

1923

# Is There a Republican Form of Government

William Whatley Pierson Jr.

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>Part of the [Law Commons](#)

## Recommended Citation

William W. Pierson Jr., *Is There a Republican Form of Government*, 2 N.C. L. REV. 14 (1923).Available at: <http://scholarship.law.unc.edu/nclr/vol2/iss1/3>

This Article is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized administrator of Carolina Law Scholarship Repository. For more information, please contact [law\\_repository@unc.edu](mailto:law_repository@unc.edu).

IS THERE A REPUBLICAN FORM OF GOVERNMENT?<sup>1</sup>

WILLIAM WHATLEY PIERSON, JR.

PROFESSOR OF HISTORY AND GOVERNMENT, UNIVERSITY OF NORTH CAROLINA

IT IS DIFFICULT to understand with any degree of exactness the terminology of political science; and, moreover, it is seemingly impossible to secure anything like general agreement among publicists as to the meaning of certain important and indispensable words which appear in their works,—as for instance, the terms “state,” “commonwealth,” “sovereignty,” “nation,” etc.<sup>2</sup> Sometimes different words are employed to express the same meaning, and sometimes the same word is used to express very different meanings. The significance of ideas is often lost in controversies about the meaning of words chosen to present them; the great debate is thereby reduced to disputation about the meaning of the query. Much energy is devoted to defining words, not only, but much space to explaining the definitions. Political theory is certainly characterized by many fine distinctions, often thought by the laymen to partake of scholasticism, by a complexity and even subtlety of reasoning which are conducive to disputatious diversity of opinion, and by a vagueness of meaning which is resultant in intellectual confusion. These ambiguities of expression and the other developments mentioned are not to be ascribed, perhaps, to the popularly assumed remoteness of political philosophy from practical, every-day life, but, I think, to its essential humanness, to the fact that its influential and enduring principles spring from what has been called the *geistige innigkeit* of the people.<sup>3</sup> However this may be as to terminology, the essays and other writings on what may be called the theoretical aspects of political science are marked by great differences of opinion, as is demonstrated by the multiplicity of viewpoints respecting the origin of the state, sovereignty, the nature of law, and the proper aims of the state and the powers of its government. Thus in addition to the obstacles to clear and exact thinking raised by vagueness in language, there is a lack of finality to the theories on these basic problems of political science. However much these topics are discussed, backwards or forwards, they are none the less perennially fresh, which is due presumably to the fact that they are from time to time emerging in new connections, thereby producing necessarily and legitimately new contexts. With the origin and nature of the state explained by some one of the numerous theological, contract, sociological, materialistic, philosophical—whether pluralistic or monistic, positivist or metaphysical—or idealistic theories, one may turn to the consideration of the forms of government under which the people of the state live—that is to turn from ontology to morphology—with a relief born of

<sup>1</sup> This article might be more properly designated “Some reflections on the Classification of Governments.” It was written as the introduction to a forthcoming work to be called “A History of the Guarantee Clause of the Federal Constitution.”

<sup>2</sup> Zimmern, A. E., *Nationality and Government*, pp. 33-34; Cf. Lewis, Sir George Cornwall, *Use and Abuse of Political Terms*.

<sup>3</sup> Coker, F. W., *Organismic Theories of the State*.

the thought that such a subject falls solely within the realm of practical politics.<sup>4</sup> This realm is likely to have some fixed and intellectually tangible standards by the employment of which as guides one may on occasion arrive at a decisive judgment respecting a question as to form. The relief just alluded to is short-lived, however; for, within this so-called practical realm, also, the great masters of political philosophy from the times of Plato and Aristotle to the present have submitted classifications of governments which were either unacceptable to their contemporaries and successors or which underwent modification or criticism by them.

It might be observed in passing that *forms* of government have always been of great significance and intense interest in practical politics. They have been the occasion of wars and revolutions, of bitter controversy among politicians and statesmen, and of polemical discussion among philosophers and publicists. Some, like Mr. Exline, have protested that undue importance has been attached to mere form. He has remarked, that,

"The science of Politics never has entirely rid itself of the idealism of the ancient Greeks, who were masters of philosophical speculation, but novices in scientific investigation. Our modern politicians follow Aristotle, not only in his classification of the several elementary forms of government (which is scientific), but in the error of attaching undue importance to the mere forms of government, and ignoring the more fundamental distinction between the right and the wrong kinds of government,—namely: (1) government by autocratic and arbitrary will, and (2) government by enlightened and scientific reason. Thus, while man always has desired good government, science has failed to recognize and define the principles which distinguish good from bad government, and to apprehend the radical difference between the dictations of will and the conclusions of reason, as the determining factors in the conduct of government."<sup>5</sup>

Whatever the justification of these contentions, there is no discounting the fact that forms of government have been of paramount concern to men throughout history. Whether a form of government is a symbol to the popular mind of the residence of authority, or whether a particular form has taken on a special sanctity or has come to represent the most precious interests of a community, it cannot be denied that historically considered the form of government a people possesses generally has been of first rate constitutional importance. The names even of forms of governments have come to be of the utmost significance in political history. We consider here the fact on which the contention rests, not the merit of the fact.

A canvass, briefly made, of some of the classifications of forms of government would, I think, be of some service in getting the problem stated with which this paper is concerned—although to re-examine this problem of classification will be to thresh dry straw. When men have written of forms, they have not

<sup>4</sup> For analysis of the theories on the origin of the State, see Bluntschli, J. G., *The Theory of the State*, Bk. IV, chs. 6-9; Burgess, J. W., *Political Science and Constitutional Law*, Vol. I Bk. II Ch. 11; Jenks, E., *History of Politics*, Chs. 2-3; Garner, J. W., *Introduction to Political Science*, Ch. IV; Ford, H. J., *The Natural History of the State*; Willoughby, W. W., *The Nature of the State*, Chs. 3-4; Woolsey, T. D., *Political Science or the State*. Vol. 1, Sec. 62.

<sup>5</sup> Exline, Frank, *Politics, An Original Investigation into the Essential Elements and Inherent Defects Common to all Present Forms of Government*, p. 5.

always meant forms of government,—they have sometimes meant forms of the state—for the distinction between state and government was made relatively late in political science. The earlier writers often confused the two.<sup>6</sup> This distinction is not easy to draw; and having been drawn, it is not always easy, nor perhaps always possible, to maintain it. Classifications, also, have had in mind many different features of government as for instance—(1) the ratio of the number of the governors to the governed; (2) the organization of governmental powers; (3) the relation of these powers to one another; (4) the territorial distribution of powers; (5) the purpose of government; (6) the relation of government to liberty; (7) the degree of the diffusion of political consciousness; (8) the selection of some one prominent organ, such as the executive, for analysis; (9) the residence of sovereignty, etc. Aristotle, as is well known, divided government into three classes using the number of persons possessing political power as a basis. "The form of government is the ordering and regulating of the city, and all the offices in it, particularly those wherein the supreme power is lodged . . ."<sup>7</sup> He repeatedly stated that this power must in every state reside in the hands of one individual, in that of a few, or in that of the many.<sup>8</sup> There would be, according to this analysis, the governments called monarchies, aristocracies, and democracies ( *πολεῖα* ), or, as the last may mean, if we accept President Woolsey's opinion, republics.<sup>9</sup> This famous trinitarian classification has influenced most writers, who have made it a basis for their own divisions, or employed it as a point of departure. Polybius, Cicero, Bodin, Hobbes, Rousseau, Blackstone, Bentham, and others have followed it, though some of them suggested certain qualifying reservations and modifications.<sup>10</sup> A frequently recurring addition to the Aristotelian formula, occasioned by the adoption by particular states of governmental features which seemingly would be more appropriate to some one of the other forms, has been the "mixed" form of government. Aristotle himself would seem to have anticipated this additional form, though he might have called this hybrid by other names.<sup>11</sup> In the observation and ready recognition of this phenomenon of the incorporation in one form of features belonging in logic more properly to some other, theory has set no limit to the mixture nor determined the proportions.

The terms employed by Aristotle were not at the time absolute, but to him

<sup>6</sup> Burgess, *Political Science and Constitutional Law*, Vol. I, pp. 68-82. For a criticism of the views of Professor Burgess, see Willoughby, *Nature of the State*, p. 206.

<sup>7</sup> Aristotle, *Politics*, Bk. III, Ch. VI.

<sup>8</sup> *Ibid.*, Bk. VI, Ch. VII. For comment on this doctrine, see Von Mohl, R., *Encyklopädie der Staatswissenschaften*; Bluntschli, op. cit. 329 et seq.; Burgess, op. cit., Vol. I, ch. 3-4, Vol. II, Bk. III, Ch. I; Schleiermacher, F., *Ueber die Begriffe der verschiedenen Staatsformen*. For detailed analysis of Aristotle's idea, see Dunning, W. A., *Political Theories Ancient and Medieval*, pp. 71-78; Willoughby, W. W., *The Political Theories of the Ancient World*, pp. 168-175. Aristotle appears to have been anticipated in this classification by Pindar, Herodotus, Socrates, and perhaps by others.

<sup>9</sup> Woolsey, *Political Science*, Vol. I, p. 467.

<sup>10</sup> Polybius in the *History of Rome* (sixth book); Cicero in *De Republica*, (Bk. II); Hobbes in the *Leviathan*, (Ch. XIX); Rousseau in *The Social Contract* (Tozer trans.); Bentham in *A Fragment on Government*, (Ch. II). For examination of the ideas of these theorists consult Dunning, Jenks, and Pollock (*History of Politics*).

<sup>11</sup> Aristotle held that all governments which "have the common good in view" to have been rightly established and strictly just. Governments having in view the good of the rulers were operating on wrong principles. "A kingdom may degenerate into a tyranny, an aristocracy into an oligarchy, and a polity into a democracy." Bk. II, ch. 9.

apparently relative.<sup>12</sup> They are apparently even more relative now. The Aristotelian idea—the government controlled by one is a monarchy; that by the many is a democracy or a republic—if applied to modern governments, is scarcely as applicable to the case of Great Britain as it is to that of the United States, for the many possess political power in the former as in the latter despite the formal difference in type of government. Some peoples, like the Ancient Greeks and the British, in effecting their political reforms, have clung to old forms and institutions while depriving them in whole or in part of their former content of power. They erect in or around ancient frameworks of government new edifices, preserving at the same time the old as a stately memorial of their past and as a symbol of the continuity of their history and legal development. They live in most part, however, in the new. Despite these metaphorical changes in residence, there may be such ties and connections between new and old of a religious, social, economic, political, and cultural nature as to enshrine the old in the imagination and patriotism of the people. In some cases, as in that of the British monarchy, the old may serve the purposes of government in an indispensable way. Whether or not this is strictly true, this factor in the evolution of government has rendered, and doubtless will continue to render, the task of classification difficult.

From these and other cases, similar to them in that the oldtime classification appears inapplicable, there arises the question: are there mixed forms? Can a monarchy have republican features or a republic monarchical ones? Aristotle recognized that a perverted form might and sometimes did take the place of the normal and true forms. He also recognized certain modifications or varieties in normal forms,—asserting, in this connection, that there were five forms of monarchy, four of aristocracy, and six of democracy.<sup>13</sup> Polybius urged an eclectic process whereby through the selection of the best governmental features of all there would be the best in one.<sup>14</sup> Bluntschli enumerated six chief kinds of monarchy, five of aristocracy, and two of democracy.<sup>15</sup> On this question, too, as is well known, there has been difference of opinion. Tacitus wrote of a government in which were compounded democratic, aristocratic, and monarchical elements; so, also, did Leibnitz.<sup>16</sup> Rousseau concluded that all governments are, or tend to become mixed.<sup>17</sup> Schleiermacher, in his *Ueber die Begriffe der verschiedenen Staatsformen*, held that the three Aristotelian divisions, monarchy aristocracy and democracy “are always running into each other.”<sup>18</sup> Among the pre-revolutionary philosophers of France in the eighteenth century, there were many who wrote about a much-desired “republican monarchy,” to use the phrase of the celebrated Abbé Mably.<sup>19</sup> In his *Principles of Legislation*, where one

<sup>12</sup> Willoughby, *Nature of the State*, pp. 361-362, 372. Cf. Bluntschli, 330-331.

<sup>13</sup> Aristotle, *op. cit.*, Bk. III, Ch. XIV. The number of monarchies was (in Ch. XV) reduced to two. Cf. Bk. IV, ch. III.

<sup>14</sup> Woolsey, *op. cit.* 471, quotes Polybius, “For it is plain that the policy which is composed of all these different ones must be considered the best.” Opinion of Cicero, cf. *De Republica*, I, ch. XXXV.

<sup>15</sup> Bluntschli, J. K., *Allgemeine Staatslehre*. Translated by Ritchie, Matheson, and Odger under title of *The Theory of the State*. Third edition here used. Pp. 356-358; 439-457.

<sup>16</sup> Tacitus, *Annals*, IV, 33.

<sup>17</sup> Rousseau, *The Social Contract*, Ch. VII.

<sup>18</sup> Quoted by Bluntschli, *op. cit.* p. 331.

<sup>19</sup> Cf. Aulard, A., *French Revolution, A Political History, 1789-1804*. (Trans. by Bernard Miall), Vol. 1, p. 92.

may find a passionate sentiment for equality and a confident faith in popular sovereignty, he presents a mixed form of government with separation of legislative and executive, the latter being subordinate to the former, a government nominally monarchical, actually republican. D'Argenson's posthumous, *Considérations sur le Gouvernement*, urges the incorporation, the infusion, of republican institutions into the monarchy, his idea being to fortify the monarchy by such "good features of republics."<sup>20</sup> Woolsey, though he criticized the term "mixed" and would have substituted that of "limited," states that "there may be as many mixed governments as there are simple;" but Bluntschli, while admitting the existence in more governments of several features belonging more properly to other forms, held: "Such a mixture as this does not create a new form of State, for the supreme governing power is still concentrated in the hands of the monarch, or of the aristocracy, or of the people."<sup>21</sup> Hobbes and Lewis thought a union or mixture of two or more forms impossible in fact and should be excluded from theory.<sup>22</sup> "To call this [the "mixed" form] a classification of governments," wrote Lewis, "is not less an abuse of language than to call the offence of one man a conspiracy; it is, in effect, a denial of all classification, an abolition of all distinction between different classes of governments, which are thus joined together in one undistinguished heap."<sup>23</sup>

Bentham, adhering strictly to a classification based on numbers in his criticism of the views of Blackstone and recognizing on such a basis the forms of monarchy, aristocracy, and democracy, repudiated the mixed or "corrupted" form. "Other species of governments, we are given to understand, there are besides these," he said, "but even those others, if not 'reducible to,' are but 'corruptions of these.' Now what there is in any of these to be corrupted, is not so easy to understand. The essence of these several forms of government, we must always remember, is placed by him, [i.e. Blackstone] solely and entirely, in the article of number; in the ratio of the number of governors . . . as to that of the governed. If the number of the former be, to that of the latter, as one to all, then is the form of government a Monarchy; if as all to all, then is it a Democracy; if as some number between one and all, then is it an Aristocracy. Now then, if we can conceive a fourth number, which, not being more than all, is neither one nor all, nor anything between one and all, we can conceive a form of government, which, upon due proof, may appear to be a corruption of some one or other of these three."<sup>24</sup> Bluntschli, as Professor Willoughby in *The Nature of the State*, has pointed out, based his conclusion on the concept of an indivisible sovereignty, thus directing his argument on this point, "rather to the nature of the State than to the character of the government."<sup>25</sup>

<sup>20</sup> Aulard, *op. cit.*, p. 97. d'Argenson is quoted further as having written "One will find that all things that make the good of a republic will augment the authority of the monarch, instead of attacking it in any wise." He attempted to show how this interesting result might be attained.

<sup>21</sup> Woolsey, *op. cit.*, Vol. I, p. 477; Bluntschli, *op. cit.*, p. 332.

<sup>22</sup> Hobbes, *Leviathan*, ch. XIX; Dunning, *Political Theories, From Luther to Montesquieu*, p. 290.

<sup>23</sup> Lewis, *op. cit.*, p. 87; quoted by Willoughby, *Nature of the State*, pp. 368-369.

<sup>24</sup> Bentham, *A Fragment on Government*, Ch. II, quoted, Willoughby, *op. cit.*, p. 361 n.

<sup>25</sup> Willoughby, *Nature of the State*, 371.

Since our inquiry is to be directed to the ascertainment, if such is possible, of the meaning of the republican form of government in the history of the United States, it is of considerable importance to realize that the problem may or may not be concerned with a republican form of government into which monarchical or aristocratic features have been merged, and thus rendered more complex.

Montesquieu classified governments as republican, monarchical, and despotic. He recognized two forms of republic, the aristocratic and democratic. This division, as Professor Dunning has pointed out, by subdividing republics, has left the Aristotelian classification substantially intact.<sup>26</sup> Monarchies and despotic governments would seem to belong to one class, thus leaving republics and monarchies—the governments of one or of several—which is the conclusion of Lewis' penetrating study.<sup>27</sup> It is not clear that Montesquieu intended his classification to be thus simplified. If the subdivision of republics means anything and if monarchies and despotisms are really the same form of government, Montesquieu made no advance in formal classification over Aristotle. In the case of Lewis, however, subdivision of republics was not vital, all types being essentially of the same form. Here we have decisive simplification. Montesquieu thought governments different not only in structure but in principle,—that is, in the prevailing human passions which make them act. These principles of "virtue," "moderation," "honor," "fear,"—which were associated respectively with democracy, aristocracy, monarchy, and despotism were not claimed to be exclusively possessed by any form, but they were supposed by him to be relatively more influential in the forms to which they were appropriate.<sup>28</sup> Governments become "corrupted" by the weakening in the "principles," and the form is likely to undergo transformation as the principle loses influence or is altered by adoption of different ideas. These transformations follow no laws and are to be studied from history. This process of "corruption"—in which moral deterioration is not necessarily a factor—it may mean progress—brings us to a net result not very different from what other thinkers have called a "mixed" government.

Ludwig von Haller, in his great work, *Restoration of Political Science*, after generally anathematizing the compact theory, asserts that there are two forms of government,—monarchies (*Fürstenthum*) and republics.<sup>29</sup> No other forms are possible, and each is the product of circumstances. He did, to be sure, distinguish three species of monarchy: the patrimonial, the military, and the spiritual. It is difficult, in view of his definition of a republic, to escape the conviction that there would also be different forms of republic.

Schleiermacher, developing Hegelian thought, based governmental forms upon the degree of diffusion of political consciousness. His forms were, however, the conventional ones of monarchy, aristocracy and democracy. Whether

<sup>26</sup> Cf. Dunning, *Political Theories From Luther to Montesquieu*, pp. 399-409.

<sup>27</sup> Lewis, *op. cit.*, p. 72. cf. Willoughby, *Nature of the State*, p. 369.

<sup>28</sup> Dunning, *op. cit.*, p. 400 n.

<sup>29</sup> Dunning, *Political Theories From Rousseau to Spencer*, p. 199.

or not true as an explanation of the basis of governmental forms, this psychological analysis marked no advance in classification.<sup>30</sup> Neither did that of the greater political scientist, Bluntschli. He accepted the Aristotelian trinity and added a fourth form which he called "idolocracy," in which form the people "regard their ruler as a superhuman being, who is raised above them by nature: God himself is regarded as the true governor of the State."<sup>31</sup> Neither this addition nor the perverted form of "idolocracy" has appeared as having scientific validity. Professor Burgess very properly relegates it to the realm of "political mysticism."

Gareis attempted a different approach by classifying governments according to the character of the executive. The result was a fourfold division of governments in which the executive is (1) a non-responsible single person, in which it is a (2) responsible single person, in which it is a (3) non-responsible plural body, and in which it is a (4) responsible plural body.<sup>32</sup> Application of these rules of classification would lead one to such absurdities that the writer regards them as of no great worth. This principle of classification—that of analyzing the executive organ—is also, it seems to the writer, without justification.

Professor John W. Burgess made a notable effort to arrive at a scientific basis of classifying governments. He submitted four principles or canons of distinction: first, the identity or non-identity of the state with its government; second, the concentration or distribution of governmental powers; third, the nature of the official tenure; fourth, the relation of the legislature to the executive. On these bases of study and comparison, it has been suggested that there would be immediate or representative, hereditary or elective, cabinet or presidential, unitary or federal governments.<sup>33</sup> Of the greatest value of the study of governments, this set of principles in application shows that a single classification is not likely to be satisfactory. As Professor Garner puts it, "there must be as many classifications as there are points of view from which the government may be considered."<sup>34</sup> Aristotle said, "There must . . . necessarily be as many different forms of governments as there are different ranks in the society, arising from the superiority of some over others, and their different situations."<sup>35</sup> This set of rules and principles of classifications has been criticized as suggesting a way of analyzing governmental forms—thus being an invaluable aid to the study of comparative government—rather than a classification of governments. Applying these rules to a group of existing governments one would obtain an intricate variety of classifications and cross-classifica-

<sup>30</sup> Schleiermacher, *Ueber die Begriffe der Verschiedenen Staatsformen* in the *Abhandlungen der Berliner Academie*. Cf. Bluntschli, pp. 335-336.

<sup>31</sup> Bluntschli, *op. cit.*, p. 338. See also his *Lehre von Modernen Staat*. Cf. Burgess, I, 75.

<sup>32</sup> Gareis, *Allgemeines Staatsrecht*, 37 et seq. analyzed and quoted in Willoughby, *Nature of the State*, pp. 374-375.

<sup>33</sup> Burgess, *Political Science and Constitutional Law*, II, pp. 1-16. For an application of these principles and tests to the governments of the United States, England, France, and Germany, see pp. 17-40.

<sup>34</sup> Garner, *Introduction to Political Science*, 179.

<sup>35</sup> Aristotle, *Politics*, Bk. IV, ch. III.



tions. The result would closely approximate reality, however, for they would lead to the fundamental features of the governmental system. None the less, no two of the governments compared might fall into the same classification.

Professor W. W. Willoughby doubts the usefulness of the terms monarchy, aristocracy, and democracy as descriptive of forms of government. An illuminating passage, with the ideas of which this paper is in general in agreement, follows:

"The final conclusion that we must draw from the above somewhat long commentary is, that the only valuable use to which these three terms, which we have been considering, may be put, is as descriptive, not so much of the forms of governments, as to the diffusion of political consciousness and influence therein. That is to say, the adjectives, monarchic, aristocratic, and democratic are to be employed as distinguishing certain characteristics of State life; and, as such, may all three coexist in the same political organization. According to this, a given government may be designated in a certain, though not very definite, sense as either democratic, aristocratic, or monarchic, according to which one of these elements is respectively of predominant influence; just as a person is termed good or bad, selfish or benevolent, and the like, without meaning thereby that such person is wholly good or selfish, or the reverse."<sup>36</sup>

Popular and even academic usage has familiarized us with a bewildering number of other terms descriptive of government. Among others there are "radical," "liberal," "conservative," "absolute," "constitutional," "representative," "autocratic," "federal," "unitary," "cabinet," "parliamentary," "responsible," "ministerial," "presidential," "congressional," "paternal," "bureaucratic," "popular," and "imperial." Few, if any, of these terms can be said to describe a type or form of government, but rather that they refer to certain characteristics or features, prominent or otherwise, of government. James Bryce cut through this complicated problem by contending that: "The time-hallowed classification of forms of governments divides them into Monarchies, Oligarchies, and Democracies. In reality there is only one form of government. That form is the Rule of the Few. The monarch is always obliged to rule by the counsel and through the agency of others, and only a small part of what is done in his name emanates from his mind and will. The multitude has neither the knowledge nor the time nor the unflagging interest that are needed to enable it to rule. Its opinions are formed, its passions are roused, its acts are guided by a few persons—few compared with the total of the voters—and nothing would surprise it more than to learn by how few."<sup>37</sup>

But there are these terms of Monarchy, Aristocracy, Democracy and Republic, as well as the others mentioned above. Despite destructive and scientific criticism, we have them with us as a part of the common consciousness of mankind. Though they may have no strict meaning,—some of them may have no

<sup>36</sup> Willoughby, *Nature of the State*, pp. 366-367.

<sup>37</sup> Bryce, James, *American Political Science Review*, Vol. III. p. 18. Quoted by Haines and Haines, *Principles and Problems of Government*, p. 89 and by Holcombe, A. N., *The Foundations of the Modern Commonwealth*, p. 7.

rightful place in political science—they have historical background, varied and subtle connotation, and immense suggestiveness. They are still used to designate governments, and there is no likelihood of discontinuance.

Concentrating our attention now upon the republican form of government, it is well to keep in mind also, that there are other differences, in form and organization and other refinements of distinction not necessarily partaking either of a monarchial or aristocratic character, which appear in modern forms of so-called republican government. There are unitary and federal, parliamentary and non-parliamentary republics—to consider only the more important distinctions. Described with extreme brevity, the unitary republics have power, usually in ever-increasing degree, centralized in the general government, whereas the provinces—if such exist—exist mainly as administrative units subject to the general government in that they may be created, altered, and even destroyed by it. In many cases their officers are appointed and their policies controlled by the general government. Opposed to this consolidating process, there is the federal republic with powers, in varying degrees, adhering both to the generality and in the locality, with the latter likely to be historically antecedent to the former. Herein neither the local nor the central authorities are legally competent to destroy outright the powers of the other. Professor Garner, in his *Introduction to Political Science*, states that republics have been further classified as “aristocratic and democratic; as monocratic and plutocratic; unlimited, mixed, and limited; as corporate, oligarchic, aristocratic, and democratic; as federal and confederate; as centralized and unitary; as hereditary and elective, etc.”<sup>38</sup>

The mention of republican form of government brings doubtless to the minds of all the many ideas and speculations of philosophers, jurists, statesmen, and politicians respecting the merits, demerits, and durability of such a system. In the expression of approval or condemnation of the republican form, there has been made no clear distinction between republicanism and democracy. Extreme looseness characterizes the usage of both terms. Such confusion is, of course, unjustified, for there is no necessary connection between them. Some of the staunchest supporters of the republican form have been severe critics of democracy. It is well, also, to keep in mind the distinction drawn between *pure* democracy, where the people administer the affairs of government directly, and *representative* democracy, where they rule indirectly through responsible agents and where they pass at recurring intervals a judgment of endorsement or disapproval on the policy and efficiency of the agents. Thus Madison, admitting these distinctions, sought to show in the extent and structure of the Union a remedy “for the diseases most incident to republican government.” It should be noted in the excerpt to be quoted, that Madison did not distinguish between a representative republic and a representative democracy.

---

<sup>38</sup> Garner, *Introduction*, pp. 177-178.

"A republic, by which I mean a government in which the scheme of representation takes place, opens a different prospect, and promises the cure for which we are seeking. Let us examine the points in which it varies from pure democracy, and we shall comprehend both the nature of the cure and the efficacy which it must derive from the Union.

The two great points of difference between a democracy and a republic are: first, the delegation of the government, in the latter, to a small number of citizens elected by the rest; secondly, the greater number of citizens, and greater sphere of country, over which the latter may be extended.

The effect of the first difference is, on the one hand, to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good than if pronounced by the people themselves, convened for the purpose. On the other hand, the effect may be inverted. Men of factious tempers, of local prejudices, or of sinister designs, may, by intrigue, by corruption, or by other means, first obtain the suffrages, and then betray the interests of the people. The question resulting is whether small or extensive republics are more favourable to the election of proper guardians of the public weal; and it is clearly decided in favour of the latter by two obvious considerations:

In the first place, it is to be remarked that, however small the republic may be, the representatives must be raised to a certain number, in order to guard against the cabals of a few; and that, however large it may be, they must be limited to a certain number, in order to guard against the confusion of a multitude. Hence the number of representatives in the two cases not being in proportion to that of the two constituents, and being proportionally greater in the small republic, it follows that, if the proportion of fit characters be not less in the large than in the small republic, the former will present a greater option, and consequently a greater probability of a fit choice.

In the next place, as each representative will be chosen by a greater number of citizens in the large than in the small republic, it will be more difficult for unworthy candidates to practise with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to centre in men who possess the most attractive merit and the most diffusive and established character. . . .

The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other. Besides other impediments, it may be remarked that, where there is a consciousness of unjust or dishonourable purposes, communication is always checked by distrust in proportion to the number whose concurrence is necessary."<sup>39</sup>

Condemnation of a republic because of the alleged weakness of democracy is justified in logic, therefore, only when the particular republic is a democracy.

<sup>39</sup> Madison in *The Federalist*, No. 10.

The German Treitschke, in his *Politics*, held that the very notion of a democracy "contains a *contradictio in adjecto*. All governing implies the existence of the governed, but if all are to rule, who is to be ruled? Pure democracy logically carried out makes for a goal as inconceivable as the goal of a theocracy. Both have in common the abnormal tendency to compel an unattainable result."<sup>40</sup> Majority rule—supposing as Herodotus appears to have done that the majority is the ruler in a democracy or a republic—has been severely censured. "Majorities are folly," said Schiller, "and reason has always lodged among the few."<sup>41</sup> Some have held that such rule is not necessarily reasonable or just, nor that it is a security for public liberty. Democratic republics have been described as being unduly fickle with reference to men and principles, as being too susceptible to eloquence, as being too much given to mob-rule, faction, caprice, and impulsive social action, and as being unreasonably skeptical of experts in applied politics. Many have concluded, with more or less convincing logic, that republics have been inefficient in administration and in the achievement of large purposes involving organized and sustained activity. Such governments cannot get things done well, it has been held; they have been and are wasteful in expenditure and in the exploitation of resources; they are lacking in unity, coherence, and stability of purpose and policy. To some, they fail to encourage sufficiently well the development of art, education, and science; thus they level down the highly talented as much as they serve to elevate the masses producing, therefore, "the general average"—an emphasis upon quantity rather than quality; and, again, to some, they fail in many cases in their highest and most legitimate aim of effecting practically liberty and equality.<sup>42</sup> In addition to these criticisms, there have been other views of an interesting character. Many, like Montesquieu, have thought a republican form not adaptable to and practicable for large territories. *Il est de la nature d'une république qu'elle n'ait qu'un petit territoire; sans elle ne peut pas guère subsister*, said Montesquieu.<sup>43</sup> Rousseau in the *Social Contract*, wrote "that, in general, government by democracy was suited to small states, government by aristocracy to those of medium size, and government by monarchy to large states."<sup>44</sup> He further argued "that there is no form of government so liable to civil wars and internecine tumult as the democratic or popular." He regarded a democracy as perfect, but thought that in practice, not mankind, but a nation of gods might find it suitable. There is also the fundamental criticism that democracy is dangerous to liberty. Democracy, it is contended, moves toward irresponsibility. Limited monarchy and representative government are responsible in that on occasion of invasion of popular rights the

<sup>40</sup> Treitschke, H. von, *Politics*. (Trans. in two vols. by Blanche Dugdale and Torben de Bille) Treitschke distinguished between the aristocratic and democratic republic.

<sup>41</sup> Quoted by Treitschke, II, 277.

<sup>42</sup> James Bryce summarized the weaknesses of democracy as: weakness in emergency; fickleness and instability; insubordination, internal dissension, and disregard of authority; a desire to level down; oppression of minority by majority; a love of novelty; and ignorance and folly. Quoted in Gettell, R. G., *Readings in Political Science*. (Rev. Ed.) p. 173.

<sup>43</sup> Montesquieu, *Esprit des Lois*. Bk. II.

<sup>44</sup> Rousseau, *Social Contract*, Ch. III.

people may turn the administration out of power; but when the democracy directly misgoverns—and there are few who deny the possibility—there is no remedy. The distinction between the possession of sovereignty and the exercise of it is abolished. Government in so far becomes identical with the state, and appeal can only be made from the sovereign to the sovereign. Responsibility and accountability are gone.<sup>45</sup> In the United States, doubts assailed many statesmen, like Washington and Madison, during the early period of the republic. They regarded the United States as a government *sui generis*—as a great experiment in democracy and popular government, and some continue to regard it as being in the experimental stage, although the government is one of the oldest in the modern world. Most of these statesmen look on this trial, which may fail and which has not yet passed safely beyond the danger point nor which has yet indisputably justified itself, as being fraught with vast potentialities for mankind. Such reflections are interesting evidences either that all of the protagonists of the republican form—whether that form is associated with democracy or not—have not been able to remove their doubts and systematize their defence or that republics have certain inherent and irremediable defects. Although the defenders of the republican system have in some cases been at the same time critics and although the group especially of critics have had such eminent authorities as Montesquieu, De Tocqueville, Stephen, Mill, Burke, Sir Henry Maine, Lecky, Treitschke, Laveleye, and Pradier-Fodéré, the criticisms of democracies and republics have diminished in number, variety and respectability.<sup>46</sup> Most of the objections to republics, it has been held by some, are as applicable to the other forms of government, at times and under certain conditions. Any detailed consideration of them, however, falls without the scope of this paper, which seeks the characteristics rather than the merits or deficiencies of the republican form of government.

But we have described—at least in some respects—republican government, rather than defined it. On this point, too, the classical and contemporary political scientists differ. Aristotle, and his many followers, as we have seen, thought it to be a government controlled by the many, that is, a definition based upon the number participating in the government. Thus submission to the expressed will of a majority in a regularly constituted electorate would become a “vital principle of a republic.” Montesquieu stated that “a republican government is that in which the body, or only a part of the people, is possessed of the supreme power; . . . When the body of the people is possessed of the supreme power, it is called a *democracy*.”<sup>47</sup> Sir Henry Maine, in his *Popular Government*, stated that the term “republic” had been at one time loosely employed to designate a government of any sort which had no hereditary king, but which, in time, had come to signify a government resting on a widely extended suffrage

<sup>45</sup> Burgess, J. W., *Reconciliation of Government and Liberty*. Cf. his *Recent Changes in American Constitutional Theory*.

<sup>46</sup> Garner, *Introduction*, pp. 222-230, cf. Burke, E., *Reflections on the French Revolution*; Laveleye, *Le Gouvernement dans la Démocratie*; Treitschke, *Politics*, Vol. II; Lecky, W. E. H., *Democracy and Liberty*.

<sup>47</sup> Montesquieu, *op. cit.* Bk. II, ch. I.

basis.<sup>48</sup> Bluntschli held that there are two ways of understanding the term "republic," a wide and a narrow. In the first way, we refer to a government in which the idea of the common good (*res publica*) prevails, in which there is a public law. Such a government and state he held to be free, in which no one held public office as a private property right, and in which all power is exercised for the common good. In the narrow sense, he thought the term referred to governments which were not monarchies, that is governments exercised by a group, forming an aristocracy or a democracy.<sup>49</sup> To Jellinek, a republic was the negation of a monarchy. It is government by a more or less numerous—and rather more than less—collegial organization. To him, curiously enough, the German Empire was a republic, because the highest political authority (*Staatsgewalt*) was not in the hands of one individual. To him, also, aristocracies, oligarchies, democracies, and timocracies were in reality republics.<sup>50</sup> The French political scientist, Duguit, in his *Droit Constitutionnel*, supplied as the test for determining a republic, the tenure of the executive, holding that when the office is elective the government is republican, when hereditary it is monarchical.<sup>51</sup> Gareis declared that the distinguishing feature of the republican form of government appears when all the executive officers are personally and legally responsible to the people for the proper performance of their various functions.<sup>52</sup> When it came to a definition of republican government Rousseau was very vague. "J'appelle donc république tout État régi par des lois, sous quelque forme d'administration que ce puisse être."<sup>53</sup> No matter what the form of government may happen to be, if it is ruled by laws, it is a republic. Thus Thomas Paine, following Rousseau, wrote:

"What is called a Republic is not any particular 'form of government. It is wholly characteristic of the purport, matter or object for which Government ought to be instituted, and on which it is to be employed: RES-PUBLICA, the public affairs, or the public good; or literally translated, the public thing. It is a word of good original, referring to what ought to be the character and business of Government; and in this sense it is naturally opposed to the word monarchy, which has a base original signification. It means arbitrary power in an individual person; in the exercise of which, himself, and not the res-publica, is the object.

"Every Government that does not act on the principle of a Republic, or, in other words, that does not make the res-publica its whole and sole object, is not a good Government. Republican Government is no other than Government established and conducted for the interest of the public, as well individually as collectively. It is not necessarily connected with any particular form, but it most naturally associates with the representative form, as being best calculated to secure the end for which a Nation is at the expense of supporting it."<sup>54</sup>

<sup>48</sup> Maine, *Popular Government*, p. 198.

<sup>49</sup> Bluntschli, J. G., *Politik*, 295, et seq. See analysis of this idea in Garner, *Introduction*, (in note) p. 176.

<sup>50</sup> Jellinek, G., *Recht des Modernen Staats*, p. 695. Analyzed in note, Garner, *op. cit.* p. 177.

<sup>51</sup> Duguit, L., *Droit Constitutionnel*, p. 375.

<sup>52</sup> Gareis, *op. cit.*, p. 37. Opinion as analyzed by Willoughby, *Nature of the State*, p. 375.

<sup>53</sup> Rousseau, *Contrat Social*, Pk. II, ch. VI. For his conception of law, see Dunning, *Political Theories From Rousseau to Spencer*, p. 28. Treitschke (*Politics*, II. 226) defines a republic as follows: "All republics have this characteristic in common, that in them the authority of the State is delegated, and does not rule by its own right, as it does in a monarchy, so that consequently the rulers are subjects at the same time."

<sup>54</sup> Paine, Thomas, *The Rights of Man*, Pt. II, Ch. III.

Paine seemed to think that confusion would be avoided by keeping always in mind that a republic describes the business of government, not a *form*. He thought the representative form to be republican, that it was the one best suited to large territories, and that—as in the United States—it was simply “representation ingrafted upon Democracy.” Haller’s idea of a republic, to quote Professor Dunning, was: “When a number of men, substantially equal in power and therefore naturally independent of one another, unite for the promotion of some common interest, and by virtue of their union and strength become independent of every other society or individual, there is a republic.”<sup>55</sup>

Some of these characteristics and tests clearly become faulty and questionable, when considering certain modern monarchies in which by constitutional limitations and the operation of cabinet and parliamentary systems the monarchs have come to have titular powers only. In them the working executive is really responsible and in effect elective. Sir. G. C. Lewis has pointed out that some governments are called monarchical merely because a titular ruler may be called Prince or King.

A bewildering variety of governments have been called republics. For such a title to be justified there would have to be many conceptions of the term. That or the term must lose any real meaning. Thus Athens, Rome, Venice, Florence, Genoa, Holland, and Poland have been called republics. It was from the practice of denominating such governments as republics that Professor Woodburn deduces the following classification: oligarchic republics, like Venice; military republics, like Rome; federal republics, like Switzerland; centralized or national republics, like France; partly centralized and partly national republics, like the United States; democratic republics, like Switzerland or the United States. To this list, he adds in the same study that republican government may virtually exist under monarchical forms, as in England.<sup>56</sup>

Such are some of the definitions submitted in political science, and it remains to be seen how useful they may be as pragmatic guides in searching for the indispensable characteristics of republican form of government. It might pertinently be observed that some statesmen and political theorists associate representation with the republican form. If representation has commonly been associated with the republican form, it can scarcely be claimed to be either necessary to it nor exclusively identified with it. Must the basis of the representative system be democratic? Are the order of institutions or the method of their organization prescribed? What authority—if the favorite idea of Rousseau obtains—inheres in people when they occasionally by unorganized and spontaneous act over-ride their representatives? It would be difficult in view of the amazing diversity of institutions now constitutionally sanctioned in so-called republics—especially the new ones formed after the World War—to specify any governmental feature,

<sup>55</sup> Dunning, *Political Theories From Rousseau to Spencer*, p. 205.

<sup>56</sup> Woodburn, J. A., *The American Republic and its Government*, (2nd. ed.) pp. 55-56. The scope of this paper has limited the analysis of classifications of governments. A more complete survey would include such writers and philosophers as Von Mohl, Waitz, Roscher, Bernatzik, Pradier-Fodere, Meyer, Schulze, Zacharia, Esmein, Giddings, etc.

institution or administrative device, which could not be grafted on to the republican order. The great Argentine philosopher, Alberdi, called the Latin-American republics disguised monarchies, whereas Take Jonescu, lawyer and statesman of Roumania, characterized certain European monarchs as hereditary presidents of republics.<sup>57</sup> In 1790, Mirabeau declared that "In a certain sense republics are monarchical, and again in a certain sense monarchies are republics." Comparative government and historical political science would seem to indicate that republics—even if they ever had a vital principle which differentiated them from other forms—have now lost any claim to consideration as a type. Is there a republican form of government? From the foregoing it seems right to conclude that there is no vital principle in the republican order. Such a principle has not been found in the number sharing political power or electoral privilege; it is not in any exclusive virtue or purpose; it is not in the tenure of office; it is not in the residence of sovereignty; it is not in any special organization or separation of powers; and it is not the identification or non-identification of government with the state. To the question an emphatic negative must be answered. The term republic is a name conveying a general, but anomalous, a suggestive, but somewhat dangerously vague, connotation. The same, perhaps, might be said of the other so-called classical designations of governments. Between what has been called an absolute monarchy and what has been called a democratic republic there is, to be sure, a wide extremity of difference. One would be blind to fact, indeed, however, not to realize that a similar degree of difference may and has distinguished such monarchies from democratic and liberal ones and such republics from autocratic and conservative ones. A more strictly exact and historical answer to the question above proposed might be that there are particular governments that are in matter of fact called republican. None of them possesses any feature which could not on occasion be adopted by governments classified under different forms. It would seem, therefore, that the statesman, the legislature, and the constitution-maker must in each generation and emergency decide what is republican and what not—so long as the term is used in the loose way so far current. Many contemporary governments are republican therefore, because they are so named. Their founders and makers have acted, it would seem—to adapt the fine old formula of Thomas Paine—on the principle that for a government to be republican it is sufficient that it wills to be called such.

The nature and proper characteristics of such a form of government becomes of considerable importance in the United States, not only because that form is the chosen and approved one for the general government and the necessary form for every new state which is admitted to the Union; but, also, because the Constitution, in Article IV, section four, takes care to guarantee that it shall be the permanent form of government for each State. "The United States shall guarantee to every State in this Union a Republican form of Government."<sup>58</sup>

<sup>57</sup> Alberdi, J. B., *Del Gobierno en Sud America*. (*Escritos Postumos*, Vol. IV.)

<sup>58</sup> *The Constitution*, Art. IV, sec. IV.



Certain questions have arisen in reaching a construction of this "guarantee clause." In the first place, what are the characteristics and powers of government which this clause assures to each State? Secondly, what are the powers conferred on the "United States"? Does the word "guarantee" confer creative and formative, as well as protective and sustaining powers? Thirdly, what organ of the general government is to exercise this guaranteeing function thus imposed on the "United States"? Fourthly, what are the limits of such power when once exercised? The answers to such questions, as will have been established from the foregoing, involve many difficulties, for, as Chief Justice Waite, in his opinion in *Minor vs. Happersett*, said: "No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated."<sup>59</sup> If, as we concluded above, there is, properly speaking, no republican form of government, what becomes of the "guarantee clause"? In guaranteeing "a" republican form of government, did the Fathers place in the Constitution a clause—whatever their understanding of it might have been—which requires that the "United States" shall give its sanction and protection to any institution that is republican because it is so-called or that is republican because it has the precedent of having been adopted by some "republic"? In guaranteeing "a" republican form, would the clause permit a drastic or revolutionary change to be made by the "United States" in an existing order? Is the clause significant or meaningless? Certain crises in the history of the United States—and it is generally in the time of crisis that the guarantee clause becomes operative—have brought these questions to the urgent notice of American statesmen and theorists. It will be the purpose of a subsequent inquiry to treat such times of crisis historically and to analyze American opinion of the guarantee clause of the Constitution.

---

<sup>59</sup> *Minor v. Happersett*, 21 Wallace, 162.