

Populism and Crisis of Representation ¹

Populismo e crise de representação

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Resumo

A partir do recente referendo constitucional italiano que reduziu o número de representantes em um terço, o ensaio focaliza a relação entre a crise do constitucionalismo democrático e a afirmação do populismo, destacando correlações preocupantes com a consolidação de regimes autoritários e ditatoriais. A análise de outras propostas de revisão constitucional atualmente em discussão no Parlamento confirma a tendência para reforçar a governabilidade contra o princípio representativo, também através da introdução de certos institutos de democracia participativa. Analisando essa tendência no contexto da crise mais geral da representação e suas causas profundas, o ensaio reafirma a necessidade da democracia representativa como única forma de salvaguardar uma democracia real, capaz de administrar a complexidade das demandas do mundo contemporâneo. Cabe, portanto, evitar a falsa democracia dos instrumentos da democracia participativa, mais facilmente manipulados pelas novas elites para além dos partidos políticos, dos canais institucionais de participação popular na determinação da política nacional. Nessa perspectiva, até mesmo a ideia da Net como ágora telemática e o lugar onde a e-democracia se afirmaria revela sua falácia, sendo incapaz de garantir o caráter democrático das escolhas e a formação consciente das decisões políticas.

Palavras-chave: Crise de Representação. Democracia participativa. Democracia representativa. E-democracia. Populismo.

Abstract

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Starting from the recent Italian constitutional referendum that reduced the number of representatives by a third, the essay focuses on the relationship between the crisis of democratic constitutionalism and the affirmation of populism, highlighting worrying correlations with the consolidation of authoritarian and dictatorial regimes. The analysis of further proposals for constitutional revision currently under discussion in the Parliament confirms the trend to strengthen governability against the representative principle, also through the introduction of certain institutes of participative democracy. Analysing this tendency in the context of the more general crisis of representation and its root causes, the essay reaffirms the need for representative democracy as the only way to safeguard a real democracy, able to manage the complexity of the demands of the contemporary world. It is therefore appropriate to avoid the false democracy of the instruments of participative democracy, more easily manipulated by the new elites beyond the political parties, the institutional channels of popular participation in the determination of national politics. From this perspective, even the idea of the Net as a telematic agora and the place where e-democracy would assert itself reveals its fallacy, being unable to guarantee the democratic nature of choices and the conscious formation of political decisions.

Keywords: Crisis of Representation. E-democracy. Participative democracy. Populism. Representative democracy.

1. Introduction: Democracy vs. Representation?

A few days ago, I was watching an episode of a very famous TV series from the late 1990s, *The West Wing - All the President's Men*, the first series that told the story of American politics and won 26 *Emmy Awards*.

In that episode, the president of the republic of the United States, played by a very good Martin Sheen, addressing his chief of staff says 'we are not in a democracy, we are a representative republic. And you know what that means? That decisions are not made by the electorate, but by those they have chosen. Could they perhaps choose them better? Yes, but when you consider the alternatives...'.

Obviously, here the concepts have been simplified as much as possible, speaking of 'democracy' to mean 'direct democracy' and 'representative republic' to mean 'representative democracy'³. Once this has been clarified, the contrast

³ Although, as rightly pointed out by M. LUCIANI, *Il paradigma della rappresentanza di fronte alla crisi del rappresentato*, in N. ZANON, F. BIONDI (eds.), *Percorsi e vicende attuali della rappresentanza e della responsabilità politica* Milano, 2001, 110, "the real opposition (...) was between 'democracy' (without adjectives) and 'representative government', since only where

between Democracy and the Representative Republic referred to in the American *fiction* is astonishing for its great topicality, but above all because it allows us to glimpse (albeit in an essential and simple dialogue such as that of television intended for a mass audience) the exaltation of the representative principle declined in an antagonistic key with respect to the democratic principle⁴.

Democracy vs. Representation, then? A truly classic question of constitutionalism, on which rivers of ink have been spilled. However, today, beyond the constitutional theory that has always investigated the complex and fascinating issue of the ownership and exercise of power, as well as its quantity and quality, it seems to me to be an oversimplification, which in any case reflects the equally excessive oversimplifications of the current political debate, in which the debasement of the representative principle, which affects our country today more than ever, is the symptom of a much deeper crisis, which concerns modern constitutionalism as a whole and the conceptual categories connected to it⁵.

2. The constitutional referendum on cutting parliamentarians: the anti-parliamentarism of ancient and modern populisms

On 20 and 21 September 2020, the constitutional referendum on reducing the number of parliamentarians was held in Italy. With a majority of around 70 per cent voting 'yes' to the constitutional revision, the number of elected senators was reduced from 315 to 200 and the number of deputies from 630 to 400, thus reducing parliamentary representation by more than a third.

there was direct popular decision there was democracy, and where there was representation there was no democracy".

⁴ Cf., S. CASSESE, *Il popolo e i suoi rappresentanti*, Rome, 2019, 10, according to whom 'modern representation serves to abandon the principle of the perpetuity of power, to ensure the turnover of rulers, their rotation in office, to periodically approve programmes and persons in charge of carrying them out'.

⁵ Democratic constitutionalism 'was the fruit of a concrete historical process, which came to maturity when the principles enunciated in written documents found political subjects capable of enforcing them'. Thus, G. AZZARITI, *Democracy and constitution in the great spaces of contemporaneity*, in *Giornale di st. cost.*, 2016, 232. According to A. LUCARELLI, *Populisms and Democratic Representation*, Naples, 2020, 54, 'the theories of modern constitutionalism, even more than the founding principles of representative democracy, obviously included in them, are fundamental for understanding the phenomenon of populism'.

A constitutional reform, in my opinion, the child of a widespread popular *sentiment*, by now accustomed to the populist idea (which has always been the workhorse of the 5 Star Movement), that reducing the number of MPs was equivalent to increasing the efficiency and productivity of the Chambers and rationalizing public spending, cutting the 'caste' and ridding democratic institutions of a third of deputies and senators, now perceived not as the representatives of the people, but - in the name of the moralization of the institutions - as its enemies, parasites and idlers⁶.

The constitutional revision law, it should be pointed out, was approved at second reading in the Chamber of Deputies on 8 October 2019, with a 'soviet' majority of 553 votes in favor out of 567 voters, the result of a political agreement between the M5S and its new ally in the government, the Partito Democratico, which, after voting 'no' three times in a row to cut the number of MPs, had changed its vote to 'yes' in order to guarantee the stability of the Executive it had joined.

This approval reached in the Chamber with an absolute majority was followed, therefore, by the constitutional referendum, as provided for in Article 138 of the Constitution, by which the final decision was put back into the hands of the electoral body.

However, contrary to what was hoped for during the explanations of vote, the referendum campaign was mostly carried out in Jacobin tones and led the Italian citizens towards a sort of storming of the Bastille, plastically representing the banner of populism that is now reigning in the Italian political debate. Rather than from a reasoned and meditated intent of institutional reorganization, in fact, the constitutional revision seemed to be animated by a merely 'punitive' intention towards parliamentarians, which found its breeding ground in the widespread anti-political sentiment that has exploded, in a particularly significant manner, in recent years⁷.

⁶ On this point, allow me to refer to F. SALMONI, *Chi ha detto che tagliando i parlamentari si eleggeranno solo talenti?*, in *ilsussidiario.net*, 7 September 2020.

⁷ Cf., M. DELLA MORTE, *A campaign to prove that anti-politics is not unbeatable*, in *huffingtonpost.it*, 19 September 2020, which states "Too complex (...) to counter the hegemony of anti-politics, too difficult to reject the idea of the parasitic 'caste', of Parliament as a place for wasters, of costs to be cut in the name of moralizing reason. For a long time it almost seemed as

A refrain that in our legal system has already been seen and experienced by Italians on their own skin even when, with the Fascist party coming to power, Parliament, the seat of representative democracy, became the 'enemy' to be bent and overthrown⁸.

At that time, Mussolini's party wiped out political representation starting with political representation itself: it entered Parliament and through successive laws took control of it and finally deprived it of its power from within, until its final suppression and replacement with the Chamber of the fasces and corporations⁹.

The work of deconstructing representation was carried out by means of successive regulatory acts, finding its most significant moment in the first place, in Law no. 1019 of 17 May 1928 on the *Reform of Political Representation*, thanks to which the number of deputies was reduced to 400¹⁰ and the single national constituency was introduced, with blocked lists, through which the National Grand Council of Fascism proposed to the people a pre-constituted list of candidates, which could only be approved or rejected when voting¹¹. Secondly, with Law No.

if the opposition to this constitutional revision converted the unfortunate into an enemy of the people, into someone who dared to defend the privileges of an indefensible political class".

⁸ Cf., E. GIANFRANCESCO, *Parlamento e regolamenti parlamentari in epoca fascista*, in *Osservatorio sulle fonti*.it, 2008, 3. That the progenitor of modern populisms in Italy was Mussolini's fascism (and then Hitler's Nazism), is also argued by, among others, L. FERRAJOLI, *Democrazia e populismo*, in *Rivista AIC*, 2018, 3 and U. ECO, *A passo di gambero. Hot wars and media populism*, Milan, 2016, 49-50.

⁹ Cf., L. CARLASSARE, *Is there a continuity between the Statutory Order and the Fascist regime?*, in M. D'AMICO, A. DE FRANCESCO, C. SICCARDI, *L'Italia ai tempi del ventennio fascista. A ottant'anni dalle leggi antiebraiche: tra storia e diritto*, Milano, 2019, 38, according to which 'radical was the repudiation of democracy; when the single list was instituted (1928) there were no longer any opposition voices in the Chamber, then, from 1939, even that semblance of an election ended: the Chamber of Deputies was replaced by the Chamber of Fascists and Corporations, political rights were also formally suppressed'.

¹⁰ Coincidentally, the same number approved by the recent constitutional revision.

¹¹ The bill provided for: the reduction of the number of deputies to 400 and the constitution of the entire kingdom into a single national constituency; the conferment of the right to propose candidates on legally recognised national confederations of trade unions, on other legally recognized moral entities and on associations, including de facto associations of national importance with cultural, educational, assistance or propaganda purposes; the number of candidates that could be proposed by trade union organizations (double the number of deputies to be elected, i.e. 800) and by bodies and associations (half the number of deputies, i.e. 200); the distribution of candidates among the 13 trade union organizations, according to figures defined in an attached table, so that the corresponding employers' and workers' organizations in the individual categories would express an equal number of proposals the compilation of the list of "designated deputies" by the Grand Council, according to criteria of maximum discretion in the choice from among the proposed candidates and even outside them; the vote by the male citizens entitled to vote, consisting of approval or non-approval of the list in its entirety; the election of the 400 deputies on the list in the event of a preponderance of votes in favor or a parity between

129¹² of 19 January 1939, Article 1 of which provided for the *suppression* of the Chamber of Deputies at the end of the XXIX legislature and the establishment, in its place, of the Chamber of Fascists and Corporations¹³.

Fascism, in short, operating from within Parliament, by means of legislative and regulatory changes disrupted political representation, breaking the democratic dialectic between majority and opposition¹⁴, in a path dangerously similar to what is happening today in the Italian legal system.

I realize that the parallelism may appear somewhat forced, nor do I intend to suggest that we are, today, in a situation of democratic emergency similar to that which occurred in the days of fascism. However, I cannot fail to emphasize certain 'signs' that I believe should be the subject of careful reflection by constitutionalist doctrine.

Even during the *Ventennio* (the twenty years of Fascism), members of the fascist party did their utmost to debase the work of Parliament, delegitimizing it and making it the target of continuous criticism aimed at exacerbating the mounting popular aversion. Even then, the language of politics was violent, even then PNF members showed great distrust towards the Chamber of Deputies, the seat of political representation¹⁵, even then the vocabulary used to describe this distrust was coarse and coarse.

Just like the language used in recent times by many important Italian political formations, such as, for example, the one used during the famous rally in Trento by Beppe Grillo, *leader* and founder of the 5 Star Movement, when, on

votes in favor and votes against; the renewal of elections with competing lists (and thus representation of minorities) in the event of non-approval of the list.

¹² Law No. 129 of 19 January 1939, *Establishment of the Chamber of Fasci and Corporations*, in *Official Gazette* No. 37 of 14 February 1939.

¹³ The 1939 law 'does not implement a representative system of indirect democracy (which presupposes the distinct subjects of the representative and the represented), but of direct authoritarian democracy, since it is the people themselves who immediately - without the need for electoral acts -, through the physical persons of their hierarchs, become part of one of the constitutional organs of the State'. Thus, M. UDINA, *Il nuovo ordinamento costituzionale dello Stato fascista*, in *Riv. dir. pubbl.*, 1939, 466; S. PANUNZIO, *La Camera dei Fasci e delle Corporazioni*, Rome, 1939, 29-31.

¹⁴ See, H. KELSEN, *Essence and Value of Democracy*, in *Dottrina dello Stato*, Naples, 1998, 17 ff.

¹⁵ The lifelong Senate of the Kingdom was, however, of royal appointment.

10 February 2013, addressing his supporters, he vehemently stated: ‘we will open Parliament like a can of tuna fish’¹⁶.

An approach that, albeit – admittedly – with notable and important differences, to some extent sadly evokes that used by Mussolini towards the Chamber of Deputies on 16th November 1922 when presenting his government, when, in a very famous speech, he claimed that the Italian people -in their best part- had “given themselves a government outside, above and against every designation of Parliament”, so that he would leave “the melancholic zealots of super-constitutionalism, the task of more or less complaining about it”, adding, laconically: “I could have made of this deaf and grey Chamber a bivouac of maniples (...) I could have bolted Parliament and constituted a Government exclusively of fascists. I could have, but I did not, at least at this early stage, want to’¹⁷.

3. Populism and democracy between *populus* and *démos*

That the phenomenon of populism is transversal from a spatial-temporal point of view, to the extent that it is impossible to categorize it univocally, is by now a peaceful affirmation¹⁸. There is not ‘the’ populism, but as many populisms

¹⁶ See the full speech on *youtube.com*, 25 February 2013. Cf., A. MORELLI, *Il principio personalista nell'era dei populismi*, in *Consulta Online*, 2019, 367, who rightly points out that 'although (...) today's populist movements present considerable differences from the totalitarianisms of the 20th century, they too, like the former, show a monist and reductionist inspiration that appears radically incompatible with the pluralist spirit of the Republican Constitution'. On the 5 Star Movement, *ex plurimis*, J. SCHWÖRER, *Populisms. Il "Movimento 5 Stelle" e la "Alternativa per la Germania"*, Rome, 2016, 16 ff.; M. REVELLI, *Dentro e contro. Quando il populismo è di governo (When populism is governing)*, Roma-Bari, 2015, 13 ff.; S. CASSESE, *La democrazia e i suoi limiti (Democracy and its limits)*, Milan, 2017, 37, according to whom the 5 Star Movement 'has a fluid organisation, which is a mixture of populism and caesarism'.

¹⁷ *Atti parlamentari* (A.P.), Camera dei deputati (CdD), *Discussions*, XXVI legislatura, Sessione 1921-1923, Tornata del 16 novembre 1922, 8390-8394. On this point, M. BOVERO, *Democracy in the Twilight?* in M. BOVERO, V. PAZÉ (eds.), *La democrazia in nove lezioni*, Roma-Bari, 2010, 3 ff.; L. FERRAJOLI, *Poteri selvaggi. La crisi della democrazia italiana*, Laterza, Roma-Bari, 2011, 22 ff.

¹⁸ See, *inter alia*, E. LACLAU, *La ragione populista*, Roma-Bari, 2008, 5 ff.; C. PINELLI, *Populismo e democrazia rappresentativa* and L. CEDRONI, *Democrazia e populismo*, in *Dem. diritto*, 2010, resp. 29 ff. and 38 ff.; J.-W. MÜLLER, *What is Populism?*, Milan, 2017, 18 ff.; G. IONESCU, E. GELLNER, *Populism: Its Meaning and National Character*, London, 1969, 1 ff.; S. GENTILE, *Populismi contemporanei. XIX - XXI secolo*, Milan, 2015, 6 ff.; F.S. FESTA, *Populismo*, in C. GALLI, R. ESPOSITO (eds.), *Enciclopedia del pensiero politico*, Roma-Bari, 2000, 549 ff.; J.

as there are movements – class, political and party – which, for one reason or another, have criticized and criticize the established state (both as ruling classes and as dominated classes)¹⁹. As superlatively summarized by Isaiah Berlin, in his very famous speech at the conference entitled ‘*Defining Populism*’, held at the London School of Economics and Political Science in 1967, to scramble to identify a pure type of populism is tantamount to subjecting scholars to the so-called Cinderella complex, for which they are not the only ones to be subjected to the Cinderella complex. *Cinderella complex, whereby*, given ‘a shoe -the word “populism”- for which there is a foot somewhere’, there are ‘all kinds of feet that almost fit it, but we must not be fooled by these feet that almost fit’, because ‘the prince is always going in search of the shoe; and somewhere, we are sure, it waits for a limbo called pure “populism”’. This is the core of populism, its essence²⁰.

If we want to draw a reflection from this, we cannot but recognize that populism, despite having experienced its highest moment as a movement of thought, culture and politics in late 19th century Russia, has almost immediately lost its initial positive connotation to become a sociological, political, philosophical attitude, good for all seasons and usable by anyone²¹, with a negative semantic connotation, often derogatory²².

LUKACS, *Democrazia e populismo*, Milano, 2006, 11 ff.; L. INCISA DI CAMERANA, *Populismo*, and D. GRASSI, *Il neopopulismo*, both in N. BOBBIO, N. MATTEUCCI, G. PASQUINO (eds.), *Dictionary of Politics*, Turin, 2016, resp. 732 ff. and 737 ff.; F. PANIZZA, *Populism and the Mirror of Democracy*, London-New York, 2005, 32 ff.; S. FELTRI, *Sovereign Populism*, Turin, 2017, 7 ff.; M. ANSELMi, P. BLOKKER, N. URBINATI (eds.), *La sfida populista*, Milan, 2018, 12 ff.; P. ROSANVALLON, *Pensare il populismo*, Rome, 2017, 25 ff.; C. MUDDE, C. ROVIRA KALTWASSER, *Populism. A Very Short Introduction*, Oxford, 2017, 1 ff.

¹⁹ For this distinction, E. LACLAU, *Politics and ideology in Marxist theory: Capitalism, fascism, populism*, London, 1977, 172-173.

²⁰ Cf., D. MC-RAE, L. SHAPIRO, F.W. DEAKIN, H. SETON-WATSON, P. WORSLEY, E. GELLNER, I. BERLIN (eds.), *Conference on populism: verbatim report. London School of Economics and Political Science*, London, 1967, 139.

²¹ This is excellently demonstrated by M. MANETTI, *Constitution, democratic participation, populism*, in *AIC Magazine*, 2018, 378-379. She affirms that ‘to speak today of “people” and “populism” it is necessary to start from the awareness that these are two empty words, or rather *passé partout* words, i.e. they are not linked to any unambiguous and precise meaning but are filled, from time to time, with different meanings according to convenience’, R. MORDENTI, *Il concetto di “popolo” in Gramsci e il “populismo”*, in G. LIGUORI (ed.), *Gramsci e il populismo*, Milan, 2019, 31.

²² Cf., D. CECCARELLI MOROLLI, ‘*Populism*’ and *Demagogy in Ancient Near Eastern and Greco-Roman Civilisations. Some very brief outlines*, in R. CHIARELLI (ed.), *Il populismo tra storia, politica e diritto*, Soveria Mannelli, 2015, 17; M. TARCHI, *Il populismo e la scienza politica: come*

True, the jurist is putting his hands up, as stated by a part of Italian legal-publicist doctrine, because the concept's polyvalence makes it objectively elusive and not subsumable under a single category, especially from the perspective of constitutional law and when compared to the concept of democracy²³.

Of course, one might ask whether or not there is a real opposition between populism and democracy²⁴.

These are, of course, very different concepts, where the first would appear to be nothing more than a translation of the Russian term *Narodnichestvo* and yet, as has been correctly pointed out, "translation is in itself an imputation" and not "a simple 'neutral' equivalence (which translation can never be, since it must use the categories available in the language)"²⁵, while the second, that of democracy, has been established since ancient times as a theory of power, in whatever way it has been declined (direct, representative, decision-making, etc.)²⁶.

liberarsi del "complesso di Cenerentola", in Fil pol., 2004, 411 ff, who states on populism that 'it has been noted that it has presented itself from time to time in different guises, expressing itself through movements, regimes, discursive styles and rhetorical strategies, states of mind and psychological attitudes, and has been attributed the chameleon-like ability to adapt to a wide multiplicity of contexts, transgressing the usual dividing line between right and left' (ibid., 411-412).

²³ Cf., C. PINELLI, *Populism and Representative Democracy*, in *Dem dir.*, 2010, 29 ff.; I. DIAMANTI, *On the periphery of the crisis. Populism and the malaise of representative democracy*, in *State and Market*, 2018, 117 ff.

²⁴ Cf., V. PAZÉ, *Populism as the antithesis of democracy*, in *Political Theory*, 2017, 118; P. CHIANTERA-STUTTE, *Political representation and populism: some reflections*, in *Rivista di Studi Politici*, 2014, 105.

²⁵ So that "to speak of populism as a *genus*" is to take for granted "what needs to be demonstrated: that movements with very different characteristics, separated in time, space and culture, possess certain crucial attributes that justify our consciously and analytically subsuming them under the same category 'populism', despite the variations in their other characteristics". Thus, P. WORSLEY, *The concept of populism*, in G. IONESCU, E. GELLNER (eds.), *Populism: Its Meanings and National Characteristics*, London, 1969, 219.

²⁶ Cf., A. LUCARELLI, *Populismi e rappresentanza democratica*, cit., 87, according to whom "the participatory instances (*rectius* participatory democracy), the impulses of the multitude, even outside of rules and procedures" can "configure themselves historically as reactions to liberalism, as claims of an economic nature and of social dignity, driven by demands for equality and solidarity, in terms of social and fiscal justice".

Yet both populism and democratic theory place the people at the center of their reflections²⁷. Thus, the question about the supposed or real opposition between populism and democracy is not at all peregrine²⁸.

To some extent, the etymology of the two terms may help, populism being derived from the Latin word *populus*, democracy from the Greek word *démos*²⁹.

Indeed, if there were an exact correspondence of meaning between *populus* and *démos*, it would certainly be easier to answer this question, but, unfortunately, the semantic spectrum of both terms is really very wide, so that, since I cannot go into this in depth here (which I nevertheless consider of great interest from a theoretical point of view, also for the theme I am analyzing here)³⁰, I can only take the answer for granted and consider the two terms and their respective concepts as fungible³¹.

It is not possible, therefore, for the sake of a mere position of principle, to contrast populism with democracy, having, instead, to immerse ourselves in the multiple historical, political and theoretical realities that have utilized such concepts and to verify whether or not their evolution has characterized a conflicting and alternative landing³². Thus populism, which arose, as a concept, at a time chronologically subsequent to the birth of that of democracy, can only

²⁷ Cf., V. PAZÉ, *Populism as the antithesis of democracy*, cit., 112, who recalls 'of democracy, populism adopts the lexicon, the watchwords, the myths. It bases itself on its own principle of legitimation -popular sovereignty- by taking it to extremes and interpreting it in a fundamentalist key'.

²⁸ Cf., L. CANFORA, G. ZAGREBELSKY, *La maschera democratica*, cit., 72, according to whom 'populism and democracy are concepts that are very close to each other and there is a risk of creating grey areas or confusion'.

²⁹ Cf., M. BENVENUTI, *Divagazioni su popolo e populismo a partire dall'attuale orizzonte costituzionale italiano*, in R. CHIARELLI (ed.), *Il populismo*, cit., 275.

³⁰ Cf., M. CARVALE, *Popolo. Antiquity and the Middle Ages*, in *Enciclopedia delle scienze sociali*, at treccani.it; L. PEPPE, *Popolo (dir. rom.)*, in *Enc. dir.*, Milan, 1985, 315 ff. and Authors cited therein; and, for a comparison between the Roman and Greek political lexicon, S. CAGNAZZI, *Démos*, in *Quaderni di storia*, 1980, 297 ff.

³¹ On this point, see the opposing positions, on the one hand, of, Y. MÉNY, Y. SUREL (eds.), *Democracies and the Populist Challenge*, New York, 2002, 11, according to which populism can only arise when the concept of the people is born; L. ZANATTA, *Il populismo*, Roma, 2013, 18; on the other, M. TRONTI, *Popolo*, in *Dem. diritto*, 2010, 12, according to which when there is the people there is no populism.

³² Cf., M. ANSELMi, *Gramsci nel dibattito sul populismo contemporaneo*, in G. LIGUORI (ed.), *Gramsci e il populismo*, cit., 106, according to whom it is a mistake "to consider populism in an almost fetishistic way, as an epistemological object separated from the complexity of democratic dynamics: especially today it is clear that a careful analysis of populism directly implies an analysis of the conditions and profound transformations of contemporary democracies".

be correctly declined and qualified in relation to the latter and in relation to its proximity or otherwise with democratic structures³³.

It is in virtue of this necessarily relativist approach³⁴, in fact, that the term populism has been used "to describe techniques of direct democracy, such as the referendum and the popular initiative, but also certain types of dictatorships"³⁵, in the most multifaceted manner and by political subjects often with such antithetical positions that it may be easier to grasp their differences rather than their common roots, having been invoked since the time of the Russian *narodniki*³⁶ to the American *People's Party*, Peronism, Castroism, *Chavismo*³⁷ and, in Europe, to the movements headed by Mussolini, Hitler, Chirac, Le Pen, Berlusconi³⁸, Salvini, Orban, Beppe Grillo and so on³⁹.

But already many centuries earlier, the classics, in trying to outline the characteristics of an optimal form of government, were describing something very similar to what appear to be some of the current typical warhorses of populism, which, however, in antiquity, did not have any of the negative connotations

³³ As careful scholarship has stated, 'Any reference to pathology will inevitably include a definition of democracy, and this definition is likely to differ markedly from one political setting to another'. Thus, Y. MÉNY, Y. SUREL (eds.), *Democracies and the Populist Challenge*, cit., 4.

³⁴ See, Y. MÉNY, Y. SUREL (eds.), *Democracies and the Populist Challenge*, cit., 4.

³⁵ See, M. CANOVAN, *Populism*, New York-London, 1981, 3 (the translation is mine).

³⁶ Cf., A. WALICKI, *Russia*, in G. IONESCU, E. GELLNER (eds.), *Populism*, cit., 63, according to whom there are two established meanings of the term populism: "In the first sense the term populism denotes 'a theory advocating the hegemony of the masses over the educated elite, in the second sense it denotes a theory of the non-capitalist development of Russia. In the first case it was opposed to the "abstract intellectualism" of those revolutionaries who tried to teach the peasants, to impose on them the ideals of Western socialism, instead of learning what were their real needs and acting in the name of such interests and ideals of which the peasants had already become aware; in the second case it was opposed to sociological and economic theories which claimed that capitalism was an unavoidable stage of development and that Russia was no exception to this general law of evolution'.

³⁷ In Latin America, the *caudillo* who leads the masses of *campesinos* towards the government of the country is a central figure in the history of the formation of both populist movements and transitions to democratic regimes. Thus, N. URBINATI, *Populism as the Extreme Boundary of Representative Democracy. Response to McCormick and Del Savio and Mameli*, in *Micromega*, 16 May 2014, 1.

³⁸ On a particularly interesting aspect of Berlusconism, see V. GIACCHÉ, *Fisco, populismo e lotta di classe in Italia*, in *Dem. diritto*, 2010, 192 ff.

³⁹ Cf., M. MANETTI, *Constitution, democratic participation, populism*, cit., 375, who rightly emphasises how populism has landed "finally in Europe, where the episodic manifestations of the past are overlaid by today's flourishing, both on the right and on the left of the political spectrum". See also P. TAGGART, *Populism*, Buckingham-Philadelphia, 2000, 10, who states 'Populism serves many masters and mistresses. At different times and in different places it has been a force for change, a force against change, a creature of progressive politics of the left, the refuge of a measured defence of the status quo and a companion of the extreme right'.

attributed to it today⁴⁰. I am thinking, to give just one example, of Tane in the very famous monologue described by Herodotus in his *Histories*, who stated 'the government of the people has (in the first place, *ed.*) the most beautiful name of all: *isonomy*. Secondly, there is nothing that the monarch does: public offices are drawn, magistracies are subject to accountability, and all decisions are referred to the community. I therefore propose to abandon the monarchy and raise the people to power, because it is in the mass that everything resides'⁴¹.

Surely, therefore, when we refer to populism, we are alluding neither to a defined political regime, since a populist orientation can exist in a democracy as well as in a dictatorship, nor to a predetermined ideology, since, on the contrary, it is not an ideology, but an attitude through which ideologies can spread and assert themselves⁴².

4. Populism, Bonapartism and authoritarian demagogy

And yet, despite what has been noted so far, there are some characteristics common to all populisms.

For a start, for example, they all tend to proliferate at times of economic crisis: everywhere in the world, from the earliest times to the contemporary age, major economic crises have represented a fertile breeding *ground* in which populisms have been able to take root and flourish, promising the restoration of prosperity and an end to economic and social imbalances⁴³.

⁴⁰ As D. CECCARELLI MOROLLI, '*Populism*' and *Demagogy*, cit., 18, 'for the ancient world I believe it is not methodologically correct to speak technically of populism, unless one uses this word as a synonym, precisely, of demagogy, a concept that is properly and exquisitely Greek'.

⁴¹ It is interesting to note that even today, in Italy, there are movements that declare themselves in favour of replacing the election of parliamentarians with the drawing of lots, as will be seen *below*, section 4. On this point, see, L. CANFORA, *La democrazia. Storia di un'ideologia*, Roma-Bari, 2011, 12 ff.

⁴² Cf. P.A. TAGUIEFF, *L'illusione populista*, Milan, 2003, 86, for whom 'populism is embodied neither in a defined type of political regime (both a democracy and a dictatorship may present a populist dimension or orientation, or have a populist style), nor in specific ideological contents (populism cannot be considered a great ideology like others: it can only be added to any one of these, to give it a certain colouring, to shade it or exacerbate it, to give it a target or an orientation)'. He speaks of democratic populism and neoliberal populism, A. LUCARELLI, *Populisms and Democratic Representation*, cit., resp. 101 ff. and 106 ff.

⁴³ See, e.g., V.I. LENIN, *Il contenuto economico del populismo e la sua critica nel libro del signor Struve*, in *Opere Complete*, Roma, 1954, I, 347, according to whom the essence of populism consisted in the 'protest against feudalism (stratum of the old nobility) and against the bourgeois

Just as they all revolve around the concept of the people and its exaltation, which passes through the exaggeration of the principle of popular sovereignty, the intolerance of constitutional limits, the rejection of the rulers-governed dialectic, the denial of mediation by the traditional parties⁴⁴, the conception of the people as an undifferentiated unity⁴⁵, “which goes hand in hand with the construction of a dividing line between the people, honest and uncontaminated, and the ‘non-people’, dishonest and corrupt”⁴⁶, the communicative style that exploits “the malaise, anxiety and frustration of certain categories of subjects with anti-political buzzwords”⁴⁷, the totalising identification with the charismatic *leader*.

In populism, ‘people are those who do not govern, who do not represent, who do not exercise organised functions in an authoritative manner’⁴⁸. Whether right-wing or left-wing, populism directly addresses the people, fights against the *establishment* – be it ‘good’ or ‘bad’ -, insinuates the idea that the people are granted everything without any limits because they are the only legitimate holders of political decision-making, fights against the established order guilty of ignoring their real needs and only favouring the economic *elites* that support it⁴⁹.

world (stratum of the new middle class) in Russia *from the point of view of the peasant, the small producer* and in the ‘chimerical character of this protest’. On this point, D. PALANO, *Populism*, Milan, 2017, 10 ff.

⁴⁴ That parties are fundamental in enabling political participation is also emphasised, *ex multis*, by L. FERRAJOLI, *Democracy and Populism*, cit.

⁴⁵ Cf., A. SPADARO, *From ‘constitutional democracy’ to ‘illiberal democracy’ (sovereignist populism), to the.... “democratisation”*, in *DPCE online*, 2020, 3885, according to whom populism tends to turn the people into masses.

⁴⁶ See, V. PAZÉ, *Populism as the antithesis of democracy*, cit., 118.

⁴⁷ Cf. M. MANETTI, *Constitution, democratic participation, populism*, cit., 377; P.A. TAGUIEFF, *L’illusione populista*, cit., 85, according to whom “‘populism’ is only a fictitious entity, which it would be vain to try to grasp. Of the term ‘populism’, however, one could ironically say” that it is a very useful word “precisely because no one knows what it really means”; M. TARCHI, *Il populismo e la scienza politica*, cit., 412.

⁴⁸ Cf. C. SCHMITT, *Doctrine of the Constitution*, edited by Antonio Caracciolo, Milan, 1984, 317.

⁴⁹ Cf., M. TARCHI, *Italia populista. Dal qualunquismo a Beppe Grillo*, Bologna, 2015, 80, who states ‘even before reincarnating as the duce of fascism, Mussolini gave ample proof of personal sensitivity to issues that enjoy wide circulation in the populist imagination: as a socialist he did not spare himself in hurling anathemas against parliamentary ‘chatter’ and ‘cretinism’, against bureaucrats and intellectuals, all targets on which he would continue to exert himself even after his interventionist conversion, not giving up thundering against the ineptitude of the ruling classes, supporting the aspirations of the entire people for social justice and claiming the institution of instruments of direct democracy’.

Hence, the idea that the only acceptable form of government is one that identifies in a *leader*, in a 'strong man' capable of taking care of the needs of the people, the *spokesman* of popular demands *either* through the elimination of all the powers that represent 'the enemy' and guard its privileges, *or* through the most varied forms of direct or participatory democracy⁵⁰.

The so-called *Bonapartism* is, in fact, a constant of populism and indicates precisely the consubstantiality of the charismatic leader to populism⁵¹, just as happened with the rise to power of Louis Bonaparte, whom Victor Hugo did not hesitate to describe as "a man of average stature, cold, pale, slow, and with an air that seems not to be entirely awake"⁵², the same 'mediocre and

⁵⁰ Cf., N. MERKER, *Philosophies of Populism*, Rome-Bari, 209, 171, who states 'a constant of populism is the charismatic leader who claims to represent the people because he knows what, though an uncultivated mass, they deeply desire: so that he is the only one who, through his own intuition, guides that people to the high Destinies inherent to it'. See, on this point, F. CHIAPPONI, *Democracy, populism, leadership: il MoVimento 5 Stelle*, Novi Ligure, 2017, 145-146, according to whom, despite the fact that the MoVimento 5 Stelle 'is the bearer of an ideology based on the absence of *leadership* and that Grillo himself is keen to carve out for himself the role of "guarantor" of the Pentastellati, if one descends from the abstractness of the statements of principle set out in the non-Statute and in the area publicity, to the empirical level, it is difficult not to find the existence of a strongly *leader-like* structure of the party, which moreover ensures the leader a position of substantial immovability, in the absence of rules aimed at guaranteeing the periodic contestability of the party *leadership*'.

⁵¹ The terms Caesarism and Bonapartism originated in 19th century France with reference to the regime of Louis Bonaparte who 'proclaimed himself president of the republic with the coup d'état of 2 December 1851, and a year later 'emperor of the French' with the name Napoleon III, having both offices sanctioned by a piloted plebiscite'. Thus, N. MERKER, *Philosophies of Populism*, cit., 171. But see K. MARX, *Il diciotto brumaio di Luigi Bonaparte*, in *Opere complete*, XI, Rome, 1982, who, in the *Preface to the second edition* of 23 June 1869, states, rightly, that the use of the term *caesarism* represents a 'superficial historical analogy', because 'one forgets the essential fact that, especially in ancient Rome, the class struggle took place only within a privileged minority, between the rich and the poor who were free citizens, while the great productive mass of the population, the slaves, constituted only the passive pedestal of the combatants. One forgets Sismondi's profound expression: "the Roman proletariat lived at the expense of society, whereas, modern society lives at the expense of the proletariat"'. In doctrine, D. LOSURDO, *Democracy or Bonapartism. Trionfo e decadenza del suffragio universale*, Turin, 1993, 55 ff.; M. VOLPI, *La democrazia autoritaria: forma di governo bonapartista e V repubblica francese*, Bologna, 1979, 56 ff.; J.J. LINZ, *Totalitarian and Authoritarian Regimes*, Boulder-London, 2000, 143 ff.

⁵² Cf., V. HUGO, *Napoleon the Little. New and accurate translation from the French*, 1867, 22-23, which clearly manifests his contempt for the man he accuses of betraying the people, when he states 'Little does he care to be despised, content with the appearance of respect. Before 2 December, the right-wing leaders were happy to say of Louis Bonaparte: He is an idiot. They were deceiving themselves. Of course, that brain is cloudy, that brain has gaps, but one can sometimes decipher some thoughts in it, and they are sufficiently coordinated. It is a book where there are torn pages. Louis Bonaparte has a fixed idea, but a fixed idea is not idiotism. He knows what he wants, and he gets there. Through justice, through laws, through reason, through honesty, through humanity, through everything, but he gets there (...) he does not speak, he lies. He lies as other men breathe. Does he announce an honest intention? Beware: does he affirm? Beware: does he swear? Tremble' (*ibid.*, 26). By the same author, *Storia di un delitto*, Rome, 2013, *passim*.

grotesque character'⁵³ who, in the memorable pages of Karl Marx, made 'an appeal to the people against the parliamentary assemblies', directing and inflaming 'against the National Assembly, the constitutionally organized expression of the people, the inorganized masses of the people'⁵⁴.

In Hugo's and Marx's description of Bonapartism there is already 'a phenomenology of populism, and their portrait of the demagogue would also fit today's populists at home and in neighbouring countries'⁵⁵. The demagogue, in fact, 'poses himself as irreplaceable, creates a desert around himself, systematically crushes and eliminates possible competitors' and 'wants to relate to the masses directly (plebiscite, etc.), great oratory, twists and turns, phantasmagorical choreographic apparatus'⁵⁶. In short, the charismatic leader who uses the people *against* the people in order to assume power and who, in doing so, skillfully employs the seductive art of oratory, lying, flattering, attracting, repelling, appealing to the dissatisfaction of the people with the ruling *elites*.

On the other hand, according to the *Oxford Living Language Dictionary*, populism is "a political approach that strives to appeal to ordinary people who feel that their concerns are ignored by established *elite* groups"⁵⁷, while the *Vocabolario della lingua italiana* edited by Nicola Zingarelli as the first meaning of the lemma *populismo* posits: "Russian political movement of the late 19th century, which aspired to the formation of a socialist society of a peasant type, opposed to western industrialism', but, as a second meaning, defines populism

⁵³ Cf., K. MARX, *Il dicio brumaio*, cit., *Preface to the second edition* of 23 June 1869, which, while defining Louis Napoleon in this way, anything but positive, criticises Victor Hugo because, Marx states, he 'limits himself to a bitter invective, full of sarcasm, against the author responsible for the coup d'état. The event itself appears to him as a bolt from the blue. He sees in it nothing more than the act of violence of an individual. He does not realise that he enlarges this individual instead of shrinking him, as he attributes to him a power of personal initiative that would have no example in the history of the world'.

⁵⁴ Cf., K. MARX, *The Eighteenth Brumaire*, cit., 126. In doctrine, see, G. AZZARITI, *Dal Manifesto del partito comunista al 18 brumaio: Marx e il costituzionalismo democratico*, in *Dem. diritto*, 2019, 101 ff.; M. MANETTI, *Costituzione*, cit., 382. In doctrine, *ex multis*, L. CANFORA, G. ZAGREBELSKY, *La maschera democratica dell'oligarchia. Un dialogo*, Roma-Bari, 2015, 73, who state 'populisms are based on the idea of coincidence between the leader, the *conducător*, on the one hand, and popular moods, on the other'.

⁵⁵ Cf., N. MERKER, *Philosophies of Populism*, cit., 172.

⁵⁶ Thus, A. GRAMSCI, *Quaderni del carcere*, edited by V. Gerratana, Turin, 1975, 772.

⁵⁷ See it at [lexico.com/definition/populism](https://www.lexico.com/definition/populism), consulted on 3 November 2020.

as an 'Attitude that aims to win popular favour through demagogic proposals, with easy appeal'⁵⁸.

It is precisely the order of the definitions that are given of the lemma populism that allows us to glimpse, with respect to its noble origin, which also emerges from the unforgettable pages of Asor Rosa (who considers populism intimately connected with *progressivism* and 'commitment')⁵⁹, a degeneration of the term itself that has now taken on a predominantly *denigrating* meaning⁶⁰.

There is, therefore, at a certain point in the evolution of the concept of populism, an identification of it with that of demagogy⁶¹, which reveals its possible torsions in a plebiscitary and authoritarian direction⁶².

5. Cutting the number of parliamentarians: the tip of the iceberg of the transformation of constitutional democracy

The Italian constitutional revision -which I mentioned earlier- that reduced the number of parliamentarians by a third, seems to be the offspring of precisely this approach and of a certain way of understanding democracy and the

⁵⁸ See, LO ZINGARELLI, *Vocabolario della lingua italiana*, Bologna, 2020. The same definition also appears in *Il grande dizionario Garzanti della lingua italiana*, which as a second meaning of populism states: "demagogic political attitude that has the sole aim of winning the people's favour".

⁵⁹ For Asor Rosa, the programme of populism (which he considers an ideology) 'could be summed up in the formula: against big capital (thus, often, also against the big bourgeoisie), in the name of the people, against any autonomous organisation of the working class'. Cf., A. ASOR ROSA, *Writers and the People. Il populismo nella letteratura italiana contemporanea*, Rome, 1972, 17.

⁶⁰ Given its fideistic character, populism "is incompatible with party organisation (which always implies associationism according to party rules and statutes), but is rather based on 'movements'. The movement is something apparently spontaneous (in reality, it is often organised and tightly controlled, but from above), and is devoted to the support of the leader who incorporates all the energy transmitted to him'. Thus, cf., L. CANFORA, G. ZAGREBELSKY, *La maschera democratica*, cit., 74.

⁶¹ Demagogy which, as summarised by A. GRAMSCI, *Quaderni del carcere*, cit., 772, 'in the worst sense means making use of the popular masses, of their wisely aroused and nurtured passions, for one's own particular ends, for one's own petty ambitions'.

⁶² Cf., D. CECCARELLI MOROLLI, *"Populism" and Demagogy*, cit., 19, according to whom near-eastern civilisations (Egyptian, Mesopotamian, Hittite, etc.) have *de facto* "invented" - certainly in a more or less unconscious manner - forms of populism or demagogy with the intention of ensuring an element that is always sought after, namely social stability, in power". The lemma demagogy, then, was coined by the Greeks around 400 BC. as is evident from the writings of Thucydides and Aristophanes, but even more clearly from Aristotle. On this point, V. PAZÉ, *Il populismo come antitesi della democrazia*, cit., 115 ff.; M. MANETTI, *Costituzione, partecipazione democratica, populismo*, cit., 377; L. FERRAJOLI, *Democrazia e populismo*, cit., 2.

relationship between institutions and citizens, between the ruler and the governed. Indeed, its main consequence has been to debase the role of Parliament, the place, that is, of political representation, whose centrality, in our current form of government, could not and should never be questioned⁶³.

On the other hand, it is just the tip of the *iceberg* of a political, institutional and constitutional project that goes back a long way and that today, thanks to the current populisms, is slowly but surely being reversed, which rests everything on the transformation of the role of Parliament and representation through three actions aimed at enhancing governability through more efficient decision-making processes⁶⁴, functional above all to the stability requirements of the economic-financial instances of the current capitalist system⁶⁵.

Three actions, I said, because this goal can only be achieved *first and foremost* through the reduction and 'transformation' of representation, in the direction of which go both the reduction of MPs, the various bills (ordinary and constitutional revision) that I will examine shortly, and the reduction of the autonomy of MPs, guaranteed by the principle of free mandate *under* Article 67 of the Constitution⁶⁶.

Secondly, through the strengthening, *de jure* and *de facto*, of the powers of the executive: with a *reduced* and *different* Parliament, all the functions designed to counter the current abnormal accentuation of powers in the hands of

⁶³ Among other things, the current composition of the chambers (630 deputies and 315 elected senators, to which must be added the ex officio senators and those appointed for life) is the result of constitutional revisions made after the Republican Charter came into force, the original text of which stipulated that the chamber should be elected 'at the ratio of one deputy for every 80,000 inhabitants or fraction thereof exceeding 40,000' and that each region should be allocated 'one senator for every 200,000 inhabitants or fraction thereof exceeding 100,000'. If one wanted to return to the proportions established by the Constituents, on the basis of current demographic levels, the number of parliamentarians would have to be increased rather than decreased

⁶⁴ As rightly pointed out, governability is a 'Neologism that refers to a theory of concentrated, simplified, rapid power: "governability" is different from representation because it decides and acts, without getting bogged down in defatiguing discussions'. Thus, F. PALLANTE, *Contro la democrazia diretta*, Turin, 2020, 19.

⁶⁵ Cf., G. FERRARA, *La mutazione del regime politico italiano*, in *costituzionalismo.it*, 2008, 1 ff. of the paper; G. BUCCI, *Diritto e politica nella crisi della globalizzazione*, in *Dem. diritto*, 2009, 115 ff.

⁶⁶ Cf. F. PALLANTE, *Contro la democrazia diretta*, cit., 22, who states that 'Berlusconi's proposal to have only group leaders vote, with weighted suffrage; the replacement in committee of dissenting parliamentarians by the Democratic Party; the penalties for 'transfuges' provided for in the statutes of the parliamentary groups of the 5 Star Movement: these are all attempts - indeed very clumsy attempts - to circumvent the constitutional dictate'.

the government, by now the undisputed protagonist of our institutional political system, will be substantially weakened, first and foremost the activity of guidance and control by the Chambers over the work of the Executive, which will suffer an inevitable intrinsic downsizing, making the needle of the scales of weights and balances existing today tilt dangerously in favour of the latter⁶⁷.

Finally, through the strengthening of the institutions of participatory democracy, which, by giving citizens the power to make certain choices directly and without the mediation of political parties and Parliament, instead of compensating and mitigating the effects of the strengthening of governmental powers, could favour identity-based acclamations, risking contributing to the plebiscitary and authoritarian torsion of our current constitutional democracy⁶⁸.

⁶⁷ Among the supporters of the 'Yes' vote in the constitutional referendum: N. LUPO, *Reduction of the number of MPs and the internal organisation of the Chambers*, both in *Astrid Online*, 2020, 1 ff; C. FUSARO, *SI/NO, a demanding but very simple political choice: one chooses as citizens, not as constitutionalists*; G. GRASSO, *The reduction of the number of MPs: an opportunity not to be given up lightly*; I. NICOTRA, *Reducing the number of parliamentarians: an opportunity to relaunch representation*; V. ONIDA, *The reasons for a yes vote*; A. PERTICI, *The reduction of the number of MPs: the long search for the perfect number between risks and opportunities*; L.A. MAZZAROLLI, *Le ragioni del 'no' al referendum ex art. 138 Cost. of 20 and 21 September 2020, esposte da chi, pur pur pur senza grande entusiasmo, ha deciso di votare 'sì'*, all in *federalismi.it*, 9 September 2020. Among the 'No' supporters, in addition to the authors cited in the other notes, see, *ex plurimis*: G. BRUNELLI, *Una revisione senza qualità (riformatrice)*; G. CERRINA FERONI, *Si può fare finta che tutto sia come prima? Le ragioni di un NO al referendum sulla riduzione dei parlamentari*; M. D'AMICO, *Una nuova stagione di riforme costituzionali "a tappe" e le sue insidie*; G. DE MINICO, *No a una riforma ingannevole*, cit.; A. PISANESCHI, *La banalizzazione della Costituzione*; M. PLUTINO, *L'antipolitica è arrivato alla Costituzione. Curbing it may be a turning point*, all in *federalismi.it*, 9 September 2020. See also G. SILVESTRI, *Dico No al taglio perché vedo gravi pulsioni contro la democrazia*, in *La Repubblica*, 8 September 2020; A. MORELLI, *Referendums and visions of democracy*; O. CHESSA, *Quorum and equivocations*; G. de VERGOTTINI, *A brief reflection: why NO*, all in *Iacostituzione.info*, resp. 19, 17 and 14 September 2020; as well as, if you wish, my *Interview* entitled *Jurists comparing on the referendum: Fiammetta Salmoni's 'No'*, in *Pagella politica*, 7 September 2020.

⁶⁸ See, G. AZZARITI, *Criticism of Identitarian Democracy*, Roma-Bari, 2008, *passim* and, for the link between identity democracy and populism L. FERRAJOLI, *Poderes salvajes. La crisis de la democracia constitucional*, Madrid, 2011, 66. He speaks of a "shift of liberal democracies towards the category of merely 'electoral' democracies or even to an involution of electoral democracies in a pseudo-democratic or even authoritarian sense", G. DE VERGOTTINI, *Costituzionalismo europeo e transizioni democratiche*, in M. CALAMO SPECCHIA, M. CARLI, G. DI PLINIO, R. TONIATTI (eds.), *I Balcani occidentali. Le Costituzioni della transizione*, Turin, 2008, 5.

6. The constitutional revision on the linear cut in the number of MPs: limitation of the representative principle and populist anti-parliamentarism

In fact, the numerical downsizing of Parliament -unless there is an organic context of reforms that accompanies this revision with other precise measures- will have considerable repercussions precisely on the principle of representation and, therefore, on the democratic principle at the basis of the Republican Constitution⁶⁹.

To begin with, for instance, with fewer parliamentarians, all functions aimed at counteracting the current abnormal accentuation of the powers of the executive, now the undisputed protagonist of our institutional political system, will be substantially weakened⁷⁰.

Not to mention the dysfunctionality that will arise, if there are no immediate further constitutional revisions, with regard to the election and impeachment of the Head of State (resp. Articles 83 and 90 of the Constitution), with regard to all the *quorums* currently provided for in Articles 62, 64, 72, 73, 79, 94 and 138 of the Constitution, as well as with regard to the deliberations of the joint Parliament that require special majorities, e.g. Articles 104 and 135 of the

⁶⁹ May I refer to F. SALMONI, *Il Sì dà strapotere a governo e capipartito*, in *huffingtonpost.it*, 28 August, 2020.

⁷⁰ Among the supporters of the 'Yes' vote in the constitutional referendum: N. LUPO, *Reduction of the number of MPs and the internal organisation of the Chambers*, both in *Astrid Online*, 2020, 1 ff; C. FUSARO, *SI/NO, a demanding but very simple political choice: one chooses as citizens, not as constitutionalists*; G. GRASSO, *The reduction of the number of MPs: an opportunity not to be given up lightly*; I. NICOTRA, *Reducing the number of parliamentarians: an opportunity to relaunch representation*; V. ONIDA, *The reasons for a yes vote*; A. PERTICI, *The reduction of the number of MPs: the long search for the perfect number between risks and opportunities*; L.A. MAZZAROLLI, *Le ragioni del 'no' al referendum ex art. 138 Cost. of 20 and 21 September 2020, esposte da chi, pur pur pur senza grande entusiasmo, ha deciso di votare 'sì'*, all in *federalismi.it*, 9 September 2020. Among the 'No' supporters, in addition to the authors cited in the other notes, see, *ex plurimis*: G. BRUNELLI, *Una revisione senza qualità (riformatrice)*; G. CERRINA FERONI, *Si può fare finta che tutto sia come prima? Le ragioni di un NO al referendum sulla riduzione dei parlamentari*; M. D'AMICO, *Una nuova stagione di riforme costituzionali "a tappe" e le sue insidie*; G. DE MINICO, *No a una riforma ingannevole*, cit.; A. PISANESCHI, *La banalizzazione della Costituzione*; M. PLUTINO, *L'antipolitica è arrivato alla Costituzione. Curbing it may be a turning point*, all in *federalismi.it*, 9 September 2020. See also G. SILVESTRI, *Dico No al taglio perché vedo gravi pulsioni contro la democrazia*, in *La Repubblica*, 8 September 2020; A. MORELLI, *Referendums and visions of democracy*; O. CHESSA, *Quorum and equivocations*; G. de VERGOTTINI, *A brief reflection: why NO*, all in *Iacostituzione.info*, resp. 19, 17 and 14 September 2020; as well as, if you wish, my *Interview* entitled *Jurists comparing on the referendum: Fiammetta Salmoni's 'No'*, in *Pagella politica*, 7 September 2020.

Constitution. As well as for the deliberations of the joint Parliament that require special majorities, e.g. Articles 104 and 135 of the Constitution⁷¹.

Not only that, but the reform does not bring any added value even in terms of the efficiency of the institutions, particularly on the deliberative processes in the various commissions⁷², with the consequence that the very functioning of Parliament could suffer serious setbacks, at least until the parliamentary regulations are changed⁷³. At present, in fact, the functions of the two chambers have remained exactly as they were before, because the linear cut in the number of parliamentarians has not entailed any change to the current perfect bicameralism that characterises the Italian form of government. Why should a mere reduction in the number of our representatives make the parliamentary institution more efficient? I do not believe it is appropriate to reduce such an important subject to a mere question of numbers, which, if anything, are relevant for the democratic nature of the parliamentary machine, in the sense that when political decisions are taken, the more the better.

Not only does this not improve the efficiency of Parliament, but it is reasonable to expect it to worsen, because reducing the number of parliamentarians means burdening fewer people with the work and procedures imagined for a larger number of members, thus it means worsening our legislative system, and by a lot.

Making Parliament more efficient, on the other hand, in my humble opinion, means allowing it to carry out its functions in total transparency and with respect for the democratic principle, it means reviving its centrality, because political decision-making must remain in the hands of those who represent the people, and if this means that majority and opposition parliamentarians can

⁷¹ Thus, rightly, L. TRUCCO, *Il referendum sulla riduzione dei parlamentari: tre ragioni per il Sì e tre per il NO*, in *giustiziainsieme.it*, 8 September 2020, 12.

⁷² See M. DELLA MORTE, *A No for Freedom. E ora lasciate in pace Iotti*, in *Il Dubbio*, 26 August 2020, which states that the cut puts at risk all parliamentary functions 'the legislative, the inspective and the control'.

⁷³ Cf., M. LUCIANI, *Se prevalale il Sì le Camere non funzionano*, in *La Repubblica*, 22 August, 2020, which states 'it is not only a matter of accompanying the revision with the reform of the electoral law, but also and above all with the reform of parliamentary regulations. With these numbers, and the regulations in force, the Chambers cannot function'.

confront each other – even at length – in the place where they exercise their ‘princely’ function, so be it.

Then there is another issue that needs to be resolved, which concerns the disproportion between the different territories that has arisen as a result of the constitutional revision and that will lead to a serious problem of inequality in territorial representation unless a reform of the electoral law is approved quickly, because with the current one, it is undeniable that some territories no longer have (or have very few) representatives in the Senate, a problem that already existed, but which has worsened considerably with the reduction in the number of MPs⁷⁴.

Let us not forget either that on the issue of representativeness, understood, with Martines, as the potential consonance between representatives and the represented, it is obvious that reducing the number of MPs makes it more difficult for certain social strata to enter Parliament and represent the needs of the community: fewer MPs means greater selection on entry and greater selection means increasing the risk of favouring candidates *able to economically guarantee election*. If then the electoral law does not change or if it leaves the mechanism of the blocked list vote unchanged, the power of the party secretaries will further increase, accentuating the oligarchic-leadership tendencies of the selection processes of the political class, which, moreover, have already been very significant for some years now, because for some time now the political parties, the main channels of participation in the country’s political life, have been in crisis, just as the democratic nature of their internal organisation has been in crisis, so much so that the doctrine has been questioning for some time whether

⁷⁴ Worthy of note is the proposed constitutional reform through which Articles 57, paragraph 1 and 83, paragraph 3 of the Constitution are to be revised, on the one hand, by replacing the ‘regional basis’ envisaged for the election of the Senate, with a ‘constituency basis’, thus referring the determination of the territorial scope of the constituencies for the election of senators to ordinary law. On the other hand, it is proposed to reduce the number of regional delegates participating in the election of the President of the Republic from three to two (in essence reducing their number by one third in a similar proportion to that decided for the number of parliamentarians). See, A.C. 2238, proposed constitutional law Fornaro and others, on ‘Amendments to Articles 57 and 83 of the Constitution, concerning the territorial basis for the election of the Senate of the Republic and the reduction of the number of regional delegates for the election of the President of the Republic’. The provision allocating only one delegate to Valle d’Aosta remains unchanged, as does the constraint to ensure the representation of minorities.

or not it is possible to re-found the model of democracy designed by art. 49 Const.⁷⁵.

What has been said so far would be sufficient in itself to consider the revision carried out as strongly reductive of the representative principle.

But that is not enough, because according to Beppe Grillo's statements of 23 September 2020, following -then- the reform of the Constitution, the Movement's ultimate goal would be to eliminate Parliament, sweeping away decades of modern constitutionalism. The former political leader of the *Pentastellati*, current guarantor of the Movement, in fact, speaking at the *Ideas for a new world* round table organised by then President of the European Parliament, David Sassoli, stated verbatim: "I no longer believe in parliamentary representation, but in direct democracy made by citizens through referendums"⁷⁶, because "representative democracy is now 'lame' and one could draw 'by lot' the citizens' representatives in the institutions, instead of going to the polls"⁷⁷.

7. Electoral law reform and the mortification of representation

In short, the current reduction in the number of parliamentarians seems to aim at a poorly concealed, far more significant end goal: that of declining representative democracy in a reductive manner, if not through the 'physical' suppression of Parliament, at least through its 'sterilisation'⁷⁸.

⁷⁵ Cf., G. FERRARA, *La sovranità popolare e le sue forme*, in *costituzionalismo.it*, 2006, now in S. LABRIOLA, (ed.), *Valori e principi del regime repubblicano*, Roma-Bari, 2006, 251 ff.; A. APOSTOLI, *A proposito delle più recenti pubblicazioni sull'uso della Costituzione*, in *costituzionalismo.it*, 2018, 68; L. FERRAJOLI, *Democrazia e populismo*, cit., 1, according to whom, rightly, the discredit of the parties was then transferred to the representative institutions (*ibid.*, 3).

⁷⁶ See the full reproduction of the video of 23 September 2020, at *multimedia.europarl.europa.eu*. On the contradictions that seem to characterise the Movimento 5 Stelle, J. IACOBONI, *L'esperimento. Inchiesta sul Movimento 5 Stelle*, Bari-Roma, 2018, 7 ff.

⁷⁷ This is the summary of Beppe Grillo's speech in the European Parliament: *Grillo: 'I believe in direct democracy, not Parliament. The elected? Better if drawn by lot'. And he defends Rousseau*, in *La Repubblica* of 23 September 2020. In doctrine, on this point, M. AINIS, *La cura*, Milano, 2009, *passim*; N. URBINATI, L. VANDELLI, *La democrazia del sorteggio*, Torino, 2020, 11 ff.; B. MANIN, *The principles of representative government*, Cambridge, 1997, 8 ff.

⁷⁸ In addition to the proposed ordinary and constitutional laws that I mention in the text, think also of the issue of remote voting (on which, recently, R. CALVANO, *Brevi note su emergenza COVID e voto dei parlamentari a distanza. Rappresentanza politica, tra effettività e realtà virtuale*, in *federalismi.it*, 2020, 45 ff.), but also to the problem, fundamental, of the abolition of the prohibition of the imperative mandate, on which, *ex plurimis*, A. MORELLI, *Rappresentanza politica e libertà*

Symptomatic of this approach would also seem to be the name given to the Ministry for Relations with Parliament during the first Conte government, with a 5-Star-Lega majority, which was then called the *Ministry for Relations with Parliament and Direct Democracy* (a name that is oxymoronic in itself), almost as if to reveal – right from the start – the orientation that inspired the government's reforming action.

In the second Conte government, however, with a 5S-PD majority, this name has changed to the more institutional one of *Ministry for Relations with Parliament and Reforms*, thus fading the brighter hues of a sort of underlying anti-parliamentarism that, nevertheless, continues to pervade the reformist proposals of the political formations in government and elsewhere.

In fact, even considering Beppe Grillo's words as a mere provocation, at least three fixed points remain, namely, *firstly*, that parliamentary representation has already been reduced by a third. *Secondly*, that precisely because of the linear cut of deputies and senators, the proposed amendment of the current electoral law risks further debasing the role and functionality of Parliament. *Lastly*, that on such a weakened parliamentary representation are grafted a series of bills for other constitutional revisions, already being examined by the Chambers, which seem to design a form of government (and of state) in which the instances of representative democracy risk continually placing themselves in a competitive, when not conflicting, position, with those of participatory democracy, the implementation of which, on the other hand, if carried out within the constitutional perimeter, would even be – in certain respects – desirable, provided that it remains in a residual role and does not achieve the implicit aim of depriving

del mandato parlamentare, Naples, 2018, 82 ff.; BELLETTI, *La crisi della rappresentanza alla base della crisi del divieto di vincolo di mandato*, in *Osservatorio AIC*, 2020, 142 ff.; G. MOSCHELLA, *L'incerta prospettiva della democrazia rappresentativa tra crisi della sovranità dello Stato e tendenze populistiche*, in *federalismi.it*, 19 June 2019, 8; G. GRASSO, *Mandato imperativo e mandato di partito: il caso del MoVimento 5 Stelle*, in *Osservatorio AIC*, 2017, 1 ff.; N. ZANON, *Il libero mandato parlamentare. Saggio critico sull'art. 67 della Costituzione*, Milan, 1991, 1 ff.; C. DE FIORES, *Sulla rappresentazione della nazione. Brevi note sul divieto del mandato imperativo*, in *Diritto e società*, 2017, 19 ff.; I MASSA PINTO, *Rappresentanza*, in *Rivista AIC*, 2017, 1 ff.; G. AZZARITI, *Contro il revisionismo costituzionale. Tornare ai fondamentali*, Roma-Bari, 2016, 61 ff.

Parliament of its power to the benefit of a strengthening of the powers of the government⁷⁹.

From the above, at least two problems emerge that are likely to affect representation: firstly, the drastic reduction in the number of MPs means that more votes are needed to elect a member of parliament, which means that, *rebus sic stantibus*, there is “an increase in the implicit election threshold in a ‘majoritarian’ direction”⁸⁰. Add to this the effects of the 5% threshold clause, which, by virtue of the decrease in the number of MPs, would be equivalent to a much higher percentage in practice, which would be added to the implicit threshold already mentioned. It is obvious, in fact, that the fewer the seats to be allocated, the more the barrier clause affects it, since the latter must also relate to the size of the constituency. 5% with 400 seats to be elected means, in practice, amplifying the effect of the bar, which will be equivalent not to the 5% indicated by the legislative provision, but to a much larger number, which will significantly penalise minorities.

Secondly, election by means of blocked lists involves voting not on individual candidates, but on a list containing the candidates *chosen* by the party secretariats. An abominable effect, therefore, already feared during the referendum campaign by the supporters of the ‘No’ to the constitutional revision, because, as mentioned above, this increases the risk of a strengthening of the ability to control parliamentarians by the *leaders of the parties* of reference, facilitated by the reduced number of members of the Chamber, in addition to the

⁷⁹ As precisely stated, since all these proposals go hand in hand with the drastic reduction in the number of parliamentarians their ‘sign’ changes, being characterised by ‘a greater risk of anti-parliamentary drift’. Thus, M. LUCIANI, *Informal Hearing before the I Commission (Constitutional Affairs) of the Chamber of Deputies on the proposed constitutional laws “C. 726 - Ceccanti and others” and “C. 1173 - D’Uva and others”, of Modification of Article 71 of the Constitution on popular legislative initiative*, 4 December 2018, 1. In terms, A. MORELLI, *Il referendum propositivo: un’analisi costi-benefici*, in *federalismi.it*, 20 March 2019, according to whom ‘although the revision envisaged has a punctual character, it does not seem to be possible to do without considering the possible systemic effects of the introduction of the new institute’ also in relation to the revision involving the reduction in the number of parliamentarians’ (*ibid.*, 3). On this point, see also M. DELLA MORTE, *Representation vs. participation? L’equilibrio costituzionale e la sua crisi*, Milan, 2012, 142, according to whom the balance between the representative form and the participatory form in the constitutional set-up ‘does not constitute an immobile and static condition’, but it is necessary to avert, as the Constituent Assembly did, ‘the risk of participation without a legal structure, of participation, so to speak, *extra ordinem*’.

⁸⁰ Cf., L. TRUCCO, *Il referendum sulla riduzione dei parlamentari*, cit., 14; G. AZZARITI, *La modifica del sistema elettorale secondo la proposta di legge dell’attuale maggioranza*, in *Liber amicorum per Pasquale Costanzo*, on *Consulta Online*, 2020, 4, who rightly states ‘the very substantial reduction in the number of parliamentarians established by the new constitutional law (...), will already in itself entail the introduction of a natural threshold and a de facto increase with respect to those currently provided for’.

fact that the choice of those who will be included in the blocked lists will exponentially strengthen the role of the party secretariats and the selection of candidates will inevitably respond to the logic of belonging⁸¹.

8. Crisis of representation, global finance and disintermediation

Thus, the issue appears rather pernicious.

Indeed, representation is in crisis, but, by questioning the causes of this crisis, we should seek to resolve them within the framework of the pluralist democratic state, not *beyond* it or perhaps *against* it. The crisis of representation and of the fundamental principles on which it is based, the democratic principle above all, did not arise today, nor can it be said to be a novelty in the world legal scene. It emerges (or, rather, re-emerges) today, in all its breadth, on the push of the populist phenomena we have mentioned, but it is certainly not a new phenomenon⁸².

The reason for this crisis, it is well known, lies in more than one reason and relates to the crisis of the State, which is then a crisis of the constitutions and modern constitutionalism, of which it is one of the most important corollaries (along with the crisis of the welfare state)⁸³.

Its causes? Many, endogenous and exogenous to the state phenomenon.

Endogenous, because for some time now the demands of representation, on the one hand, have been overtaken by those of governability, which are expressed through the now constant use of urgent decrees and *maxi-amendments*, the practice, established more and more frequently by the

⁸¹ See, G. AZZARITI, *La modifica del sistema elettorale secondo la proposta di legge dell'attuale maggioranza*, in *Liber amicorum per Pasquale Costanzo*, on *Consulta Online*, 2020, 1 ff.

⁸² Cf., *ex plurimis*, A. RUGGERI, *Crisis of political representation and the 'jurisdictional state' (minimal note on a long-standing and unresolved issue)*, in *federalismi.it*, 28 November 2018, 2 ff.; F. BILANCIA, *La crisi dell'ordinamento giuridico dello stato rappresentativo*, Padua, 2000, 192 ff.; L. FERRAJOLI, *La democrazia attraverso i diritti*, Roma-Bari, 2013, 250, who states 'democracy, in its different and complex forms, dimensions and levels, is an artificial construction, which depends on politics, on the social struggles in its support and also on the critical and planning role of legal science and political culture

⁸³ Cf., G.P. FONTANA, *Parlamento: contributo ad un dizionario di storia costituzionale*, in *dirittoestoria.it*, 2020, who states 'the links of parliamentarism with the theory and practice of constitutionalism are particularly evident and significant, so much so that parliamentary law can be considered as the vanguard of constitutional law'. On the crisis of constitutionalism, G. AZZARITI, S. DELLAVALLE, *Crisis of constitutionalism and supranational legal order*, Naples, 2014, 13 ff.

government, of placing the question of confidence on most of its bills and so on⁸⁴. On the other hand, they are undermined by the dissolution of the concept of the political party, which is now regarded mainly as a mere electoral machine⁸⁵, the main place of intrigues and power sharing⁸⁶, instead of being seen, as it should be, as the place where citizens compete to determine (*including* through elections), in a democratic manner, national policy⁸⁷. A strongly negative connotation, therefore, resulting in a high percentage of electoral abstentionism (which is another of the reasons on which contemporary populism criticism is based), which forgets the lesson of the classics that 'the consistency of democracy in the state depends on the care of democracy in the parties'⁸⁸.

To these arguments, it is also necessary to add that, recently also used by supporters of the reform on cutting parliamentarians, of the replacement of national representation by that of other elective bodies -European Parliament, regional councils, city councils, etc.-, so that it could, according to an authoritative

⁸⁴ Cf., *ex plurimis*, D. ALTMAN, *Citizenship and Contemporary Direct Democracy*, Cambridge, 2019, 26 ff., who states 'the delegitimisation of representative democracy is sharpened through a series of proposals ranging from the strengthening of the powers of the executive, with accentuated plebiscitary tendencies, to the introduction of instruments to establish genuine direct democracy'.

⁸⁵ While the vote should go much further, as rightly stated by F. BILANCIA, '*Re-porcellum*' and *constitutional adjudication*, in *constitutionalism.it*, 2015, 1 ff.; L. RONCHETTI, *Political representation as constitutional representation*, in *constitutionalism.it*, 2015, 19-20.

⁸⁶ Ezio Mauro speaks of "cultural and moral decay, bordering, at times, on connivance with the criminal world" in E. MAURO, G. ZAGREBELSKY, *La felicità della democrazia. A Dialogue*, Roma-Bari, 2011, 16. See, also, G. CASALEGGIO, B. GRILLO, *Siamo in guerra*, Milano, 2011, 14, footnote 1, who state 'direct democracy does not tolerate party intermediation, it does not delegate its future to papier-mâché television leaders. To wafflers who self-elect representatives for profit or visibility'.

⁸⁷ See, Constitutional Court, Sent. 20 July 2018, No. 170, cons. dir. 6, which states 'political representation, in the Republican Constitution, is in principle representation through political parties, which, pursuant to Article 49 of the Constitution, are the associations that allow citizens to compete, by democratic method, to determine, including through participation in elections, national policy'. The political party must be "the essential instrument for the transmission of power from civil society to political society to take place and to be carried out in forms in keeping with the democratic principle". Thus, M. LUCIANI, *Sul partito politico, oggi*, in *Dem. diritto*, 2010, 164. On this point, see also A. MASTROPAOLO, *Crisis of the parties or decay of democracy?*, in *costituzionalismo.it*, 2005; M. GREGORIO, *Parte totale. Le dottrine costituzionali del partito politico in Italia tra Otto e Novecento*, Giuffrè, Milano 2013, *passim*; as well as, M. MANETTI, *Costituzione*, cit., 383, who states "The parties, together with the traditional media, are accused without distinction of complicity, if not of corruptive agreement, with the economic potentates, giving rise to the image of a compact and unassailable *establishment* in its various components: political and economic, social and cultural".

⁸⁸ E. FRAENKEL, *The Representative and Plebiscitary Component in the Democratic Constitutional State*, Turin, 1994, 93.

doctrine, which I do not agree with, find a parcelled-out expression in other institutional places, since 'in our constitutional system political representation is widespread'⁸⁹. This latter thesis would also clash with what the Italian Constitutional Court held in its notorious judgment no. 106 of 2002, where it clarified that "only Parliament is the seat of national political representation, which imparts to its functions a typical and inalienable characterization"⁹⁰.

There are, then, a series of factors *exogenous* to the state phenomenon, which have contributed to the weakening of constitutionalism and the representative principle consubstantial to it. It is, indeed, a fact that events such as the globalization and transnationalisation of the economy, the world economic-financial crisis, the cession of sovereignty in favour of supranational bodies with a pre-eminent ordoliberal culture, the exaltation of technocracy⁹¹, up to the proliferation of international organisations and institutions that regulate the economy in the interests of the world's financial *elites*, heedless of the social malaise and socio-political fractures resulting from them⁹², have plunged their blades right into the heart of the democratic constitutions of the post-World War II period, causing lacerating wounds⁹³.

⁸⁹ Thus, U. DE SIERVO, *Yes to cutting parliamentarians to reduce the power of lobbies*, in *Sussidiario.net*, 2 September 2020.

⁹⁰ Cf., Corte cost., sent. 12 April 2002, no. 106, cons. dir. 4. on which see the observations of F. CUOCOLO, *Parlamento nazionale e "parlamenti" regionali*; C. PINELLI, *Continuità e discontinuità dell'impianto repubblicano nella prima pronuncia sul nuovo Titolo V*; N. ZANON, *La funzione unitaria del Parlamento nazionale e la revisione del titolo V*; A. MANGIA, *I consigli regionali e la fine della rappresentanza politica*, all in *Giur. cost.*, 2002, resp. 873 ff.; 878 ff.; 884 ff.; 885 ff.; N. LUPO, *Dalla Corte costituzionale uno "stop" (definitivo) ai Parlamenti regionali. Note to Corte cost. no. 106/2002*, in *amministrazioneincammino.luiss.it*, 10 July 2002.

⁹¹ Cf., G. CERRINA FERONI, *Organismi sovranazionali e legittimazione democratica. Spunti per una riflessione*, in C. BASSU, G.G. CARBONI (eds.), *Representation and Globalisation*, Turin, 2016, 45 ff. On the problem of technocracy, let us refer to F. SALMONI, *Le norme tecniche*, Milan, 2001, *passim*.

⁹² The well-known *cleavages* identified by S.M. LIPSET, S. ROKKAN, *Cleavages Structures, Party Systems and Voter Alignments: An Introduction*, in S.M. LIPSET, S. ROKKAN (eds.), *Party Systems and Voter Alignments: Cross National Perspectives*, New York, 1967, 1-67.

⁹³ The loss of external sovereignty "inevitably determines a progressive loss of meaning of constitutions, which end up missing the raw material of their disposition, namely power". Thus, M. LUCIANI, *L'antisovrano e la crisi delle costituzioni*, in *Riv. dir. cost.*, 1996, 163. On this point, see also L. FERRAJOLI, *Democracy and Populism*, cit., 7, who also agrees that "the main factor of the crisis lies (...) in the reversal of the relationship between politics and economics". The same author identifies a nexus between liberalists and sovereign-populists in L. FERRAJOLI, *L'alleanza perversa tra sovranismi e liberismo*, in *costituzionalismo.it*, 2019, 3 ff., emphasising, however, that "for the first time in history, the global challenge thrown down to reason by these threats imposes an equally global policy, based on a world cooperation that no power will be able to escape, and on a world constitutionalism that will have to be taken seriously because it is in

Among these, a special place is occupied by the transformation of the concept of finance, which follows the definitive transformation of the concept of 'capital', which is no longer understood as an instrument of power, but now as *power in itself*, because it is 'employed, invested, circulated on the financial markets for the purpose of immediately producing more money', without passing through the roads of production⁹⁴.

Hence, the new paths of finance, those of fluid and virtual capital passing from hand to hand, fast, immaterial, on channels parallel to those of the state and not subject to any democratic control, destined to increase the wealth of a few at the expense of the many. The latter, seduced by the idea of 'easy' gain within the reach of all, by this *possible and egalitarian financial market*, where we live the illusion of being all equal, because we all have the same chance to increase our wealth in the instant of a *click*, they have invested their life savings to enter a *wonderland*, unaware, however, of the 'immensity of evil' and of the fact that with every *click* of their mouse, on the other side of the world, there is someone who accumulates wealth by betting on their inexperience and guiding the masses of capital towards their concentration in the hands of a lucky few⁹⁵.

All this is made possible by the phenomenon we know as *disintermediation*, which was born to be applied first to economics and then to

everyone's interest, not only to peace but to the very survival of the human race". Thus, L. FERRAJOLI, *La democrazia attraverso i diritti*, cit., 252.

⁹⁴ Thus, L. GALLINO, *Finanzcapitalismo. La civiltà del denaro in crisi*, Turin, 2011, 11. This transformation had already been foreseen by M. LUCIANI, *L'antisovrano*, cit., 168, when he wrote "the freedom of investment of capital is (instead), in globalised society, a freedom (the only one) in which only its individual side is perceptible: no collective value is opposed to it, because there is no collectivity to which to impute that value, and in any case there is no social power that can impose its respect". See also M. BATTINI, *History in progress of authoritarian democracy*, in L. CERASI (ed.), *Genealogies and geographies of anti-democracy in the European crisis of the 1930s. Fascismi, corporativismi, laburismi*, 2019, 265, who states 'Italian national-populism constitutes a reaction to the policies of the new global financial "great transformation" that have freed capital from all legal, fiscal and territorial control and have widened the gap between the increase in gross domestic product and the increase in welfare and education, to the point of generating inequalities such as to jeopardise the meritocratic and egalitarian values of democracy'.

⁹⁵ Cf., M. HINDMAN, *The Internet Trap. How the digital economy builds monopolies and undermines democracy*, Turin, 2019, 8 ff., who points out how virtual finance is able to circumvent market control.

finance and by virtue of which all intermediated activities are reduced by direct recourse to world markets through the network⁹⁶.

And it is precisely this concept that, in fact, has become one of the pivotal points around which the *methods* of today's populisms revolve: the systematic downsizing of parliamentary assemblies and their prerogatives, to which I have referred, is exactly in line with the *political disintermediation* that aims at the transformation of representative democracy into 'direct' democracy, also thanks to the use of new technologies and the network⁹⁷.

9. Multi-class state and centrality of Parliament: representation as a guarantee of democracy

Trying now to pull the threads together, is it possible to imagine a relationship between voters and elected representatives in our legal system that makes the mediation of political parties superfluous? Is it possible to replace representative democracy with direct democracy? Is it possible to compress the role of parliament and representation in a manner compatible with the fundamental principles of our Constitutional Charter?

The answer, in my opinion, can only be negative.

As the Constitutional Court has repeatedly affirmed, in fact, 'the Republican Constitution has established a parliamentary democracy, meaning

⁹⁶ Cf., I. DIAMANTI, *On the Periphery of the Crisis*, cit., 120. The concept of disintermediation was first elaborated by P. HAWKEN, *The Next Economy*, New York 1984, 133 ff. See, now, J.M. ROBLES-MORALES, A.M. CORDONA-HERNANDEZ, *Digital Political Participation, Social Networks and Big Data. Disintermediation in the Era of Web 2.0*, Cham, 2019, 2, who state 'Disintermediation is a process that may be reversing a key aspect of our cultural, social and economic models. The rise of industrial culture brought with it the problem of how to handle many of our everyday problems directly ourselves. Our societies are structured around organisations whose role is to intervene between ordinary citizens and the spheres where the decisions that affect them are taken'. See also, on this point, S. RODOTÁ, *Technopolitics. La democrazia e le nuove tecnologie della comunicazione*, Bari-Roma, 2004, *passim*.

⁹⁷ Cf., A. STERPA, *How to hold together institutional 'disintermediation' and the representation of the Nation?*, in *federalismi.it*, 19 December 2018, 2 ff.; F. CLEMENTI, *Il fenomeno dell'associarsi politico tra crisi della rappresentanza e globalizzazione. Spunti problematici*, in C. BASSU, G.G. CARBONI (eds.), *Representation and globalisation*, cit., 137 ff.; M.G. RODOMONTE, *Il "populismo sovranista" e l'Europa: a proposito di crisi della democrazia e del processo di integrazione europea*, in *Nomos*, 2019, 3. Critically, on the point, P.A. TAGUIEFF, *The populist illusion*, cit., 38 ff. and 58 ff.

that, as is also shown by the precedence given by the constitutional text to Parliament in the order of the state apparatus, it has placed Parliament at the center of the system, making it the characterizing institution of the system'⁹⁸.

This is because Parliament has an indissoluble and privileged link with popular sovereignty, which 'irrefutably constitutes an offshoot of democratic-representative principles' and, while not describing the terms of an identity relationship, is the organ of the state most expressive of popular sovereignty⁹⁹.

Statements that leave little doubt as to the centrality of Parliament and the role of political representation designed by the Constituent Assembly, but also as to the impossibility of giving space to a different form of democracy that is no longer representative, but direct, at least in its conceptual 'purity'. The reference to the purity of the concept, of course, is not accidental. There is no doubt, in fact, that by direct democracy is meant the decision taken by the people 'without interruption assembled', i.e. by the people in the public square, just as there is no doubt that 'a true democracy has never existed and will never exist'¹⁰⁰.

It is the classics that, as always, light the way to knowledge¹⁰¹.

The participatory institutes, which have also been provided for in the Constitution and which, as has been said, could be quite legitimately (and perhaps even desirably) reviewed and strengthened as long as they do not act as a picklock for a contextual strengthening of the powers of the executive, are fundamental not so much because they aim to replace a certain *type of* democracy with another, but because, by integrating the system in a democratic sense, they strengthen precisely its representative principle¹⁰².

Today, however, the problem is posed in terms of a real opposition between representation and democracy, a sort of ontological choice between the first and second option, which, however, places the alternative in incorrect terms.

⁹⁸ See, Constitutional Court, *Judgment* No 154 of 23 May 1985, cons. dir. 5.1.

⁹⁹ Cf. Constitutional Court. *Sentence* 106 of 2002, *cited above*, cons. dir. 3.

¹⁰⁰ Cf., J.J. ROUSSEAU, *Il contratto sociale*, transl. it. Maria Garin, with an *Introduction* by T. MAGRI, Roma-Bari, 2010, 97.

¹⁰¹ Rivers of ink have been spilled on the meaning of the term 'democracy'. It is therefore not possible here to account for the endless bibliography on the subject.

¹⁰² Cf. M. LUCIANI, *Il referendum abrogativo*, cit., 13; L. CARLASSARE, *Sovranità popolare e Stato di diritto*, in S. LABRIOLA (ed.), *Valori e principi del regime repubblicano*, cit., 163 ff; M. DELLA MORTE, *Rappresentanza vs. partecipazione?*, cit., 31 ff.

It is true that the phrase 'representative democracy' appears as a *contradictio in adiecto*, but it is equally true that with the advent of the multi-class state, the organization of society, its customs, its composition are transformed. With the evolution of social, economic and political complexities and the multiplication of the needs perceived by the community as fundamental, the demands and interests deserving protection have also multiplied, with the consequence that the state has seen its tasks increase disproportionately to the point that nothing else can exist to guarantee democracy except political representation.

Representation, in short, is a guarantee and a means of pursuing the general goals that the democratic-pluralist state must strive for¹⁰³.

The *continuum* through which popular sovereignty is expressed is consubstantial to the very concept of democracy and always passes through the participation of the people in the determination of national policy (thanks to and) through political parties, the taking of decisions, formalized in legislative policy choices, by elected representatives, within the framework of the policy and coordination function whose holder is Parliament, the direction of the government's general policy by the Prime Minister *pursuant to* Article 95 of the Constitution, subject, however, to the control activity of the Chambers and so on¹⁰⁴.

It is only on the basis of these foundations, therefore, that the institutions of participatory democracy can find their harmonious implantation within the current constitutional framework while avoiding the radicalism brought about by today's populisms.

¹⁰³ Cf., G. FERRARA, Democracy and Political Representation, in *costituzionalismo.it*, 2005, 1 ff.

¹⁰⁴ Cf., G. SILVESTRI, *Popolo, populismo e sovranità. Riflessioni su alcuni aspetti dei rapporti tra costituzionalismo e democrazia*, in G. BRUNELLI, A. PUGIOTTO., P. VERONESI (eds.), *Scritti in onore di Lorenza Carlassare. Il diritto costituzionale come regola e limite del potere*, Naples, 2009, 2002. That the *continuum* between popular sovereignty and democratic representation is a *fiction* does not detract from its validity within the framework of the current democratic-representative Constitution. On 'fictions' in constitutional law, R. MICCÙ, *Le finzioni nel diritto pubblico. I percorsi teorici*, Rome, 1999, *passim*; E. OLIVITO, *Le finzioni nel diritto costituzionale*, Naples, 2013, *passim*.

10. The multiplication of peoples and elites: the democratic principle and its concretization through representation

In this way, the attempt to weaken the parliament, to weaken the demands of representation through 'correctives' typical of participatory democracy and to replace its functions through the adoption of normative acts and political decisions with legal force adopted outside of it, suffers from an original sin that is difficult to remedy, which consists in a fallacious conceptual simplification of the current extreme social, political and legal complexity¹⁰⁵.

One forgets, in short, that in order to respond to the manifold and heterogeneous needs of the community, political decision-making requires complex speculative elaborations, which do not seem to find space in the substantial replacement of political representation by the instruments of popular participation (*i.e. (i.e. the referendum, the legislative initiative or the approval tout court of proposed laws)*), where the people, called upon to vote by expressing themselves exclusively with a 'yes' or a 'no' vote, cannot voice their opinions and reach a final decision through normal democratic dialectics, nor can they assert their demands in an articulate manner, nor can they take part in determining the country's policy, except in a simplified form¹⁰⁶.

In other words, in this way there is a 'multiplication of subjects speaking for the 'people'', hence the obvious 'multiplication and opposition between elected and non-elected – non-pluralism – which undermines the validity of the

¹⁰⁵ In contrast, A. LUCARELLI, *Populisms and Democratic Representation*, cit., 67, according to whom "the representation of the people, as a founding element of the State, endowed with legal relevance, does not preclude forms of populism that (...) decline in a complexity of models and variables. The central theme, apparently meta-legal, is visibility, in its real dimension; that is, to what extent the needs of the people are visible and relevant in decision-making processes; to what extent popular sovereignty is actually represented, through the classic institutions and instruments of democratic participation'.

¹⁰⁶ In these terms, M. MANETTI, *Constitution, democratic participation, populism*, cit., 397, who emphasises how the inevitable simplification of the referendum question "is aggravated, altering the sense of the consultation, when the public debate appears impoverished and deteriorated", with the consequence that it is impractical "today, and until the public sphere is adequately revitalised (...) to further expand the manifestations of so-called direct democracy". On this point, see also P. PASQUINO, *People or Elites?* cit., 2., who rightly states 'The people (...) cannot be the subject of legislation, since they are not able to formulate issues or discuss them by suggesting, for example, modifications or amendments'.

representative order', which has the sole result of increasing the role of the *extra-parliamentary elites*, as pointed out earlier¹⁰⁷.

With the consequence that, in these cases, there is not *more democracy*, but *less democracy*, because the result of these votes counts "as the decision of the whole people, therefore also as the will of those who are defeated in the vote, moreover as the will of those who did not take part in the vote and those who do not have the right to vote"¹⁰⁸.

The substantive equality envisaged by Article 3, paragraph 2 of the Constitution, is the primary and qualifying objective of our democracy, very different in form, and even more so in substance, from that 'one is equal one', which traces the personal, equal, free and secret vote envisaged by Article 48 of the Constitution, which is fundamental from the point of view of the equal dignity of each person, but which in its essentiality manifests the need for a merely formal equality, which characterizes the populist instances of those movements that today invoke 'direct' democracy, concentrating their aspirations solely in the moment of the expression of the vote (referendum, approval, etc.)¹⁰⁹.

But to reduce ('direct' or participatory) democracy to a mere ratification of proposals conceived, written and detailed by others -a promoter committee, a group of wise men or a mere material extensor of the proposal on which the people, indeed the electoral body, is called upon to pronounce-, does this not mean, once again attributing to 'a few' the power to draw up such proposals, thus falling right back into that very *intermediation* between the governed and the governed that it purports to eliminate, with the aggravating circumstance of coercing the people's possibility of choice and contradicting that democratic

¹⁰⁷ Cf., P. PASQUINO, *Popolo o élite?*, cit., 2. See, however, the opinion of A. LUCARELLI, *Populismi e rappresentanza democratica*, cit., 58, who states "Instances of greater fairness, of respect for the dignity of people, of workers, of pensioners, not only in a trade union form, but also in a de-structured form, have been forcefully put on the political table, without the intermediation of political parties and trade unions".

¹⁰⁸ See, C. SCHMITT, *Doctrine of the Constitution*, cit., 316.

¹⁰⁹ Cf., G. CASALEGGIO, B. GRILLO, *Siamo in guerra*, cit., 14, who, however, denote a certain terminological and conceptual confusion, when they define direct democracy as that form of state in which "citizens not only elect their representatives, but can also propose and vote on laws through different forms of participation, such as popular petition or referendum". Confusion because, as mentioned above, while direct democracy does not envisage the people deciding through elected representatives, representative democracy may well envisage its contamination with institutions typical of participatory democracy.

principle that it is intended to exalt, in fact affecting the freedom of the vote itself, in violation of Articles 1 and 48 of the Constitution? 1 and 48 of the Constitution?¹¹⁰

If it is true that the first paragraph of Article 1(2) of the Constitution, in stating that “sovereignty belongs to the people”, extrapolated from the rest of the Constitution, almost as if it were a monad, turns out to be fully usable by any ‘type’ of democracy, including the one invoked by the current populisms, placing at the center of its interpretative universe a – perhaps – monolithic concept of the people¹¹¹, it is also true that the subsequent provision sets an impassable limit to the replacement of representative democracy with participatory or ‘direct’ democracy¹¹².

A limitation rooted in the possibility for the people to exercise their sovereignty exclusively ‘in the forms and within the limits of the Constitution’. It is here, then, in this norm that lies the essence of the diversity between ‘the’ different democracies and between them and populism. The Constitution as the limit of power and to power, this is contemporary constitutional democracy, which is also and above all expressed in the representative principle: sovereignty belongs to the people, which -through representation- concretizes the democratic principle on a daily basis¹¹³.

In this way, direct democracy and its populist claim seem clearly distinct from and opposed to what modern constitutionalism preaches¹¹⁴.

¹¹⁰ I deliberately express myself, in the text, in the same words used by the Constitutional Court in its historic sentence 16 of 1978 on the abrogative referendum. See, Constitutional Court, *sentence* 7 February 1978, cons. dir. 5.

¹¹¹ On the difficulty of considering the people in a unitary manner, G. FERRARA, *Alcune osservazioni su popolo, stato e sovranità nella Costituzione italiana*, in *Rass. di dir. pubbl.*, 1965, 269 ff.

¹¹² What is important, as C. ESPOSITO, *Commentary on Article 1 of the Constitution*, in *La Costituzione italiana. Saggi*, Padua, 1954, 10, is that the people is the holder of the exercise of sovereignty, especially in the form of constituted power.

¹¹³ See, M. BENVENUTI, *Divagazioni su popolo e populismo*, cit., 281. The bibliography on the concept of sovereignty is endless. For this reason I have limited the bibliographical references to only those authors I have directly involved in the text to develop my reflections.

¹¹⁴ In contrast, E. LACLAU, *La ragione populista*, cit., XXXII, according to whom, instead, in the farewell to populism there is “the farewell to politics *tout court*, coupled with the idea that the management of a community is up to an administrative power that derives legitimacy from knowing what a ‘good’ community consists of, on balance”, with the consequence that populism represents “the democratic element in contemporary representative systems” (*ibid.*, 168). On this point, however, see the just reflection of P. CIARLO, *Democracy, popular participation and*

11. Populism, direct democracy and the telematic agora

Nor does it seem useful to me to venture down the impervious and slippery road of replacing representative democracy with direct democracy in the telematic *agora*¹¹⁵.

Today, the *democratist* claim¹¹⁶ to use the Net as a *situm* of political decisions to replace or even just flank Parliament in the expression of the popular will is improperly made, because not even the Net allows the exercise of direct democracy in the technical sense, despite the fact that, in some ways, it can represent an extraordinary opportunity to increase the awareness of the electoral body through information that is increasingly accessible to all¹¹⁷. However, it is one thing to appreciate its positive effects in terms of accessibility to sources of information, which enables the formation of a public opinion (*i.e.* a citizenship) that is more aware when it is called upon to take part in political choices, and quite another to support the replacement of representative democracy with the direct democracy of the telematic *piazza*¹¹⁸.

populism at the time of the net, in *Rivista AIC*, 2018, 4, who, states "we constitutionalists know well that conflict, be it cultural, political or social, in order to express itself freely, must be regulated, otherwise the stronger prevails over the weaker and the conflict 'ends'".

¹¹⁵ "It is evident that on the original horizon of the Internet, the founding myth of democracy stands out clearly: the agora of Athens". Thus, S. RODOTÁ, *Il mondo nella rete. Quali i diritti, quali i vincoli*, Bari, 2014, 13.

¹¹⁶ Of *democratism*, referring to direct democracy, also speaks M. LUCIANI, *L'antisovrano*, cit., 159.

¹¹⁷ Cf., T.E. FROSINI, *Internet e democrazia*, in T.E. FROSINI, *Liberté Egalité Internet*, Naples, 2019, 211 ff., according to which the *Internet*, which, however, has "more to do with liberalism than democracy" can "represent an opportunity to improve the forms of democracy, especially in terms of political participation". On this point, also A. SIMONCINI, *The Unconstitutional Algorithm: Artificial Intelligence and the Future of Freedoms*, in *BioLaw Journal*, 2019, 70, who states that the Web allows 'each and every person, at any instant, direct and immediate access to the desired information and, vice versa, each person, at any instant, can become the supplier of information on the web'. Also A. LUCARELLI, *Populisms and Democratic Representation*, cit., 58-59, with a look at France, argues that 'The people, united on the Net and by the Net, has found its unity in the selection of problems, critical issues, and proposals, has spontaneously decided not to use other tools provided by direct or participatory democracy, and has channeled itself towards a real mobilization, turning neither to political parties nor to parliamentary representation', but directly to the executive power.

¹¹⁸ Of *cyberpopulism* speaks M. REVELLI, *Populism 2.0*, Turin, 2017, 47. On electronic democracy, in addition to the Authors cited in the other notes, *ex multis*, P. COSTANZO, *La democrazia elettronica: note minime sulla c.d. E-democracy*, in *Dir. inf. e dell'inf.*, 2003, 465 ff. and the same A., *Il fattore tecnologico e le trasformazioni del costituzionalismo*, in AA.VV., *Costituzionalismo e globalizzazione, Atti del XXVII Convegno annuale dell'Associazione italiana dei costituzionalisti*, Salerno, 22-24 November 2012, Naples, 2014, 43 ff.; M. CUNIBERTI,

The latter hypothesis is plagued by an obvious incompatibility with the current Republican Constitution and its fundamental principles, and for this very reason insuperable through the 'ordinary' instruments of constitutional revision.

But even if we want to hypothesize a path leading in some way to the establishment of a true direct democracy to be exercised through the Net, there are several problems, already highlighted by shrewd doctrine, that make such an idea impracticable and range from the impossibility of guaranteeing that voting is personal, free and secret, as required by Article 48 of the Constitution, to the issue of the faculty of intervention and amendment in an *agora* attended by millions of people, amplified by the circumstance that "electronic democracy by its very nature does not foster, indeed tends to hinder, those thoughtful deliberative processes and that effective interaction between political parties that are the essence and, at the same time, the reason for any modern parliamentary democracy"¹¹⁹, to the nontrivial one of access to the medium, the solipsism it produces, and many more¹²⁰.

The shaping of public decision-making, therefore, also in this case (as in the traditional case of representative democracy today under constant attack), will have to be 'managed': there will have to be someone who necessarily formulates the questions on which citizens are called upon to decide and who also determines the 'how' and 'when' of direct popular consultation.

With which, it seems clear to me, we once again fall back on the idea of the otherness between rulers and ruled, between hegemonic structured minorities and active citizens, against which today's populist propaganda is

Tecnologie digitali e libertà politiche, in *Dir. inf. e dell'inf.*, 2015, 275 ff.; P. BECCHI, *Democrazia diretta, democrazia digitale e M5s*, in *Cyberspazio e Diritto*, 2017, 243 ff.; A. MORELLI, *Political Representation*, cit., 12 ff.

¹¹⁹ Cf., F. GALLO, *Democracy 4.0. La Costituzione, i cittadini e la partecipazione*, in *Rivista AIC*, 2020, 491.

¹²⁰ Cf. M. LUCIANI, *Il referendum abrogativo*, cit., 121; M. DELLA MORTE, *Rappresentanza vs. partecipazione?*, cit., 134 ff.; M. DOGLIANI, *Representation, government and political mediation*, in *constitutionalism.it*, 2017, 13 ff.; P. BILANCIA, *Crisis in representative democracy and openings to new instances of democratic participation*, in *federalismi.it*, 2017, 14, who rightly states 'not all Italians are (...) in a position to participate in the political "debate" also due to a lack of digital culture: factors such as age, cultural and economic conditions marginalise a large part of citizens from any online debate, thus not allowing substantial equality in participation. Weak and marginalised subjects, therefore, precisely those who most need protection to exercise their rights, are not taken into account by e-democracy'.

hurled¹²¹. It will always be the organized and privileged parts of the population (who can access or even own the medium), the real new *elites of e-democracy*, and their intermediation will always be necessary¹²².

Representation, therefore, thrown out the door, re-enters in a different and perhaps, in my opinion, more devious form, through the window, in the guise of *portrayal*¹²³.

If it is true that the *Internet* 'represents the largest public space that humanity has ever known, safeguarding its "nature" implies (...) the concrete possibility of exercising "civic virtues", thus giving shape to an active citizenship' that is a resource for democracy and not 'the congenial form of the new populisms'¹²⁴.

This is a crucial point in current legal thinking: populist movements denigrate representative democracy, undermine the role of Parliament to the point of wishing for its elimination, mock the traditional political parties¹²⁵, extol

¹²¹ In the MoVimento 5 Stelle it is populistically proclaimed that the elected representatives would only be 'employees' of the voters. On this point, G. GRASSO, *Un coup d'oeil sur l'Italie. Le "Mouvement 5 étoiles" et les défis de la démocratie représentative*, report to the 10ème Congrès de l'Association Française des Constitutionnalistes, Lille, 22-24 June 2017, 6 ff. of the paper.

¹²² Cf. M. LUCIANI, *Il referendum abrogativo*, cit., 111 ff. As M. BATTINI, *Storia in corso della democrazia autoritaria*, cit., 270, rightly states, the democracy "of the Internet is the technological version of forms of identity representation implemented 'directly', without the intermediation that is intrinsic to representation".

¹²³ Cf., N. URBINATI, *Io, il popolo. Come il populismo trasforma la democrazia*, Bologna, 2020, 42, according to whom populism 'does not eliminate the elite, but establishes a new type of elite'. On this point, see also P. ROSANVALLON, *Democratic legitimacy. Impartiality, reflexivity, proximity*, Turin, 2015, 45; V. PAZÉ, *Crisis of representation and imperative mandate*, in *Political Theory*, 2014, 286, who points out how, in the case of the 5 Star Movement, the mandate bond 'binds representatives not so much to the voters - called to ratify decisions already taken - but to the undisputed leader of the movement, as well as owner of the relative brand'. On the difference between representation and representation, see, at least, H. HOFMANN, *Representation-Representation. Parola e concetto dall'antichità all'Ottocento*, Milan, 2007, 33 ff.; E.W. BÖCKENFÖRDE, *Democracy and Representation*, in *Quad. cost.* 1985, 227 ff., who rightly emphasizes how the people always express themselves at the urging of the elites. By the same author, see also, of course, *State, Constitution, Democracy. Studi di teoria della costituzione e di diritto costituzionale*, Milan, 2006, 377 ff.

¹²⁴ Cf., S. RODOTÁ, *A Constitution for the Internet?*, in *Pol. dir.*, 2010, 350, which puts on the table a central problem of today's political and legal reflection, absent in his earlier *Tecnopolitica. La democrazia e le nuove tecnologie della comunicazione*, 10 ff.

¹²⁵ That hostility towards parties was hostility towards democracy had already been brilliantly grasped by H. KELSEN, *Essence and Value of Democracy*, cit., 55 ff. As M. MANETTI, *Constitution, Democratic Participation, Populism*, cit., 382 and 385 ff. states, "Clarifying that the target of populist criticism is party democracy, and not the constitutional state as a whole, does not mean, however, denying that such criticism can lead, under certain circumstances, to the establishment of authoritarian regimes, where popular sovereignty is reduced to the acclamation of the leader and the guarantees of rights are cancelled". See, on this point, also F.R. DE

greater and more direct governability both by favouring the strengthening of the executive and through the exclusive, frequent and constant use of participatory democratic institutions such as electronic referendums (transformed into plebiscitary *consensus* instruments)¹²⁶ and proclaim themselves the sole repositories of Truth by accusing the mainstream media of conspiracy¹²⁷.

All this, facilitated by the telematic *agora*, which removes political power from the controls of democratic institutions and the Constitution¹²⁸.

In addition, when populist movements use the Internet and *social media* for communication, information and *consensus* building, the relationship with the free press becomes extremely conflictual. The *Internet* allows the charismatic leader to have a direct line to his supporters, relegating the independent press to the role of the enemy mystifier of reality: the propaganda constantly insinuates the idea that the traditional media are the exclusive prerogative of the *strong powers* and, as such, the cradle of anti-democratic plots to be unmasked¹²⁹.

MARTINO, L' "uso" della Costituzione nel dibattito sulle riforme, in *costituzionalismo.it*, in part. 96 and C. DE FIORES, *Dai partiti democratici di massa ai partiti post-democratici del leader. Constitutional profiles of a metamorphosis*, both in *constitutionalism.it*, 2018, resp. 65 ff. and 211 ff.

¹²⁶ Cf., S. RODOTÁ, *Hyperdemocracy. Come cambia la sovranità democratica con il web*, Roma-Bari, 2013, 19, who states: 'The new technological possibilities assign a previously unthinkable role to the referendum, due to the rapidity and frequency with which it becomes possible to have recourse to it. Every possible social mediator disappears. The electronic home/terminal can be transformed into a permanent voting booth. Deprived of confrontation and reciprocal communication, confined to the game of question and answer, the new mass democracy will take on the character of a living room democracy, of a suffocating 'dining room democracy'.

¹²⁷ A risk that, of course, can also exist when the Net is used not by typically populist movements, but also by traditional political parties, with the difference that, in the latter case, it is only one of the means used to transfer information, not the only one, and the positive effects of the decentralization of political discussion and interaction between participants should prevail over the risks highlighted above.

¹²⁸ C. PINELLI, *Populism, Law and Society. Uno sguardo costituzionale*, in *Questione giustizia*, 2019, 33, that 'constitutional guarantees are (...) totally alien to populists, as they are preordained to limit political power, so the threat invests their *raison d'être*'. On this point, see also P. COSTANZO, *La "democrazia digitale" (precautions for use)*, in *Dir. Pubbl.*, 2019, 71 ff. Of democracy of the public speaks B. MANIN, *The principles of representative government*, cit., 206 ff.

¹²⁹ Cf., A. SPADARO, *Constitutionalism versus Populism. (On the so-called populist-plebiscitary drift of contemporary constitutional democracies)*, in G. BRUNELLI, A. PUGIOTTO., P. VERONESI (eds.), *Scritti in onore di Lorenza Carlassare. Il diritto costituzionale come regola e limite del potere*, Naples, 2009, 2035; G. DI COSIMO, *Personale e digitale: le metamorfosi del partito*, in *Forum di Quad. cost.*, 17 January 2019, 1 ff.; P. CHIANTERA-STUTTE, *Political representation and populism*, cit., 103 ff.

In this sense, the telematic *piazza* and the direct relationship that, through it, the populist *leader* is able to establish with his 'base', speaking through an unmediated and uncontradicted voice, instead of facilitating open debate and the formation of a pluralist political conscience, risks standardizing thought, favoring identity-based acclamations and authoritarian regressions of democracy¹³⁰.

As has been effectively stated, in short, 'a plebiscitary organized political community will (...) be more likely to be satisfied with a representation that symbolizes the collective will through a single person, than to tolerate a representation that reflects social differentiation through a parliament'¹³¹.

Moreover, populist movements often lash out at the caste by proposing the replacement of representative democracy with direct democracy, suggesting that it be implemented through IT platforms that are, however, owned by private entities, managed in a top-down manner, with no guarantee of transparency in public decision-making processes and with no real organization in the Country¹³². This, in addition to the impracticability of direct democracy through the Net for the reasons already stated, is one of the least reassuring aspects of *e-democracy*¹³³. In fact, such platforms are almost always able to significantly influence individual and collective decisions through the manipulation of data and the dissemination of sometimes fake news¹³⁴.

¹³⁰ "The idea that the unmediated and uncontradicted voice of the *leader* represents the truth works in *tandem* with the story that the mainstream media offer the public nothing but lies". Thus, F. FINCHLSTEIN, *From Fascisms to Populisms. History, politics and demagogy in today's world*, Rome, 2019, 99. For A. LUCARELLI, *Populisms and Democratic Representation*, cit., 130, in the network, in reality, there develops 'an apparent freedom and democracy, incapable of structurally and functionally connecting society with institutions, but above all subject to the control of the ICT oligopolies'.

¹³¹ Cf., E. FRAENKEL, *The Representative Component*, cit., 44.

¹³² For example, Mark Zuckerberg tried to organize a referendum on *Facebook*, on which S. RODOTÁ, *Vivere la democrazia*, Bari-Roma, 2018, 32. He also criticizes, on this point, M. MANETTI, *Constitution, democratic participation, populism*, cit., 389. The most striking example of a private platform used by an avowedly populist movement to establish direct democracy is the MoVimento 5 Stelle's Rousseau platform, on which G. CASALEGGIO, D. FO, B. GRILLO, *Il grillo canta sempre al tramonto. Dialogo sull'Italia e il Movimento 5 Stelle*, Milan, 2013, 8 ff.

¹³³ On the Rousseau platform, for example, there is no way to guarantee the reliability of the vote. Cf., L. MOSCA, *Problems and limits of the 'cybercratic' organisational model in the experience of the 5 Star Movement*, in *Practical Reason*, 2015, 37 ff.

¹³⁴ As P. CIARLO, *Democracy, Popular Participation*, cit., 8, 'the awareness underlying Article 21 of the Constitution, for example on the sources of funding for communication, retains its rationale intact. We are leaving the era of conviction to enter the era of (covert) political persuasion'. Cf., S. CANNAVÓ, *Da Rousseau alla piattaforma Rousseau*, Rome, 2019, 10 ff.; A. DAL LAGO, *Clic! Grillo, Casaleggio e la demagogia elettronica*, Naples, 2013, 36, who warns 'Casaleggio e

Contemporary populism, therefore, unlike that of its origins, conceals “a monster that is anything but mild, armed with that subtle violence that is plebiscitary *consensus*, animalized *macroanthropos*, clothed in shiny participatory robes, which conceal the naked life of the cession of sovereignty from the new plebs to the last leader, not even a charismatic one” for which it is necessary to “beat populism, in the form of populist democracy: because it conceals the power relationship”¹³⁵.

And the only viable path seems to me to be the usual, comfortable and rigorous one of ‘what ought to be’ outlined by the Republican Constitution and the exercise of popular sovereignty within the limits drawn by it¹³⁶.

Because, as a great Master of our times, Gianni Ferrara, wrote in a 2008 that now seems light years away, but instead reveals all its relevance today “at the beginning of the 21st century, we cannot have any doubts: democracy is either representative or it is not. Because the ancient one, extolled as direct, turned out to be slavery and imperialism, the identity-based one identified itself in fascist and Nazi totalitarianism, the council-based one exhausted itself in the revolutionary impulse alone. While it cannot be ruled out that other qualifications may intervene to connote it, it has turned out to be true that what defines it are in any case the institutions that have conformed it, which can, and perhaps must, enrich it, but only by deploying the potentialities that fertilize its essence”¹³⁷.

Associati is a fundamental part of the system, as it organises Grillo's strategies, looks after his *blog* and controlled the voting procedures in the 'parliamentary' elections. The company is therefore the brain of the 'Casaleggio-Grillo-M5S' system, but no one knows how it works, or its long-term goals. It operates in silence and secrecy, as the 'dark side' of that entrepreneurial political Janus of which Grillo is the visible and ubiquitous face'.

¹³⁵ Cf., M. TRONTI, *People*, cit., 13-14. Rightly, G. BUCCI, *Dal governo democratico dell'economia alla crisi come dispositivo di governo*, in *Rivista AIC*, 2020, 387, emphasises that "These subjects - while presenting themselves "as anti-system" and "anti-caste" - once they came to power, nevertheless turned out to be "functional" to the strengthening of the system and therefore of its inequalities and discriminations".

¹³⁶ See, M. RUOTOLO, *A mo' di introduzione*, in *costituzionalismo.it*, 2008, 1 ff.; G. AZZARITI, *Democrazia e costituzione*, cit., 237-238, who states 'In this unstable context, the need for a normative capacity of constitutions seems to be resurfacing, flanked by a demand for justice and the protection of fundamental rights at both national and planetary levels (...) A new struggle for the constitution and democracy in the great spaces of contemporaneity is possible, perhaps even necessary', whereby 'if it is true that globalised capitalism is liberal (and liberalist) but not democratic, it is also to be noted that the demands for a democratic constitutionalism that is able to operate on a global level are now appearing on the world stage' not yet ripe for assertion 'but this simply means that there is still a long way to go'.

¹³⁷ Cf., G. FERRARA, *La mutazione del regime politico italiano*, cit., 4.

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