

## Submission to Ludwig Von Mises Institute

On 23 August, 2006

**Title of the Working-Paper:**

Human Rights and the Republican Moment: Insights from the Political Theory of Freedom

**Author:**

Magdalena Zolkos, PhD

**Contact:**

#307

11440-40<sup>th</sup> Ave

Edmonton, AB T6J 0R5

CANADA

**Phone:**

780 432 4694

**Email:**

[mzolkos@gmail.com](mailto:mzolkos@gmail.com)

**Biographical Note:**

Magdalena Zolkos holds PhD degree in Political Science (University of Copenhagen, 2005). She is commencing work as an external lecturer at the Department of Political Science, University of Alberta, Canada. She is also affiliated with the research centre CEBAST, Department of Political Science, University of Copenhagen. She has published *Conceptual Analysis of the Human Rights and Democracy Nexus in the Polish Late- and Post-Communist Contexts* (Copenhagen Political Studies Press, 2005) and co-edited *The Challenge of Mobility in the Baltic Sea Region* (Berliner Wissenschaftsverlag, 2005).

**Abstract of the Working-Paper:**

This paper sets to investigate discursive-theoretical connections between the notion of human rights and the concept of public freedom. It takes its point of departure in the liberal individual and socialist conceptualizations of human rights, and suggests that from a historical perspective these two have developed in a dichotomous relation and are therefore based on opposed understandings of liberty. This paper proceeds to investigate the “third way option,” i.e. the civic republican linkage between political (democratic) liberty and human rights. It argues that the civic republican discourse has located human rights in a close and horizontal relation to democracy. In this way, for good or bad, it has embraced the aspect of *interdependence* between human rights and democratic freedom. This paper investigates the complexities and conceptual trajectories of that relationship in (i) classical texts of Benjamin Constant on modern and ancient liberty, and in (ii) the contemporary theoretical debates on civic republicanism, democratic liberty, and civic and human rights.

# **Human Rights and the Republican Moment: Insights from the Political Theory of Freedom**

## **INTRODUCTION**

This paper maps different trajectories of accommodating the concept of human rights with normative democratic thinking. Its particular interest lies with the so-called “civic-republican” perspective. Admittedly, it is not frequent that this perspective has been directly linked with the problematique of human rights due to *inter alia* republicanism’s alleged accentuation of civic duties rather than rights, or its distrust with the potentially de-politicizing effect of universal human rights.<sup>i</sup> This paper argues, however, that the civic-republican perspective offers a valuable input into the political understanding of human rights as it links them closely to the questions of the democratic process and popular sovereignty. The problem that this paper discusses is therefore (i) how human rights can be articulated through the republican prism as a politically valid option, and (ii) whether it is possible to relate this articulation of rights to the liberal paradigm of rights as protective of the inviolability of the individual sphere.

The understanding of civic-republicanism pursued in this paper is that it does not constitute a clear-cut typological “box” within which human rights analysis is fitted. Rather, the civic-republican perspective is perceived as historically contingent and changeable cluster of ideas captured as a “moment” in the history of democratic thinking.<sup>ii</sup> This paper endorses therefore Mouritsen’s view that “there are no such things back there as ‘liberalism’ and ‘republicanism’; only clusters of more or less internally coherent arguments, values, and employments of concepts.”<sup>iii</sup> The starting-point for the discussion of the civic-republican conceptualization of human rights is an essay by Ferry and Renaut, which incorporates civic-republicanism within the dichotomous construction of the liberal discourse on rights as “entitlements” and the socialist discourse on rights as “permissions.”<sup>iv</sup> While the human rights dynamics of the triad of liberalism, socialism and republicanism have been discussed elsewhere,<sup>v</sup> it is of particular interest for this paper that the civic-

republican perspective is proposed as a *heuristic device* to see the negative/positive and the individual/collective dichotomies in human rights as “relative.”<sup>vi</sup> This is because civic-republicanism introduces other conceptual categories for the understanding of the political functioning of human rights, such as imagination of human freedom along the lines of not “non-interference,” but “non-domination.”<sup>vii</sup>

This paper starts with the question of how one can account for the lack of attention paid by republicanism to the issue of human rights (and vice versa). It suggests that at the heart of their uneasy connection lies the republican ambiguity about human rights operating *beyond* the boundaries of national communities. This means that in order to be able to conceptualize human rights along the republican lines, one first needs to show how human rights can function as an integrative component of the political process, and not an element external (and superior) to that process. Next, this paper sketches out in greater detail what it terms as the republican *imagining* of human rights. This discussion brings this paper to its main query, namely *whether* and *how* it is possible to construct a coherent connection between the republican “community” and “freedom as non-domination” on the one hand and the liberal “individual” and “freedom as non-interference” on the other hand within the contemporary human rights discourse. As regards this possibility of constructing the “republican-liberal hybrid,” this paper will commence its discussion with Benjamin Constant and his dichotomization of the “the ancient condition” versus “the modern condition,” and concludes with discussion of on political freedom by Michael J. Sandel, Richard Dagger, Philip Pettit and Quentin Skinner.

## **THE REPUBLICAN FEAR: HUMAN RIGHTS AND THE *OUTSIDE OF POLITICS***

This paper argues that the relatively scarce scholarship on human rights and civic-republicanism is somewhat connected to the understanding of the universality attribute of human rights as rights’ transgression of the political boundaries of race, nationality and gender. Shapiro has pointed out that the idea of human rights application presupposes situations in which the state protection of citizen rights is found inaccurate or insufficient.<sup>viii</sup> Implicit in such formulation is the positioning of human rights *beyond*, and *above*, the

boundaries of the political sphere. The problem that this situation connotes for republicanism has been captured by Arendt's famous figuration of a stateless refugee who becomes "superfluous" as a human being,<sup>ix</sup> because in his/her desperate situation he/she remains in possession of "only" human rights. For Arendt, *because* universal human rights were claimed to originate in *our common humanity*, wrapped in the de-ontological rhetoric and not dependant on people's political attachments to the nation-state, they had become *immobilized* and *disempowered* as political instruments in the struggle against social injustice:

The [r]ights of [m]an, supposedly inalienable, proved unenforceable [...] whenever people appeared who were no longer citizens of any sovereign state. [...] Although everyone seems to agree that the plight of these people consists precisely in their loss of the [r]ights of [m]an, no one seems to know which rights they lost when they lost these human rights.<sup>x</sup>

For Arendt there were two misconceptions at the heart of the universal human rights thinking: first, that *oikos* (the "natural," i.e. the "non-political") evoked the condition of equality among people, and second, that this condition of equality entitled people to certain rights.<sup>xi</sup> Rather, Arendt argued that

Equality [...] is not given to us, but is the result of human organization insofar as it is guided by the principle of justice. We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights. Our political life rests on the assumption that we can produce equality through organization, because man can act in and change and build a common world, together with his equals and only with his equals.<sup>xii</sup>

The Arendtian critique of deriving rights from a universal and elusive category of humanity rather than from people's political belonging has been picked up more recently by researchers arguing that human rights ought to "lose their absolute and inalienable status and come to be seen in their true light as merely protecting important aspects of a given public culture on which the interests and possibilities of a particular society's members depend."<sup>xiii</sup> Similarly, Koskenniemi has argued that the problem with locating human rights *beyond*

the boundaries of the political community is that “everybody knows that politics are not ‘really’ about translating natural rights into positive law; that at issue are struggle and compromise, power and ideology, and not derivations from transparent and automatically knowable normative demands.”<sup>xiv</sup> The result of portraying human rights as “proclamations of eternal, meta-juridical values binding the legislator to respect eternal ethical principles” has also been the neglect of the historical developments of rights doctrine, in particular as regards its contribution to the formation of the modern state.<sup>xv</sup> This paper argues that if human rights *ex definitione* transcended the boundaries of political society and eluded the grasp of democratic decision-making, they could not be warranted or vindicated in relation to any conceptions of the common good, as “seeking to justify rights [would make them] vulnerable to the objections that can be directed against the justifying reasons.”<sup>xvi</sup> It is therefore necessary for civic-republicanism to re-articulate human rights as integrative components of (i.e. both dependent on and constitutive of) the democratic process without at the same time diminishing the critical potential of rights as instruments naming injustice and sparking social change.

## **THE REPUBLICAN MOMENT: CAPTURING HUMAN RIGHTS WITHIN THE POLITICAL**

Ferry and Renaut pictured the historical development of the liberal and socialist conceptions of rights as dialectical.<sup>xvii</sup> While individual liberalism gave precedence to the issues related to citizen security (protected by civil and political rights), the socialist democratic discourse prioritized the subsistence provisions (guaranteed by the socio-economic ones). Within the liberal interpretation, the civil-political rights have gained “negative” status in the sense that their realization was claimed to require non-interference from the norm-receiving agency (the state) or, in other words, the abstention from a disruptive or harmful action towards an individual citizen.<sup>xviii</sup> In this context, the “disruptive action” has connoted the transgression of the borderline between the public and private domains. In contrast, the socio-economic category of rights has been labeled as “positive” on the grounds that it purportedly required the norm-receiver (the state) to take certain action or interfere on behalf of the right-holding individual. In the case of the positive rights, there

was a subsequent change in governmental obligations, as their practice required that the state adopt an affirmative role in the process of rights protection. The reason for has been that subsistence rights were “designed in legal terms to meet basic human needs not otherwise satisfied by the socioeconomic system.”<sup>xxix</sup>

Assumptions of that dialectic have informed Ferry and Renaut’s elucidation that it was not primarily the *content* of right-claims that defined the difference between the liberal and socialist understandings of human rights. Rather, at issue were two distinctively different *categories* of rights. Whereas in the individual liberal definition, rights have been interpreted synonymously with “permissions,” they have functioned as “entitlements” in the socialist understanding.<sup>xx</sup> Consequently, two disparate readings of the state-citizen relation were at stake: while the liberal rights as “permissions” connoted a situation in which individual autonomy designated the prohibition of state interference, the socialist rights as “entitlements” indicated that “the state is expected to have the capacity to provide *services*, with a resultant acceptance of an increase in its power to enable it to respond to requests deemed valid.”<sup>xxi</sup> While liberalism put forth “[...] the idea of a *minimal state* limited to protecting its citizens’ autonomy, [socialism promoted] a *welfare state* that, through positive benefits and services, can contribute to the birth of that ‘material security’ guaranteed to every person.”<sup>xxii</sup>

The argument here is that the civic-republican approach to human rights offers a fruitful “synthesis” of the liberal and socialist discourses on human rights. There are two main reasons for this: first, this perspective demonstrates that the concept of human rights does not forfeit its political persuasiveness or legal significance if it is approached as an inter-subjective and integral element of political community and the practice of citizenry, and not as a “natural” or “pre-political” quality. Second, from the civic-republican perspective, there is a *reciprocal* relationship between democracy and human rights. The logic of the civic-republican argumentation is that the democratic process and human rights constitute two correlated and equivalent dynamics and should not be structured hierarchically but regarded as *politically interactive*.

Civic-republicanism has introduced an alternative group of human rights, which cuts across the traditional classification of civil-political and socio-economic rights. This is the category of “participation

rights,” grounded in the assumption that the function of democratic rights is to secure public liberty understood synonymously with “non-domination,” “self-mastery” and “self-realization.”<sup>xxiii</sup> From the civic-republican perspective, the accomplishment of public freedom may require both negative and positive measures. As Márkus has argued, the contemporary conditions of democracy necessitate the re-negotiation of the compatibility of negative and positive freedoms.<sup>xxiv</sup> This is because of the “paradox of negative liberty” meaning that in the modern industrial societies characterized by a pluralism of values, opinions and morality, the withdrawal of the state leaves a power vacuum that is subsequently filled by other, non-state forms of domination. The civic-republican position advocates in this context the removal of “the strict opposition between the exercise of the state power, on the one hand, and the freedom of the individual, on the other.”<sup>xxv</sup>

The civic-republican interpretation of the nexus between the democratic process and human rights has presupposed a close link between private and public liberty in accordance with the dictum that “it is only possible [for individuals] to be free in a free state.”<sup>xxvi</sup> Private liberty has hence been perceived as preconditioned by the conditions of external and internal sovereignty. In contrast with individual liberalism, civic-republicanism has emphasized that liberty is not relational to the *number* and even the *content* of laws *per se*, but that it is preconditioned by people’s ability to act as the *constitutive agency* in the process of legal development. This is grounded in the republican tenet that “being unfree does not consist in being restrained; on the contrary, the restraint of a fair system of law – a non-arbitrary regime – does not make [one] unfree.”<sup>xxvii</sup> This has led Larmore to claim that in republicanism “law and liberty are not intrinsically opposed [...] To the extent that just laws deliver us from the relations of domination in which the natural course of things would otherwise place us, they make up freedom’s condition of possibility, not its antithesis.”<sup>xxviii</sup>

The civic-republican theory of freedom rooted in the non-dominance paradigm has been also accommodative of certain positive components, defined as “the capacity for political participation [...] to realize ends which [individuals] have autonomously chosen for themselves.”<sup>xxix</sup> In this context it needs to be noted that the intra-mural controversy among the interlocutors of the civic-republican debate on whether the republican conception of freedom is negative in character (as in Pettit’s “instrumental republicanism”), or

whether it also has some positive constituents (as in Taylor's "intrinsic republicanism"), is related to different understandings of what is life in a free political community. This implies that freedom could either connote the lack of external dominance or the role of active citizenry in the governance process. Here two significantly different civic-republican definitions of "self-government" are at stake: (i) one that considers the community to be a whole in its relation to other (external) forms of power that potentially endanger the autonomy of that community, and (ii) one that looks at its particular internal power arrangements.

The argument is that the recognition of civic-political and socio-economic rights in the civic-republican "moment" occurs on the grounds of the empowerment and equipment of the citizen for political engagement, and hence of the prevention of the circumstances of domination.<sup>xxx</sup> For example, liberal "permission" in the form of the freedom of speech, the freedom of the press and the freedom of assembly have been traditionally ascribed a defensive character as provisions of state non-involvement in the area of personal expression. In contrast, the claim is that civic-republicanism has attached a discernable positive status to these rights in the sense that it has defined them as (i) indispensable for civic activities; as (ii) requiring some degree of protection; and hence as (iii) *not* synonymous with the lack of state intervention. Honohan has argued that in regard to the freedom of speech, one ought to distinguish between "a right to speech that has a clear political relevance and a general right to expression."<sup>xxxix</sup> From the civic-republican perspective, the former is of greater *democratic importance* and hence requires a greater degree of state protection, whereas the latter can be relegated to the private sphere and is hence regarded as tantamount to non-interference. While "in the liberal conception [...] the justification of rights has to do with the importance of respecting the capacity of persons to choose their own ends for themselves," in the civic republican perspective, rights are warranted on the basis of their connection to "a certain [...] goal, namely the end of shaping citizens who will be capable of sharing in self-government."<sup>xxxix</sup>

This chapter asserts that the *politicizing effect* of rights is crucial for grasping the civic-republican concept of participation rights. This has been captured in the Arendtian notion of "public freedom" and been recognized as characteristic of the so-called "neo-Athenian" version of republicanism.



This means that “direct participation in politics by ordinary citizens” has been considered inseparable from an individual experience of “self-determination.”<sup>xxxiii</sup> According to Goldfarb’s interpretation, the practice of civic-republican freedom has been characterized by an important inter-subjective component, because it “takes place between people [and] exists in activity that calls something into being that did not exist before.”<sup>xxxiv</sup> This meant that

[The republican] freedom is the condition in which the individual in a community [...] may, if it is within her of his capacities, make a significant mark in the presence of others. [...] Freedom is constituted by politics. Freedom is not located in the region of the individual life unconstrained by political interference, as the liberals believe, nor is it realized in the act of collective liberation and achievement, as Marxists believe. Rather [it is] situated in the defense of and actions in an autonomous public realm, in which individuals can live and act in their plurality, according to their own principles, but essentially in interaction with others.<sup>xxxv</sup>

Arendt is believed to have resurrected the Aristotelian ideas about the close conceptual linkage between the sphere of politics, on the one hand, and the sphere of individual freedom on the other, which opposed the liberal credo of the *minimization of politics* and the *maximization of liberty*. Arendt’s idea had its roots in (i) the ancient Greek notion of politics as a *performing art* and (ii) in the definition of freedom as an *action* conducted on the basis of the principles of ethics. The conceptualization of freedom as an inter-subjective and ethically informed public behavior has coincided with her conviction that “men are free as long as they act [politically], neither before nor after.”<sup>xxxvi</sup> Through her depiction of the inseparability of freedom and politics, Arendt has endorsed the “intrinsic value of distinctive republican ideals,”<sup>xxxvii</sup> suggesting a means of analyzing the idea of participation rights as the opposition to domination.

On the basis of their characterization of participation rights, Ferry and Renaut have envisioned civic-republicanism as a “middle way” approach positioned in-between the liberal and socialist traditions.<sup>xxxviii</sup> Their contention has been that civic-republicanism is able to identify the “common field” of liberalism and socialism through its notion of “political community.” This concept designated a social group or a social

stratum engaged in democratic forms of communication and a shared sense of collectivity as regards the members' popular habits, systems of values and interests.<sup>xxxix</sup> It has built upon the idea of collective identities, social interdependencies and a certain degree of collective solidarity. The republican vision of political community is potentially recognizable and appreciated by the socialist viewpoint due to the latter's emphasis on societal bonds, commonalities and interdependencies. At the same time, however, civic-republicanism has distanced itself from the socialist thinking in that it embraced the qualifier *political*. This indicated that the civic-republican community was legally formalized and politically delimited, and hence different from a mere social collective. The political character of the civic-republican community has been regarded as a necessary prerequisite to act as rights guarantor. For the individual citizen, this has meant that "in order to have rights one must be part of a legal and political community both [...] to be able to show one's humanity through action and to be recognized as a legal person."<sup>xl</sup>

This contention has been articulated in the context of the civic-republican critique of the natural or "pre-political" concept of human rights. Arendt has argued that human rights were necessarily a social and political construction in that their practice *took place within a given society, was conditioned by its laws, and embodied in its political life.*<sup>xli</sup> In this sense, the egalitarian ideal, recognized as an intrinsic component of the contemporary human rights discourse, needs to be understood as a political project. This designation of the community as "political" signifies the possibility of a dialogue between the civic-republican and liberal perspectives. Both perspectives have been concerned with the conditions and dynamics of the political, viewed as a domain for state-societal interactions. However, the major difference in that aspect has been that the republican reading of state-society relations vastly exceeded the liberal concept of "representation."<sup>xlii</sup> The civic-republican community involved (i) expressions of solidarity, loyalty and attachment among the members of that community (rather than mere obedience to its laws) and (ii) engagement in the political life through the processes of continuous democratic dialogue, deliberation and public justification. In this context, Honohan has employed the conception of "internalized inclinations,"<sup>xliii</sup> which indicates people's predilections to act for the benefit of their community, rather than pursue their

private interests. In turn, liberalism has difficulty accepting the vision of a political organization of individuals bound together by solidarity and collective experience. It has also tended to undermine the role of a common history and tradition as a context that shapes people's political identity and the boundaries of rationality. Liberalism has been critical of the conception of political community, which emphasized "not that which differentiates individuals from each other and from the community, but rather what they share with other individuals, and what integrates them into the community."<sup>xliv</sup> Finally, an important difference between the liberal and republican understandings of the political community has been the *demarcation of its boundaries*: in the liberal view, the political has been closely related to the conception of (popular) control, whereas for civic-republicanism, it has been synonymous to "being of public relevance, concern or interest."<sup>xlv</sup> Importantly, the republican interpretation of the public-private paradigm has deviated from the liberal interpretation in that it did not translate directly into the state and non-state division.

It thereby becomes apparent that the republican discourse on rights has been concerned with a type of democracy substantially different from the liberal and socialist models. The claim is that in spite of their sharp differences, both individual liberalism and socialism have treated the issue of civic involvement within the political sphere as secondary to individual performances in the private and economic areas. To paraphrase Wallmer, they have "harbored a conception of the political according to which the final goal of politics was something *beyond* politics."<sup>xlvi</sup> In contrast, civic-republicanism has emphasized human rights as motivating and empowering for the capacity of citizens to make input into the political system. In other words, the key differentiating factor in these theoretical interpretations of rights has been their understanding of *what politics stands for*. For liberalism, rights have had an *extra-democratic* character in the sense that individual liberties assumed precedence over the issues of democratic self-government. Hence, the popular sovereignty and individual rights have been only incidentally related, because rights constrained – and remained in opposition to – democracy. In the socialist perspective, human rights have remained *outside of the political* in yet another sense: its claim has been that rights and democracy define norms that should not be restrained to public domain, but rather be directive for private (socio-economic) concerns. For civic-

republicanism, in contrast, *there was no place for rights outside of the political community*, as human rights were practiced and theorized upon within the public sphere. They were “not absolute, natural, pre-political [...] moral constraints on a subsequent moral order, [but] politically constructed and guaranteed [and] can evolve in the light of conditions for self-government, through deliberation.”<sup>xlvi</sup> The vision of politics advanced by civic-republicanism was based therefore on the “belief in the consensual possibilities of deliberative dialogue [and that] agreement can result in free and open interaction.”<sup>xlvi</sup>

### **THE REPUBLICAN FREEDOM: HUMAN RIGHTS AS A “LACK OF UN-FREEDOM”**

The remaining section of this paper focuses on the issues of inter-paradigmatic *conformability* and the *coexistence* of two theoretical-democratic “moments,” the liberal individual one and the republican one. The notion of “liberal republicanism” is conjured here as a possibility of rapprochement between republican freedom, which “depends on sharing in self-governance,” and the liberal “toleration and respect for individual rights.”<sup>xlix</sup> The conjecture of this paper is that the debates on the coherence and desirability of a liberal-republican “hybrid,” and in particular as regards the relation between the liberal and republican accounts of human rights, have necessarily centered on their differing understandings of public liberty.

In order to sketch a broader intellectual context of the debate on the liberal-republican compatibility, one needs to recognize the problematization of the “ancient condition” versus the “modern condition” by Benjamin Constant. Constant announced the modern invalidity of the neo-Athenian republican type of public freedom and critically reflected on liberalism as an “ideology” of the developing industrial societies that had detrimentally diminished the importance of participatory and collectivist values. It is important to remember in this context that the historical background for Constant’s reflections was the formation of the French republic and the subsequent royalist restoration, and the Constant “felt profoundly ambivalent as to the respective merits of each.”<sup>li</sup> For Constant, the concept of social freedom invoked by the ancient Greek republics meant “active participation in collective power rather than in the peaceful enjoyment of individual independence.”<sup>li</sup> In turn, the modern concept of liberal freedom connoted:

The right to be subjected only to the laws, and to be neither arrested, detained, put to death or maltreated in any way by the arbitrary will of one or more individuals. It is the rights of everyone to express their opinion, choose a profession and practice it, to dispose of property, and even to abuse it; to come and go without permission, and without having to account for their motives or undertakings. It is everyone's right to associate with other individuals, either to discuss their interests, or to profess the religion which they and their associates prefer, or even simply to occupy their days or hours in a way which is most compatible with their inclinations or whims.<sup>lii</sup>

Constant's distinction between ancient and modern freedom thereby corresponded to the demarcating line between the classical republican and modern liberal discourses on rights. The "ancient condition" connoted the political significance of individual members of a given democratic community, however, due to the political effects of industrialization and modernization (the development of representative political systems, governance of large centralized territories, etc.), it was no longer considered *accomplishable*.<sup>liii</sup> In turn, the "modern condition" entailed an extensive process of de-politicization in accordance with the conviction that *individual freedom began where politics ended*. For Constant

The progress of civilization, the commercial tendency of the age, the communication among peoples, have infinitely multiplied and varied the means of individual happiness. To be happy, men need only to be left in perfect independence in all that concerns their occupations, their undertakings, their sphere of activity, their fantasies.<sup>liv</sup>

The suggestion is that, in Constant's view, modernity *removed* the pursuit of individual well-being from the political into the private sphere. At the same time, the classical republican notion of liberty, with its value of self-government, was considered incongruous with the modern political environment, for it brought about a peril of despotism and the tyranny of the majority. In particular, Constant proposed that there ought to be adequate reconsideration of the "ancient" principle of popular sovereignty for the reason that its unmitigated

realization “[was] bound to constitute evil, in whatever hands it [was] placed. Entrust it to one man, to several, to all, you will still find that it is equally an evil.”<sup>lv</sup> Characteristically, the institutionalization of restraints on popular sovereignty in the form of inviolable individual rights was discussed in terms of the indispensable preventive instruments for the purposes of avoiding the dangers of the individually suppressive majority rule.<sup>lvi</sup>

The conjecture here is that, against the background of the intellectual climate in the post-revolutionary France, which presupposed the sharp opposition of the modern and ancient concepts of freedom, Constant argued for the incorporation of Neo-Athenian values within modern political environments, and hence for their *amalgamation* with liberal rights thinking. Critical of “the falsity, sufferings and moral impoverishment of the modern age,”<sup>lvii</sup> Constant postulated that some extent of the political liberty and the republican spirit of civic duty and public dedication were indeed indispensable for the reasons that:

Political liberty, by submitting to all citizens, without exception, the care and assessment of their most sacred interests, enlarges their spirit, ennobles their thoughts, and establishes among them a kind of intellectual equality which forms the glory and power of a people.<sup>lviii</sup>

This paper suggests that the republican-liberal debate has proceeded within two main trajectories. The first trajectory has been directed by the question of collective conditioning of the exercise of individual freedom. The second trajectory has centered on the question of the relation between the republican vision of social liberty as “non-domination” and the liberal understanding of liberty as “non-interference.” These two trajectories and the argumentation either for or against the republican-liberal compatibility is presented in the table below.

	<b>Republican – Liberal Compatibility</b>	<b>Republican – Liberal Incompatibility</b>
<b>Freedom and the Individual – Collective Levels</b>	Individual is free to act within the collective if he/she is undisturbed in norm-compliance ⇒ Location within the collective preconditions individual autonomy (Dagger)	Individual is free to act within the collective if he/she can pursue individualistic goals regardless of norms of this collective ⇒ Location within the collective (potentially) encumbers individual autonomy (Sandel)
<b>Unfreedom as Dependence and Interference</b>	Connection between the condition of dependence and intrusion (possibly hierarchical) ⇒ Public liberty as non-domination and non-interference (Skinner)	No connection between the condition of dependence and intrusion ⇒ Public liberty as non-domination (Pettit)

Table 1 Schematic presentation of the positions in the republican-liberal debate.

The first trajectory of the liberal-republican debate centers on the question whether it is possible to reconcile between the liberal respect for individual rights and the republican pursuit of collective good; as well as between the liberal maintenance of the moral and religious impartiality of the state and the republican endorsement of specific normative vision of society. For instance, Dagger advocated the construction of the republican-liberal “hybrid” as a combination of the republican principle of self-determination of a given political community and the principle of individual autonomy within that community.<sup>lix</sup> In other words, he envisioned a potential positive correlation (or at least lack of mutual incompatibility) between the external collective sovereignty and the individual autonomy of its members. In contrast, for Sandel such positive correlation could only be articulated at a high level of generality and abstraction.<sup>lx</sup> He argued that the conflict

between individual autonomy and the republican ethos of collective self-determination and civic duties was inevitable (as well as politically consequential) because of the inbuilt dynamic of the liberal polity to insist on individual self-sufficiency to the degree of individual separation. The implication is the unavoidable “corrosion” of civic-republican values.

This paper finds it interesting that both authors employed the concept of “individual autonomy” as central for their argumentations, but it also suggests that their understandings of autonomy differed substantially. While Sandel understood autonomy in individualistic terms as an act of political self-governance and self-determination, Dagger endorsed the Kantian notion of autonomy as a moral act performed in accordance with superior ethical norms. Dagger aimed hence to de-construct the allegedly antagonistic notions of individual autonomy and of the communal purpose and civic virtue through argumentation that the desire for individual autonomy, traditionally regarded as an exclusive liberal conception, had *de facto* remained at the heart of the republican notion of civic virtue. In this perspective, the civic-republican endorsement of the concept of personal autonomy was articulated out of “the fear of dependence” and in accordance with the conviction that “the virtuous citizen must be free, but not simply free to go his or her own way, [...] instead, the citizen is free when she or he participates in the government of his or her community.”<sup>lxi</sup> He thereby conceptualized the civic-republican personal autonomy as “three-aspectival,” meaning (i) being free from “bad desires,” (ii) being free from personal subordination to the external rule, and (iii) being capable of self-determination.<sup>lxii</sup> This argumentative logic was based on the assumption that the collective and individual aspects of autonomy remained closely interlinked and that the fact of individual actions being conditioned by his/her collective political location was not a restraint on his/her personal liberty, but, on the contrary, a guarantee of the possibility to practice one’s freedom. Accordingly, the connection between civic virtue and individual autonomy was that “both concepts help us to see how independence is related to dependence.”<sup>lxiii</sup>

As regards Sandel’s claim about the incompatibility of the liberal autonomy and the republican values, it is important to note that Sandel’s critical stance concerned specifically the *procedural version* of



liberalism, which he defined as an insistence on governmental impartiality in regard to the “competing conceptions of the good life”<sup>lxiv</sup> and the “priority of right over the good.”<sup>lxv</sup> His argument was that this liberal tenet “rests on the [flawed] conception of self that doesn’t enable us to make sense of certain moral and political obligations.”<sup>lxvi</sup> Sandel’s understanding of procedural liberalism was therefore grounded in a conception of individual autonomy as defined in terms of a lack of interference in his/her personal choices, which – in the context of the republican-liberal hybrid – was more problematic and more challenging than the Kantian notion of autonomy as an ethically conditioned individual choice.<sup>lxvii</sup> The reason was that the “individualistic sense of autonomy” related to the republican formative project as a constraint and limitation, and not its compatible and ancillary element. Sandel thereby denounced the liberal ambition to “define and defend rights without affirming any particular conception of the good life”<sup>lxviii</sup> and identified the conflict between liberalism and civic-republicanism as a tension between the “insistence on neutrality” and the understanding that politics “should aim to form or cultivate certain qualities of character – certain habits and dispositions – among its citizens, to equip them to share in self-government.”<sup>lxix</sup>

In addition to the debate on the compatibility of the liberal and republican conceptualizations of individual autonomy, the issue was whether, and on what conditions, the liberal “freedom as non-interference” and the civic-republican “freedom as non-dominance” could be regarded as mutually permissible options. For Pettit at the heart of the republican freedom was lack of “arbitrary interference.”<sup>lxx</sup> This implies that that the act of interference *per se*, for example in the form of “just laws,” did not automatically connote the state of unfreedom. The conclusion in this context is that normatively speaking making an unqualified and unconditioned connection between “non-domination” and “non-interference” would be an impossible task because one could imagine situations in which “non-domination” and “non-interference” (i) correlated positively; (ii) correlated negatively or (iii) seemed to enter into no correlation at all.<sup>lxxi</sup>

Accordingly, Pettit has “prioritize[d] domination [over interference] as the antonym of freedom” and emphasized the distinction between formal freedom as “an ideal of opportunity” and the

actually existing freedom as “an ideal of exercising that opportunity.”<sup>lxxii</sup> The rationale behind this differentiation was that while formal freedom was regarded as synonymous with non-domination, the actually existing freedom implied both personal non-domination and non-interference.<sup>lxxiii</sup> In order to understand the linkage between the non-domination and non-interference aspects of the republican concept of freedom, one must realize that Pettit defined the relation between formal and factual freedom as that of “conditionality.” In other words, from the republican perspective, freedom was synonymous with personal self-rule, which occurred in the circumstances of the lack of external domination and intervention. The conclusion was that the interconnectedness of these two aspects of liberty was contingent and historical, occurring at the level of practice rather than the level of normative-theoretical reflection. Pettit’s reservation was that the acts of domination and of intervention were erroneously considered to be equally detrimental and as “equally entitled to be treated as the antonym of freedom [because it was] domination [that had] effects that [made] it inimical to freedom.”<sup>lxxiv</sup>

Skinner’s contribution into the republican-liberal debate has been distinguished from Pettit’s as “historical” rather than “normative,” and as more accommodative of the idea of compatibility between the liberal “freedom as non-interference” and the civic-republican “freedom as non-dominance.”<sup>lxxv</sup> Skinner has advocated the combination of the republican liberty paradigm of non-dominance with the liberal paradigm of non-interference as attainable and, in certain political circumstances, desirable. In this context, Skinner drew a helpful distinction between two possible understandings of civic-republican “unfreedom”: dependency as a *constraint* in itself and dependency as a *cause of constraint*. This distinction renders it theoretically possible to link the republican un-freedom in a causal relation to the liberal un-freedom in situations where dependency on the external agency and the lack of self-determination make external interference and coercion possible. This, in turn, allows for a conclusion that the attainment of liberal freedom in particular political settings is contingent upon personal self-rule. However, an important qualification here is that the liberal and republican understandings of freedom exist in a hierarchical relationship, rather than are concurrent and of equivalent importance. This means that as a condition of the republican-liberal hybrid, the

liberal “non-interference” remains harmonious with the republican “non-domination” as its subordinate and its corollary.

## CONCLUSIONS

This paper has accomplished three tasks: (i) it has articulated the problematic accommodation of human rights within civic-republican theory as a “republican fear” that human rights have a potential *de-politicizing effect*; (ii) it has suggested that in spite of that “republican fear” the civic-republican perspective can be insightful for our understanding of the dynamics of the functioning and meaning-formation of human rights; and (iii) it has sketched out a normative-theoretical possibility of conceptualizing human rights along the lines of both the republican “non-domination” and the liberal “non-interference.”

With regard to the third task, it might be surprising for the reader that this paper has not actually suggested whether the combined liberal-republican understanding of human rights *is* or *is not* possible. This is because the view presented here is that if articulated along normative lines, the answerability of this question will always depend on a broader range of employed understandings and conceptual horizons. This is because conceptualizing human rights is contingent upon understandings of other “deeper” concepts, and upon different combination trajectories of these concepts. Therefore, what this paper hopes to have demonstrated is that the issue whether one could conceptualize human rights as concurrently liberal individual “permissions” and republican “participation” in coherent way requires a reflective approach to the contemporary political theory of freedom.

To say therefore that at the heart of the human rights conceptualization rests the question of freedom means in this context, first, to problematize human rights with respect to the individual/collective nexus as “relative.” This does not mean that the positioning of an individual within a given collective becomes a matter of the post-modern “anything goes” thinking, but rather it requires recognition that the tension we envision between an individual and a collective is embedded in the very *language of human rights*. Accordingly, the re-thinking of freedom as a dynamic of the individual/collective dichotomy means

overcoming the constraint of the binary imagination of the individual and collective relationship in terms of either “conflict” or “convergence.” One possibility is to take here inspiration from Taylor’s claim that “the disengaged identity is far from being simply wrong and misguided [...]. The kind of critique we need is one that can free it of its illusory pretensions to define the totality of our lives as agents, without attempting the futile and ultimately self-destructive task of rejecting it altogether.”<sup>lxxvi</sup>

Second, to link human rights closely with the question of (republican-liberal) freedom(s) is to capture the meaning of rights as a (proscriptive) “lack” or “nonevent.” This is because “corollary for the passion for liberty [lies] an almost pathological fear of domination and dependence,”<sup>lxxvii</sup> and – in the liberal discourse – of interference. This also coincides with the view that human rights are most powerful when they function as critical instruments, thereby *providing the language* to name and denounce injustice and violence (i.e. “lack of justice” and “lack of respect” for a human person), and *instigating social change*. What the liberal-republican debate helps us to understand about human rights as centered on the question of (un-)freedom is that human rights – just like the political concept of freedom – constitute a performative act, which is never complete, never fully achieved, but in the constant need for re-affirmation.

---

<sup>i</sup> For exceptions of academic research dealing with human rights from civic-republican perspective see e.g. James Bohmann, “Republican Cosmopolitanism,” *The Journal of Political Philosophy* 12.3 (2004): 336-352.

<sup>ii</sup> Philip Pettit, *Republicanism: A Theory of Freedom and Government* (Oxford: Oxford University Press, 1999), 7-11.

<sup>iii</sup> Per Mouritzen, “Four Models of Republican Liberty and Self-government,” in *Republicanism in Theory and Practice*, ed. Iseult Honohan and Jeremy Jennings (London: Routledge, 2005).

<sup>iv</sup> Luc Ferry and Alain Renaut, *From the Rights of Man to the Republican Idea* (Chicago: the University of Chicago Press, 1992).

<sup>v</sup> See e.g. Magdalena Zolkos, “Forskjellige visioner og idéer om menneskerettigheder i demokratisk tænkning: Ferry and Renauts republikanske alternativ,” *Slagmark* 39 (2004): 145-155.

<sup>vi</sup> Luiz Carlos Bresser-Pereira, “Citizenship and *Res Publica*: The Emergence of Republican Rights,” *Citizenship Studies* 6.2 (2002): 149.

- 
- <sup>vii</sup> Daniel Weinstock, "Introduction," in *Republicanism: History, Theory and Practice*, ed. Daniel Weinstock and Christian Nadeau (London: Frank Cass Publishers, 2004). 1.
- <sup>viii</sup> Ian Shapiro, *Democratic Justice* (New Haven: Yale University Press, 1999), 6.
- <sup>ix</sup> Seyla Benhabib, "Arendt's *Eichmann in Jerusalem*," in *The Cambridge Companion to Hannah Arendt*, ed. D. Villa (Cambridge: Cambridge University Press, 2000). 31-32.
- <sup>x</sup> Hannah Arendt, *The Origins of Totalitarianism* (London: Allen & Unwin, 1967), 293.
- <sup>xi</sup> Christian Rostbøll, *Human Rights, Popular Sovereignty and Freedom* (Copenhagen: Copenhagen Political Studies Press, 1998), 14-22.
- <sup>xii</sup> Arendt, *Origins*, 301.
- <sup>xiii</sup> Richard Bellamy, *Rethinking Liberalism* (London: Pinter, 2000), 155.
- <sup>xiv</sup> Matti Koskeniemi, "The Effect of Rights on Political Culture," in *The EU and Human Rights*, ed. Philip Alston (Oxford: Oxford University Press, 1999). 115.
- <sup>xv</sup> Giorgio Agamben, *Homo Sacer. Sovereign Power and Bare Life* (Stanford: University of Stanford Press, 1998), 128.
- <sup>xvi</sup> Koskeniemi, "Effect," 115.
- <sup>xvii</sup> Ferry and Renaut, *From the Rights*, 16.
- <sup>xviii</sup> Matthew Festenstein, "Contemporary Liberalism," in *New Political Thought: An Introduction* ed. Adam Lent (London: Lawrence & Wishart, 1998). 14.
- <sup>xix</sup> Richard P. Claude, *Comparative Human Rights* (Baltimore: John Hopkins University Press, 1976). 42.
- <sup>xx</sup> Ferry and Renaut, *From the Rights*, 17.
- <sup>xxi</sup> Ferry and Renaut, *From the Rights*, 17.
- <sup>xxii</sup> Ferry and Renaut, *From the Rights*, 18 (*emphasis in original*).
- <sup>xxiii</sup> Iseult Honohan, *Civic Republicanism* (London: Routledge, 2002), 180.
- <sup>xxiv</sup> Györgi Márkus, "On Freedom: Positive and Negative," *Constellation* 6.3 (1999): 281.
- <sup>xxv</sup> Márkus, "On Freedom," 281.
- <sup>xxvi</sup> Quentin Skinner, *Liberty Before Liberalism* (Cambridge: Cambridge University Press, 1998), 61.
- <sup>xxvii</sup> Pettit, *Republicanism*, 5.
- <sup>xxviii</sup> Larmore C., "Liberal and Republican Conceptions of Freedom," in *Republicanism: History, Theory and Practice* ed. Daniel Weinstock and Christian Nadeau (London: Frank Cass Publishers, 2004). 100.
- <sup>xxix</sup> Márkus, "On Freedom," 282.
- <sup>xxx</sup> Pettit, *Republicanism*, 117-119.

- 
- <sup>xxx</sup>i Honohan, *Civic*, 209.
- <sup>xxx</sup>ii Michael J. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge, MA: the Belknap Press of Harvard University Press, 1996), 68.
- <sup>xxx</sup>iii Margaret Canovan, "Hannah Arendt: Republicanism and Democracy," in *Liberal Democracy and Its Critics* ed. April Carter and Geoffrey Stokes (Cambridge: Polity Press, 1998), 39.
- <sup>xxx</sup>iv Jeffrey C. Goldfarb, *Beyond Glasnost. The Post-totalitarian Mind* (Chicago: University of Chicago Press, 1989), 129.
- <sup>xxx</sup>v Goldfarb, *Beyond Glasnost*, 129.
- <sup>xxx</sup>vi Hannah Arendt, "Freedom and Politics," in *Liberty* ed. D. Miller (Oxford: Oxford University Press, 1991). 64.
- <sup>xxx</sup>vii John Maynor, "Another Instrumental Republican Approach?" *European Journal of Political Theory* 1.1 (2002): 86.
- <sup>xxx</sup>viii Ferry and Renaut, *From the Rights*, 110-111.
- <sup>xxx</sup>ix John Maynor, *Republicanism in the Modern World* (Cambridge: Polity Press, 2003), 10.
- <sup>x</sup>l Rostbøll, *Human Rights*, 17.
- <sup>x</sup>li Arendt, *Origins*, 234.
- <sup>x</sup>lii Maynor, *Republicanism*, 33.
- <sup>x</sup>liii Honohan, *Civic*, 159.
- <sup>x</sup>liv A. Oldfield, *Citizenship and Community: Civic Republicanism and the Modern World* (London: Routledge, 1990), 145.
- <sup>x</sup>lv Honohan, *Civic*, 159.
- <sup>x</sup>lvi A. Wallmer, "Arendt on Revolution," in *The Cambridge Companion to Hannah Arendt* ed. D. Villa (Cambridge: Cambridge University Press, 2000). 220 (*emphasis in original*).
- <sup>x</sup>lvii Honohan, *Civic*, 207 and 210.
- <sup>x</sup>lviii C.V. Ward, "The Limits of 'Liberal Republicanism': Why Group-Based Remedies and Republican Citizenship Don't Mix," *Columbia Law Review* 91.3 (1991): 584-585.
- <sup>x</sup>lix Sandel, *Democracy's Discontent*, 4.
- <sup>1</sup> Biancamaria Fontana, "Introduction," in *Benjamin Constant. Political Writings* ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988). 19.
- <sup>li</sup> Benjamin Constant, "The Spirit of Conquest and Usurpation and their Relation to European Civilization," in *Benjamin Constant. Political Writings* ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988). 102.
- <sup>lii</sup> Benjamin Constant, "The Liberty of the Ancients Compared with that of the Moderns," in *Benjamin Constant. Political Writings* ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988). 310-311.
- <sup>liii</sup> Constant, "The Spirit," 103-104.

- 
- <sup>liv</sup> Constant, "The Spirit," 104.
- <sup>lv</sup> Benjamin Constant, "Principles of Politics Applicable to All Representative Governments," in *Benjamin Constant. Political Writings* ed. Biancamaria Fontana (Cambridge: Cambridge University Press, 1988). 176.
- <sup>lvi</sup> Constant, "Principles," 183.
- <sup>lvii</sup> Fontana, "Introduction," 19.
- <sup>lviii</sup> Constant, "The Liberty," 327.
- <sup>lix</sup> Richard Dagger, "Ideological Communities and Conceptual Contests: the Case of Rights," *Journal of Political Ideologies* 4.3 (1999): 397-403.
- <sup>lx</sup> Michael J. Sandel, "Liberalism and Republicanism: Friends or Foes? A Reply to Richard Dagger," *Review of Politics* 61.2 (1999): 209-215.
- <sup>lxi</sup> Dagger, "Ideological," 191.
- <sup>lxii</sup> Dagger, "Ideological," 192.
- <sup>lxiii</sup> Dagger, "Ideological," 192.
- <sup>lxiv</sup> Sandel, *Democracy's Discontent*, 66.
- <sup>lxv</sup> Sandel, "Liberalism," 209.
- <sup>lxvi</sup> Sandel, *Democracy's Discontent*, 66.
- <sup>lxvii</sup> Sandel, "Liberalism," 211.
- <sup>lxviii</sup> Sandel, "Liberalism," 212.
- <sup>lxix</sup> Sandel, *Democracy's Discontent*, 97.
- <sup>lxx</sup> Pettit, *Republicanism*, 22.
- <sup>lxxi</sup> Larmore, "Liberal," 99.
- <sup>lxxii</sup> Philip Pettit, "Keeping Republican Freedom Simple. On a Difference with Quentin Skinner," *Political Theory* 30.3 (2002): 342.
- <sup>lxxiii</sup> Pettit, "Keeping," 343.
- <sup>lxxiv</sup> Pettit, "Keeping," 352.
- <sup>lxxv</sup> Larmore, "Liberal," 105.
- <sup>lxxvi</sup> Charles Taylor, *Philosophical Papers I: Philosophy and the Human Sciences* (Cambridge: Cambridge University Press, 1985), 7.
- <sup>lxxvii</sup> Joel Isaac, "Republicanism: A European Inheritance," *European Journal of Social Theory* 8.1 (2005): 79.