation and competing authorities arising in such a scheme.

Finally, in chapter 9 I make my own contribution to plebeian constitutional theory by proposing to constitutionalize popular power in a “plebeian branch” that is thought through Arendt’s model of parties and councils, incorporating features from the proposals establishing plebeian institutions analyzed in the previous sections. I first lay out a way to separate the few from the many that would in principle conform to the current liberal constitutional framework, and then I describe the two institutions that would make up the proposed plebeian branch: a network of primary assemblies with the power to initiate and veto or repeal any law, public policy, judicial decision, and appointment as well as to update the constitution, and a Tribunate office aimed at enforcing mandates coming out of the network of assemblies and fighting political corruption. To close this final chapter I offer a tentative juridical framework for this plebeian branch, which is meant to be incorporated into any existing representative democratic regime and is aimed at empowering plebeians—common people who enjoy only second-class citizenship within the current constitutional structure—as a more enduring solution to the systemic corruption of representative systems and the oligarchic domination that inevitably comes with it.

I close the book with an epilogue discussing possible scenarios in which plebeian power could be institutionalized from the point of view of revolutionary politics, and I argue that if—following Machiavelli, Condorcet, Luxemburg, and Arendt—the aim of revolution is liberty, which demands self-emancipatory political action, then revolutionary change—aimed at building the legal and material infrastructure for plebeian political power—could be achieved without the need of an outright revolution. The redistribution of political power could be done by revolutionary reformers within the boundaries of the Constitution or by the people themselves, claiming collective power and authority by disrupting the ordinary administration of power with their extraordinary political action in local assemblies.

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