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DELIBERATIVE PARTICIPATION TO DEMOCRATIZE DEMOCRACIES

Surname **Mannarini** Name **Giulia**

Registration number **813074**

Tutor: **Chiar.mo Prof. Claudio Martinelli**

Supervisor: **Chiar. ma Prof.ssa Pamela Martino**

Coordinator: **Chiar.mo Prof. Antonello Tancredi**

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Deliberative participation to democratize democracies

*A mia madre Antonella, a mio padre Alberto e a mia sorella Sofia,
àncore della mia vita.*

*A Paolo,
conoscerti è stato bellissimo, averti accanto ancora di più.*

*Al mio straordinario Maestro,
per avermi guidato
in questa avventura meravigliosa
che è la ricerca.*

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INTRODUCTION

The Reasons, the Path, the Method

They seemed like misfortunes, but they were actually opportunities

GIAMBATTISTA VICO, *Principi di Scienza Nuova*,
dall'epigrafe dedicatoria premessa all'edizione del 1730

*If I were capable of it, I would like to write a hymn [...] to discord, to struggle, to
the disunity of spirits.
Why should thinking and acting in the same way be an ideal?*

Luigi Einaudi, *Verso la città divina*

“Can we still live together – free, equal, and different?” asked Alain Touraine¹. Today, in the aftermath of both medieval and modern developments – of which constitutional theory and history form the very essence and conceptual and historical thread – the need to preserve the best models of government and political organization has by no means disappeared; on the contrary, it has grown more urgent.

While in our time the democratic form enjoys the greatest success in the Western world, it must nevertheless coexist with significant limitations: democracy is not, and never has been, a fixed condition already attained, but rather an ever-changing and evolving process, whose developments

¹ A. TOURAINE, *Pouvons-nous vivre ensemble? Egaux et différents*, Le Livre de Poche, Paris, 1999.

must be followed with great care. Accordingly, the pursuit of a better refinement and adaptation of democratic structures to the concrete demands of reality is inherent to democracy itself and has accompanied it every step of the way.

From a theoretical perspective, this process has translated into the contributions of numerous intellectuals, who over time have provided reflections, theories, interpretations, and critiques within the tradition of democratic thought. Within this broad and qualitatively significant tradition, the family of deliberative democracy occupies a prominent position.

Although “the idea of deliberative democracy and its practical application are as old as democracy itself”², it is the maturation of certain transformations begun decades ago that has recently revived this paradigm. It is now at the center of a renewed scholarly effort to “refine” our democracies. A substantial number of such efforts fall under the broad and heterogeneous umbrella of deliberative democracy, whose most recent theoretical developments stem from communicative theory, the concept of the public sphere, and deliberative methods and politics – areas in which Jürgen Habermas is commonly regarded as a foundational figure. The German philosopher is thus considered among the essential classics in deliberative literature. Closely related, one also finds studies situated within the broader framework of participatory democracy.

These various reflections – arising as critiques of traditional models – center around a common opposition to (mere) political representation and

² J. ELSTER, *Deliberative Democracy*, Cambridge, 1998, p. 8.

the conviction that more solid and effective mechanisms for making public decisions can be devised. The goal is to strike a better balance between respecting democratic ideals and safeguarding individual rights. Public decisions are thus not taken primarily through the procedures of elected assemblies or negotiation with social partners, but rather through discussion and confrontation among citizens' preferences – those citizens being selected via rationalized sortition to participate in new institutional bodies that deliberate within a communicative space designed to foster opinion change.

To deliberate means to actively and consciously engage citizens in political life. The etymological meaning of “deliberation”, which the English language preserves more clearly, holds the epistemic value of the deliberative process itself: “deliberation” refers to the dialogical and discursive method leading to a decision, rather than to the decision as such. Accordingly, forms of communication and information exchange based on rational argumentation become essential. In other words, what is central is the decision-formation phase, which becomes the main instrument for legitimizing and justifying political choices, avoiding, for instance, certain paradoxes identified in game theory and social choice theory. Beyond a particularistic view, deliberation realizes a form of communicative rationality aimed at expressing a collective reason, regarded as superior to individual reasoning. The transformation of opinions thus occurs in a conscious and impartial manner, in order to reach unanimous decisions.

Within the wide range of deliberative practices and new forms of participation – still emerging and difficult to classify – lie the Citizens' Assem-

blies (CAs): hybrid structures at the crossroads of old and new, which have resurfaced in several Western countries in recent years. Beginning with their first experimentation in British Columbia, Canada, in the early 2000s, many other countries have implemented such participatory mechanisms, sometimes as structural innovations, other times more sporadically. Particularly over the past decade, CAs have been revitalized in several major European democracies – Ireland, Belgium, the Netherlands, the UK, France, Germany, and also Iceland – often in relation to specific, sensitive issues. While the original Canadian assembly focused on electoral reform, recent CAs have been convened to foster public dialogue on divisive and high-stakes topics, such as marriage equality, gender issues, abortion, end-of-life decisions, and environmental policy. Even in the Canadian case, electoral reform was at that time a highly controversial issue – what is considered “divisive”, after all, shifts across time and historical context.

This divisiveness may serve as a common denominator among these otherwise diverse phenomena. Today’s Citizens’ Assemblies address topics that are inherently controversial and potentially polarizing, particularly in the domain of civil rights – issues from which national institutions often retreat. In fact, it is often those same institutions that initiate these deliberative processes, delegating the role of mediation and discussion to randomly selected bodies.

Such developments stem from the crisis of the vote – now perceived as insufficient to encapsulate democracy. This reflects a contemporary disillusionment with politics, which is no longer seen as a space of genuine will-

formation, or rather, as one marked by an anemic will, constrained by the accelerated rhythms of today's world.

These factors are linked to another significant transformation: the disintegration of a society once composed of coherent social worlds, as described by Pierre Rosanvallon. In such a society, "delegation was sufficient to represent those social worlds, which had their own internal coherence and meaning. Today, what is at stake is the legibility of society – our ability to narrate and make sense of it. We have moved from a world shaped by processes of representation and delegation to one that demands narrative representation – a form of representation that renders society intelligible to its members and visible in public discourse. This type of representation does not concern static entities, but rather the lived experiences, personal histories, and individual trajectories of its members. These dynamics give rise to collective identities that are at once more fragmented and more historical, bound to events. Societies today are event-communities, communities of testing, rather than simple communities of position"³. These observations echo earlier reflections by authors such as Durkheim, Mead, and Weber on modernity and modernization, as well as Gehlen's concept of crystallization⁴.

These transformations, which breed polarizing and populist dynamics, create fertile ground for trends of verticalization and caesarism to flourish in two directions: on the one hand, a simplified delegation to charismatic

³ P. ROSANVALLON, *Sulla crisi della democrazia*, in *il Mulino*, 4, 2020, pp. 692-701, p. 693.

⁴ For further information on this topic, see J. HABERMAS, *Il discorso filosofico della modernità*, Bari, 1997, pp. 2 ff.

individuals reflects a yearning for leadership; on the other hand, the difficulty traditional representative organs face in incorporating social fragmentation leads to their being bypassed, with decision-making power shifting to the executive. Yet, a democratic regime finds its very essence in “the antithesis of power concentration, in opposition to the idea that social complexity and heterogeneity can be nullified in a single leader, or reduced to a cult of personality”⁵.

In an attempt to respond to this challenge, some sectors of society and academia are placing their hopes in a new actor to whom such representational demands – particularly from younger segments of the electorate – might be delegated, as parties and parliaments increasingly struggle to keep pace with societal change.

This new actor takes the form of an assembly of citizens, selected by lot on a representative basis, grounded in the deliberative theorists’ claim that democracy requires more than the mere aggregation of individual preferences. The quality of decisions is believed to derive from the quality of public debate that precedes the vote. In other words, decisional legitimacy is tied more to robust political argumentation than to the act of voting itself.

Altogether, this leads to the paradoxical coupling of participation and indifference. Deliberative practices today represent a “participatory piece” striving to carve out space within these dynamics. In doing so, they con-

⁵ L. ZANOTTI, *La sana democrazia*, Torino, 2005, p. 106.

front the pressing question of whether we may once again be living in a moment when “our age is one of gestation and transition to a new era”⁶.

It is in this spirit that this work seeks to offer a reflection on the subject, not in a classificatory sense, but rather as a systemic inquiry. Firstly, because attempts to categorize these fragmented and unevenly distributed phenomena have already been widely provided by foreign scholarship. Secondly, because the guiding intent of this research is to use this opportunity to rethink democracy, and to observe representative democracy through the lens of deliberative democracies. This volume is thus a collection of reflections on the relationship between these two forms of democracy, aiming to explore their essence, particularly the beating heart that has sustained representative government.

From a methodological standpoint, the approach is constitutional and comparative, enriched by interdisciplinary contributions, particularly from the fields of history and the history of political thought, which can offer significant insights for legal theorists of the state and institutions.

The starting point is a dive into the past, necessary to establish key distinctions that help elucidate the rationale behind contemporary deliberative theories and practices. This historical grounding allows for identifying the differences between past and present and examining the philosophical reflections that gave rise to deliberative democracies and their practices. The endpoint – closing the circle – is a synthesis of the reflections offered throughout, assembled like pieces of a puzzle to provide interpretive keys

⁶ J. HABERMAS, *Il discorso filosofico della modernità*, Bari, 1997, pp. 6-7, where the Author quotes G.H.W. HEGEL, *Fenomenologia dello spirito*, Firenze, 1963, pp. 8 ff.

not only to the deliberative phenomenon, but above all to representative democracy itself.

A crucial question then emerges: Can deliberative democracy escape the dialectic of consensus and conflict? Or rather, does it claim to establish consensus in a system where pluralism and conflict are inherent?

Indeed, built upon a symbolic framework of values such as “rational consensus” and a vision of uniformity, these theories often attempt to overcome, or even ignore, the irremovable and paradoxical character of democracy: conflict itself. This tension dates back to the very origins of liberal democracy, which emerged from the uneasy convergence of two opposing worldviews: liberalism and democracy.

Such a distorted value framework leads to institutional consequences, whereby the sovereignty of the people is sought to be liberated from the canons of representation, through participatory methods and radically alternative arenas of dialogue – different in their conceptual foundations, methodologies, and normative references. Above all, it is the elitist theorists who help us understand this dichotomy.

Certainly, the discouragement and disillusionment stemming from the apparent poverty and nakedness of the demos, and from a somewhat faded democratic ethos, should be seized not as reasons for despair or passive backlash, but as opportunities to rekindle intellectual and civic responsibility. In adversity, one must find and create opportunity. It is, after all, in the liberal-democratic spirit to react by challenging outdated structures, starting with intellectual reform.

A first step is to critically engage – following the Weberian spirit of the “scientist as a vocation” – with those models that, in various ways, attempt to revitalize the ethos of the people, asking to what extent these paths, offered as solutions or enhancements of democratic participation and, by extension, as answers to democracy’s structural crisis, can systemically co-exist within the current representative framework, a complex and delicately balanced architecture of legal and extralegal norms.

If deliberative circuits were to be embedded into this architecture, would it still be liberal democracy?

CHAPTER I

FOR A HISTORICAL-CONCEPTUAL COMPASS

*Now be pleased to welcome his coming:
he goes in search of liberty, which is so dear,
as he who gives his life for it knows well*

DANTE, *Purgatorio*

SOMMARIO: 1. Nebulous concepts – 2. The Democracy of the Ancients – 2.1. Echoes from Athens: the False Model of Direct Democracy – 2.2. The Concept of Power in Ancient Greece – 3. The Democracy of the Moderns – 3.1. Representative Government – 3.2. Liberalism and Democracy: the Two Distinct Tributaries of the Liberal-democratic River – 3.3. The Intuition of “Organized Minorities” – 3.4. Representative Democracy and Elitism: Debunking Certain Myths – 3.5. Caring for Democracy: Exercises in Retrotopia for a Present That Has Never Been.

1. *Nebulous concepts*

Within some segments of Italian society, and more broadly in Western countries, the revitalization of “democratic discourse” has been persistently ongoing for some time. Not that it ever truly fell silent – given that democratic regimes are, by their very nature, always in a state of becoming.

The need to enable communities of individuals to live together over time, and to do so in the most optimal way possible, has always driven the constant reflection on legal and political organization. From Xenophon to He-

rodotus, from Polybius to Thucydides, and notably Aristotle with his seminal *Ἀθηναίων πολιτεία*⁷, even the ancients pondered the best possible form of government to solve that timeless and perhaps unsolvable political dilemma: civil coexistence.

Thus was introduced – and then practiced – the idea of a broad exercise of political power, entrusted to the *demos*, following specific dynamics embedded within that ancient and peculiar era which shaped the cradle of Western civilization.

Today, with the rise of representative democracy having become established, the core of democratic narrative increasingly seems to hinge on the need to find *correctives* – ones that either leverage the tools and methods offered by technological progress, or hark back to the stylistic forms of a pre-modern and pre-medieval past, necessarily outside the bounds of the representative framework.

As is well known, these two trends pose mostly distinct challenges. Yet they share a common feature: a greater participation by citizens, in two different forms. First of all, a greater involvement in existing participatory mechanisms and institutions, achieved by eliminating space-time barriers; then, a greater involvement in public decision-making processes, allowing citizens to engage in dialogue and confrontation with their representatives.

As for whether these two paths are mutually exclusive, the matter is more complex – mainly due to the vastness of theories proposing what

⁷ ARISTOTELE, T. GARGIULO, P. J. RHODES, A. ZAMBRINI, *Vol. 3: Costituzione Degli Ateniesi*, in P. BOITANI (ed.), *La Democrazia in Grecia*, Mondadori, Milano, 2016.

might be called “relational” participation, i.e., participatory democracy and deliberative democracy.

Even more, deliberative democracy – and more accurately, the theories of deliberative democracy – are characterized by significant variety and a lack of clearly defined application contexts⁸.

Indeed, it is more appropriate to speak of a body of theories rather than a unified and clearly defined theory: “There are probably as many theories of deliberative democracy as there are theorists of it”⁹.

The term “theory” should thus be understood in its etymological sense – from the ancient Greek θεωρία, which in turn derives from θεωρεῖν, meaning “to observe,” “to look at” – that is, as a vision or overview. In other words, these are systems that encompass various bodies of knowledge under a single idea: that of a democracy in which free and equal citizens engage in discussion, expanding the range of political ideas and opinions from the ground up.

So, a strand of theories within which one can nonetheless trace, in very general terms, a few fundamental principles, which are variously addressed and interpreted by different authors. These principles can be identified as participation, discussion, consensus, and inclusion.

Despite these shared principles, the various theories maintain a significant degree of heterogeneity, which is in fact their most distinctive feature.

⁸ R. BIFULCO, *Democrazia deliberativa e principio di realtà*, in *federalismi.it*, 1, 2017, pp. 3-6.

⁹ A. FUNG, *Deliberation before the Revolution. Towards an Ethics of Deliberative Democracy in an Unjust World*, in *Political Theory*, Vol. 33, 3, 2005, pp. 397-419.

First, there is heterogeneity in their initial outlook – culturally, politically, and philosophically – although a common thread can often be found in their critique of liberal thought, whether explicit or implicit. In some theorists, this critique is more pronounced, while others engage more cautiously, often believing that deliberative principles can help overcome the long-standing dichotomy between liberalism and democracy.

Still, it's important to remember that deliberative theories always stem from a recognition of the pathologies of liberal democracies.

There is also heterogeneity in application, as the principles of deliberative democracy have led to the development of various tools and guiding principles, some integrated into representative institutions, and others existing parallel to them.

In short, deliberative democracy is marked by such a level of diversification that the first and foremost challenge of the participatory and deliberative phenomenon is, in fact, describing it¹⁰. This complexity is further heightened by the fact that, as mentioned earlier, deliberative democracies must also grapple with other ill-defined concepts, chief among them being that of participation itself, and the relationship between participation and the representative system.

The distinction lies in the type of participation to be implemented: two forms that are different, yet potentially coexistent and, as we will see, at times interwoven.

¹⁰ J.-M. DENQUIN, *Démocratie participative et démocratie semi-directe*, in A.-M. LE POU-RHIET (dir.), *La Citoyenneté*, in *Les Cahiers du Conseil Constitutionnel*, 23, février 2008, p. 96.

In trying to develop my reasoning on all these aspects, it is essential to point out a crucial element from the outset: it seems entirely fair to say that deliberative theory almost always begins from a critique of liberal and representative thought, regardless of the individual author's specific position.

Structurally and doctrinally, it belongs to a family of theories that stand in opposition to the liberal-democratic tradition—even in cases where that tradition is maintained in the background.

Indeed, for many deliberativists, deliberation and representation are not necessarily mutually exclusive. In fact, many authors have gained prominence by proposing deliberation as complementary to the representative framework¹¹ and in continuity with liberal thought. However, I believe this gives rise to a series of doubts and concerns that are extremely difficult to unravel. In their urgent desire not to reject the liberal tradition, some may fail to realize they are committing a kind of ideological murder of its very values. Because this is not merely about procedural differences – which in themselves already deviate from liberal norms – but about a rejection of the value framework and the foundational essence of liberal democracy itself.

As mentioned in the Introduction, this work does not pretend – nor has it ever pretended – to be an academic treatise, much less an exhaustive study of deliberative democracy. More authoritative academics and scholars

¹¹ However, there are also more radical authors who favour the abolition of representative regimes, T.G. BOURICIOUS, *Democracy through multi-body sortition: Athenian lessons for the modern day*, in *Journal of Public Deliberation*, Vol. 9, 1, 2013; D. VAN REYBROUCK, *Against Elections: The Case for Democracy*, Random House, New York, 2016; B. HENNING, *The End of Politicians: Time for a Real Democracy*, Unbound Digital, 2017.

have filled volumes attempting to develop democratic and philosophical theories, classifying and proposing models where deliberation might be implemented. No: this work seeks instead to seize the opportunity to reflect once more *on representative democracy*, thanks to and through the lens of deliberative democracy and participation. It aims to offer a set of critical reflections, without the presumption of providing a single definitive answer, but rather as a contribution – perhaps modest – to the academic debate, especially in contrast to the widespread enthusiasm that deliberative participation has often inspired.

Critical reflections, as said. Where critique is meant in the etymological sense of the term, from the ancient Greek verb κρίνω: whose earliest meaning was “to distinguish,” “to make distinctions”. This will be the core mission of the work: to make distinctions, especially with the help of the classics of political thought, always ready to speak anew to the present, offering fixed points of reference amidst the upheavals and transformations of our time. In some ways, this is a precious opportunity – but also a warning. Because when the classics still speak to us today, it may well be that the present itself is in trouble.

To understand the true scope – and above all, the conceptual vagueness – of the topic, and the various paths by which these “new” roads to democracy might be realized, it is both appropriate and necessary to clear away possible theoretical confusions.

This requires a few clarifications about this relatively recent branch of democratic thought, and also a brief look at the tradition of participatory democracy.

To do this, as previously stated, we must take a step back in the timeline of history and political thought, to understand the compasses that have guided the West – or, rewriting De Gaulle, a certain idea of the West – up to the present day.

2. *The Democracy of the Ancients*

2.1. *Echoes from Athens: The False Model of Direct Democracy*

That the concept of “representative democracy” reflects a historical conceptual tension between the original meaning of democracy and the theory of representation is often forgotten¹². Over the course of the last two and a half centuries, the term “democracy” has surpassed its original boundaries¹³, evolving as the rise of the democratic state – spurred by transformations from the 17th to the 20th centuries – led to the organization of a political regime in which sovereignty, held by the people, could be exercised through specific tools and procedures. Chief among these was the elec-

¹² This tension has been noted by numerous authors in political science and constitutional law, including E. RITTER VON KUEHNELT-LEDDIHN, *Liberty or Equality. The challenge of Our Times*, Caldwell, The Caxton Printers, 1952;

¹³ M. LUCIANI, *Democrazia rappresentativa e democrazia partecipativa*, in *associazione-deicostituzionalisti.it*, p. 183, available at the link https://www.associazionedeicostituzionalisti.it/old_sites/sito_AIC_2003-2010/materiali/convegna/20030619_padova/luciani.html.

tion of rulers, which ensured the representation of the governed. In other words, modern constitutional systems gradually took shape precisely as “representative democracies”.

Representative government originally emerged as an alternative and superior system to democracy. Today, by contrast, democracy and representative government – i.e., “representative democracy” – are conceptually overlapping, the result of modifications and evolutions that representative government has undergone over the past three centuries. This has led to a conceptual and substantive transformation of the idea of democracy, of which representative democracy has become a particular variant. Yet this transformation has not erased certain democratic mechanisms, some of which have been preserved.

Revisiting these distinctions is crucial for developing a comprehensive understanding of contemporary democratic theories – particularly deliberative theories and sortition-based democracy. After briefly reviewing the key features of Athenian democracy and the historical, political, constitutional, and intellectual foundations – both in Britain and continental Europe – that led to the birth of representative institutions, it is important to reflect again on the interactions between representative government and democratic machinery, tracing some key moments in the history of constitutionalism.

The difficulty in navigating the twists and turns of historical change is compounded by a shortage of precise contemporary terminology, which – as noted at the beginning of the chapter – leads to conceptual vagueness

that inevitably reflects a systemic opacity in the functioning of political institutions. Take, for instance, not only the distinction between representative government and democracy, but also that between representative democracy and direct democracy. As for the first, we do not truly know “what makes representative government resemble democracy, or what distinguishes it from it”, and thus we can only outline some guiding principles to help understand the components and consequences of their interaction. Moreover, what does it mean to exercise power indirectly? What kind of indirect relationship exists between elected officials and those they represent?¹⁴ As for the second distinction, terminological confusion becomes evident when we reconsider what has already been said about Athenian democracy – namely, the realization that even that ancient democracy was not truly “direct.” But again, what do we mean by “direct”? Is it solely a system in which power is exercised by the Assembly, or can we also say that, even when power was exercised by other bodies, it was still exercised directly by the people?

Naturally, such questions – concerning the essence of representation and direct democracy – remain the subject of divergent views among intellectuals, whether legal scholars, philosophers, or political scientists. It is possible we will never arrive at a definitive answer. However, this does not mean we should throw everything away. By revisiting the works of thinkers on representative government – especially the principles systematized by Bernard Manin in his famous essay – we can perhaps sketch a so-

¹⁴ B. MANIN, *Principi del governo rappresentativo*, il Mulino, Bologna, 2010, pp. 6 ff.

mewhat clearer picture. At the very least, these insights are very useful in critically analyzing certain “innovative” trends in our time and their coherence with the foundations of representative democracy.

As mentioned earlier, representative government and democracy were once not seen as equivalent; they were phenomena with radically different features, and the theoretical and practical distinction between them was clear and unquestioned. With his distinction between pure democracy and republic, James Madison argued that representation was not simply a workaround, a makeshift solution to the size of modern states, but rather a superior technique, because it refined and broadened public opinion through the mediation of a selected body of citizens¹⁵. It was fundamentally different from what occurred in Athens, as representative government completely excluded the people, in their collective capacity, from direct participation in public affairs. This was not – contrary to some interpretations – because it lacked representatives in the administration¹⁶. In short, it was a different conception from ancient democracy, where members of a representative assembly were not meant to mirror the people or serve as a miniature version of the populace, but instead constituted a natural aristocracy, distinct yet chosen by the electorate through voting. Only in this way could a “refined” public opinion emerge, the result of deliberative processes within

¹⁵ J. MADISON, *Federalist 10*, in A. HAMILTON, J. MADISON, J. JAY, *The Federalist Papers (1787)*, trad. It. *Il Federalista*, Bologna, Il Mulino, 1997, p. 82.

¹⁶ *Ivi*, p. 194.

smaller assemblies – one that contrasted with a “raw” public opinion driven by uncontrolled passions and contingent interests¹⁷.

According to Sieyès, on the other hand, the representative method was preferable because it allowed for the delegation of governmental functions in a society where individuals did not have the time to devote themselves to public affairs¹⁸. In short, they were two fundamentally different forms, as they were also for Constant, Rousseau, Tocqueville, and Mill. “Democracy” referred solely and exclusively to the “direct” democracy of ancient Athens, where not only did the people directly exercise many functions of sovereignty¹⁹, but where the foundational principle was that of sortition (selection by lot) for most magistracies. The introduction of elections mar-

¹⁷ J. FISHKIN, *La nostra voce. Opinione pubblica & democrazia, una proposta*, Marsilio, Venezia, 2003, p. 160.

¹⁸ E.-J. SIEYÈS, *Observations sur le support du comité de constitution concernant la nouvelle organisation de la France*, October 1789, Versailles, Baudoin, Imprimeur de l'Assemblée Nationale, 1789, p. 35.

¹⁹ B. CONSTANT, *The Liberty of the Ancients Compared with that of the Moderns*, 1819, p. 5. It is no coincidence that the author refers to “many functions of sovereignty”, and not all of them. In fact, even Athenian democracy was not “radically” direct, as there was a much more complex division of powers and functions, see *Infra*. On this point, the milestone is the work of M. H. HANSEN, *La democrazia ateniese nel IV secolo a.C.*, LED, Milano, 2003; see also M.I. FINLEY, *La politica nel mondo antico*, Laterza, Roma-Bari, 1993; ID., *La democrazia degli antichi e dei moderni*, Laterza, Roma-Bari, 2005; G. FASÒ, *La Democrazia in Grecia*, il Mulino, Bologna, 1959; R. DAHL, *Sulla democrazia*, Laterza, Roma-Bari, 2002, pp. 32 ff.; K. HURT RAAFLAUB, J. OBER, R.V. WALLACE, *Le origini della democrazia nell'antica Grecia*, Ariele, Milano, 2011.

ked a departure from sortition²⁰. Up until then, sortition had been the hallmark of systems considered democratic – that is, the self-governing Athens of the 5th and 4th centuries BC²¹, where intermediation between rulers and the ruled was practically nonexistent. In fact, the most authoritative literature on the organization of power in the *pòlis*²² emphasizes how distorted it is to claim that political power belonged entirely to the *demos*.

The institutional body where this power was located, the ἐκκλησία (Assembly), was not its sole holder. Political decisions were entrusted to the Council (βουλή) and to the courts. The Council, which was technically a magistracy (ἀρχή), consisted of 500 members drawn by lot from citizens over 30 years of age, and it played a central role in Athenian governance²³. Its activities were closely tied to those of the Assembly: it prepared and

²⁰ About sortition in general, see B. MANIN, *Principi del governo rappresentativo*, cit.; F. LANCHESTER, *Il sorteggio in campo politico come strumento integrativo dell'attività delle assemblee parlamentari*, in *Nomos. Le attualità nel diritto*, 2, 2016; G. SCACCIA, *Democrazia a sorte: problemi e opportunità*, in *Nomos. Le attualità nel diritto*, 2, 2016; Y. SINTOMER, *Sorteggio e democrazia deliberativa. Una proposta per rinnovare la politica del XXI secolo*, in *Nomos. Le attualità nel diritto*, 2, 2016; A. ZEI, *L'arbitrato del caso: applicazioni del metodo del sorteggio nel diritto pubblico*, in *Nomos. Le attualità nel diritto*, 1, 2017; ID., *Il diritto e il caso. Una riflessione sull'uso del sorteggio nel diritto pubblico*, Jovene, Napoli, 2023.

²¹ And if Bernard Manin wondered why we call ourselves democrats even though no method of selection by lot has been accepted within current systems of government, (B. MANIN, *Principi del governo rappresentativo*, cit., p. 12), today the tendency seems to be to ask the following question: why not use drawing lots to democratise (representative) democracy?

For some reflections on the rationale behind drawing lots in ancient Greece and its revival in Citizens' Assemblies, please also refer to G. MANNARINI, *Citizens' Assemblies as Articulations of Democratic Participation between Criticalities and Perspectives*, in *Diritto Pubblico Comparato ed Europeo*, 4, 2023, pp. 943-976.

²² See *Supra*, note 13.

²³ So much so that Aristotle defines it as μάλιστα κίρια, “the most powerful” in ID., *Politica*, VI, 8, 1322b, pp. 12-17.

managed the agenda, formulated proposals to be voted on, and exercised military, foreign policy, administrative, and financial oversight functions.

The courts, whose members (δικαστάι) were drawn from among the ήλιαστίαι²⁴ – a group of six thousand citizens over thirty, likewise chosen by lot – were genuine political authorities. Among their predominant activities were cases of illegality (γραφή παράνομον): any citizen could initiate such a case, for technical or substantive reasons, against those who had advanced a legislative or decree proposal in the Assembly, even if the latter had already been approved and adopted. In practice, then, cases of illegality allowed the courts to exercise political control over the activity and decisions of the έκκλησία, by virtue of reviewing the contested decisions and potentially annulling those deemed illegal.

The systemic framework was completed by entrusting executive and administrative functions to other magistracies, most of them collegial. Of the seven hundred offices provided by the Athenian system, six hundred were assigned by lot among volunteers, thus favoring a self-selection²⁵ of potential magistrates²⁶; while those requiring specific expertise were entrusted to elected officials, mostly the highest military and financial offices.

²⁴ From the 4th century BC onwards, the νομοθεταί were also recruited from within these ranks and entrusted with the task of drafting laws. During this period, the distinction between laws and decrees became more refined: the latter remained the responsibility of the Assembly, see M. H. HANSEN, *La democrazia ateniese*, cit., pp. 253 ff.

²⁵ Also by virtue of the controls and sanctions to which magistrates were subject by the Assembly and the courts.

²⁶ This aspect was highlighted by Montesquieu and later confirmed by historiographical research as a corrective method to the major flaw of drawing lots: the selection of incompetent individuals, see ID., *L'Esprit des Lois*, l. II, chap. II.

Importantly, however, in no case were the Council and the courts considered direct expressions or identifications of the δῆμος: whenever the term is used to refer to a political body, it refers solely and exclusively to the Assembly²⁷.

2.2. *The Conception of Power in Ancient Greece*

From this brief survey of some fundamental features of the Greek system of government²⁸, one may nonetheless draw decisive considerations, well emphasized by Manin²⁹: all political powers were not entrusted to the people gathered in the Assembly³⁰, to the point that one may legitimately affirm that not even Athenian democracy was, properly speaking, a genuine “direct” democracy.

It was certainly a system of government centered upon the direct will of the people, and not by chance, in Aeschylus’ *Suppliants* one encounters the periphrastic formula of democracy as δέμου κρατουσα χείρ, “the governing

²⁷ M. H. HANSEN, *La democrazia ateniese*, cit., pp. 229-230.

²⁸ An entire chapter of Astrid Zei’s recent essay is devoted to an in-depth analysis of the principle of rotation and the draw, see. A. ZEI, *Il diritto e il caso. Una riflessione sull’uso del sorteggio nel diritto pubblico*, cit., pp. 141- 190.

²⁹ B. MANIN, *Principi del governo rappresentativo*, cit., pp. 28 ff.

³⁰ Given the characteristics of the system, there are those who argue that the Athenian government was representative in nature: “Athenian democracy – especially the mature democracy after 403 B.C.E., as described in Morgens H. Hansen’s *The Athenian Democracy in the Age of Demosthenes* (Hansen 1999) was fundamentally representative rather than direct”, see T. G. BOURICIUS, *Democracy Through Multi-Body Sortition: Athenian Lessons for the Modern Day*, in *Journal of Public Deliberation*, Vol. 9, 1, 2013.

hand of the people”³¹ – an expression referring to the raised hand with which decisions were taken in the Assembly, and thus an image of popular will. Yet this popular will was the manifestation not of “the people” in general, but of those individuals who enjoyed full civic rights (*cives pleno iure*), from which slaves, women, and resident foreigners were excluded.

It was therefore a democracy in which the *ἐκκλησία* indeed held an institutional role of no small importance, but when regard is had to the other political organs, that qualification was limited to the method of selection by lot. It was a form of government in which both the principle of election and that of sortition coexisted, within a culture that undoubtedly considered the elective method aristocratic and oligarchic, whereas sortition was deemed democratic. Yet, for reasons consistent with the architecture of government, election was not incompatible with democracy – provided that it remained residual, subordinate to the principle of sortition³². The latter was considered intrinsically democratic, by virtue of the principle of rotation of offices: which, beyond being decisive in limiting power and preventing excessive or prolonged concentrations of it, was the procedural corollary of an essential feature of Greek culture and mentality, the indispensable adhesive around which the entire organization of power revolved. The democratic pillar was not that the people governed themselves, but that, in turn, each citizen had to govern and be governed: “in other words, democratic

³¹ ESCHILO, *Le Supplici*, 604.

³² The temporary nature of the office was the most common solution in ancient times to allow for a real limitation of power, even, for example, where there were particularly pervasive offices. Suffice it to think, in this regard, of the figure of the dictator in ancient Republican Rome, see L. GAROFALO (ed.), *La dittatura romana*, Jovene, Napoli, 2018.

liberty consisted not in obeying only oneself, but in obeying today someone in whose place one might tomorrow find oneself³³. Thus, if the expectation was that every citizen would eventually hold office, the precise moment at which this occurred became irrelevant, and it could therefore be left to chance.

Moreover, sortition served as a pragmatic solution to the problem of the relationship between the number of citizens and the number of offices to be filled: elections would have excessively reduced the pool of citizens potentially available for magistracies, with the risk of leaving offices vacant. There was, furthermore, an intrinsic tension that could not be ignored, determined by the relationship between electoral freedom and rotation: electoral freedom meant also the power to re-elect a candidate, and this entailed two conflicting consequences – either a limitation on the power of election, or a limitation on the principle of rotation³⁴. Indeed, Athenian democracy was characterized less as the government of all than as the government of each: since it was not the majority that governed – neither of all nor of a few—some scholars have suggested the neologism *hekastocracy*, “government of each one,” to describe the Athenian system, arriving at this conclusion by considering the contrast between sortition and the principle of majority, and by recognizing that sortition, in substance, nullifies will³⁵.

³³ B. MANIN, *Principi del governo rappresentativo*, cit., p. 33.

³⁴ This explains, from this perspective, the prohibition on holding the same judicial office more than once, which applies only to judicial offices appointed by selection and not to those elected.

³⁵ A ZEI, *Il diritto e il caso. Una riflessione sull'utilizzo del sorteggio nel diritto pubblico*, cit., p. 186.

To all this must be added the importance that τύχη (fortune) held in Greek thought and mythology, in which chance was conceived as a genuine divine force³⁶: it is not surprising, therefore, that a method based on lot would operate as a pivot of the system of power and government. Moreover, two further aspects deserve emphasis.

First, the extension of eligibility for office to all those who enjoyed citizenship. It has rightly been noted that it was not sortition itself that embodied the Athenian concept and ideal of democracy, but rather the opposite: it was political equality, from which the full acceptance of the random method derived, that represented the truly democratic principle of allocation³⁷.

Second, the actual dimension of the eligible citizenry. For “it is one thing to await one’s turn, in the certainty that it will come, even if one cannot foresee when; it is another to rely upon a mere eventuality, especially if remote”.³⁸ Not only this, but the combination of rotation and sortition fostered a moderated exercise of government by each individual, for those who were chosen by lot tended toward moderation, and those who were not tended toward temperance³⁹.

One was thus confronted with a precise, coherent, and sensible lattice-work, in which all the parts interlocked. And to retrace, however briefly, the canons of that ancient democracy – which, it must be remembered, la-

³⁶ N. TURCHI, *Tiche*, voce in *Enciclopedia Italiana* (1937).

³⁷ H. BUCHSTEIN, *Demokratie und Lotterie. Das Los als politisches Entscheidungsinstrument von der Antike bis zur EU*, Frankfurt-New York, Campus Verlag, 2010, p. 109.

³⁸ A. ZEI, *Il diritto e il caso*, cit., p. 187.

³⁹ *Ivi*, p. 189; ARISTOTELE, *Politica*, III, 1282a.

sted only a relatively short time⁴⁰ – is particularly useful and crucial, constituting an obligatory step for understanding those branches of deliberative democracy that suggest applying the principles of deliberation within bodies whose members are not elected, but chosen by lot. The system of sortition is, whether consciously or not, reclaimed by its advocates as a means of circumventing and overcoming both the physiological and pathological features of modern systems of government: on the one hand, the consequences of having a ruling class not only elected but also embedded within party structures; on the other, the necrosis of parliamentary debate in the face of the rigidification of party loyalties among parliamentarians – rendering truly dialogical exchange and shifts of opinion highly improbable – as well as the displacement of decisions into other venues than the parliamentary chambers themselves.

As often happens, in the face of new and different necessities, one looks to the past: thus returning to the ancient world. Scholars and civil society movements that advocate the use of deliberative practices based on sorti-

⁴⁰ As Bertrand Russell recalls in ID., *Storia della Filosofia Occidentale*, Longanesi&Co, Milano, 1966, the age of Pericles' rule, covering the period from 460 to 429 BC, is considered the happiest and most glorious period in the history of Athens. It was the final stage in a process of building a government based on collective participation that began after the collapse of Mycenaean civilisation and the monarchies, and which had previously seen Solon's timocratic reform in 594 BC – dividing the population into five classes of citizens who participated in political life according to their income – and Cleisthenes' reform in 508 BC – which divided the people into ten tribes, each of which drew lots to select its representatives in the Council of Five Hundred. Finally, Pericles introduced a financial allowance that allowed the proletariat to take time off work to participate in assemblies, thus establishing the right of every citizen, regardless of wealth, to be frequently and personally involved in the politics of the city. However, Pericles' death marked the end of Athens' democratic experiment, which quickly descended into demagoguery.

tion explicitly affirm their inspiration in that ancient Athenian system⁴¹, insisting on the possibility of strengthening the democratic quality of governments by reintroducing, alongside representative mechanisms, the aleatory principle of sortition. This is sustained by a narrative of recovering values such as equity, inclusion, representativeness, independence, accountability, legitimacy, trust, and liberty – the latter understood in the Aristotelian sense, as alternation between ruling and being ruled – that such practices would allow one to pursue. What would thus be achieved is the preservation of representative regimes as they evolved after the Second World War, alongside the institutionalization of practices other and different from those deriving from the theoretical fabric of stabilized contemporary democracies. In other words, a hybrid regime between representation and instruments of “direct” democracy – yet responding to two different conceptions of legitimacy of power, of citizenship, of equality, and of the relationship between governed and governors. In short, two different ways of conceiving the government of a political community.

For Greek politics was not merely a matter of state administration, but an essential component of *being human*. The idea of εὐδαιμονία was inseparable from the direct involvement of individuals in public life. The *pòlis* represented the place where each individual could express his political nature, a conception captured by Aristotle in the notion of ζῶν πολιτικόν: that man is by nature a political being, and therefore destined to live in community. The Greek man knew no distinction – and could not conceive

⁴¹ Some authors refer to it as “Athenian” democracy, see A. BARNETT, P. CARTY, *The Athenian solution. Radical Reform for the House of Lords*, Demos, Exeter, 1998.

one – between political and social spheres (the latter term first appearing in the Roman world) of his engagement, for such a distinction did not exist. These peculiarities are clearly perceptible in the writings of the ancient philosophers: suffice it to mention, for example, Plato’s *Republic* or the myth recounted in his dialogue *Protagoras*⁴², in which Zeus granted the art of politics, consisting of justice and respect, to all men. Politics was not a specialized art, for if such capacities had been reserved to only a few, cities would have been unable to survive, and humanity itself would have perished. Political virtue was, therefore, man’s nature: “if one wished to find an emblematic image of the way in which the Greeks of the seventh and sixth centuries BCE perceived their political space, the circle would probably be the most fitting. Just as the pyramid expresses the verticality of command structures and social differentiations typical of Asiatic politics, so the circle represents that process, between Solon and Cleisthenes, from the seventh century BCE to the beginning of the next, which placed power (*kratos* or *archē*) in the middle, at the center of the city (*polis*) and of its citizens; making power a public affair, a matter concerning all.”⁴³

This aspect becomes particularly evident with the concept of citizenship. Aristotle wrote that “a citizen in the fullest sense is defined by nothing other than participation in judicial functions and in magistracies”: therefore, citizenship was directly linked to the management of political and institutional life, through active participation that guaranteed each in-

⁴² PLATONE, *Protagora*, 319A-323C.

⁴³ C. GALLI (ed.), *Manuale di storia del pensiero politico*, il Mulino, Bologna, 2006, p. 21.

dividual access to the condition of *polites*. And the *polites* could not withdraw from political engagement, for the system could not survive without effective participation, without the confrontation of opinions, without the acquisition of an awareness of the problems and situations upon which one was called to decide. It thus assumed also the value of an obligation and a responsibility from which the citizen-individual could not exempt himself. As Pericles declared: “The same people, in our case, attend simultaneously to their private affairs and to public matters; and even those who dedicate themselves to particular activities are perfect connoisseurs of political issues. For we alone regard as useless, not as peaceable, the citizen who takes no part at all in these matters”.⁴⁴

Therefore, in the ancient world and in the Aristotelian vision, politics was anything but a system of limits and controls, of bonds and shackles: it was an instrument for achieving collective happiness, promoting civic virtue through rational deliberation, without which the art of legislation would prove impossible⁴⁵. This conception found its rationale in the fact that politics and political life were never perceived vertically, in such a way as to reproduce an association between the idea of politics and the idea of power, of command; rather, they unfolded entirely on the horizontal plane, in the relations among citizens.

⁴⁴ TUCIDIDE, *Storie*, II 40, 2.

⁴⁵ ARISTOTELE, *Etica Nicomachea*, Milano, Bompiani, 2000, edited by C. Mazzarelli, III, 3, pp. 119-123. The importance of deliberative methods was also emphasised by Pericles, see TUCIDIDE, *La guerra del Peloponneso*, Milano, Rizzoli, 1985, vol. I, II, p. 331: “[...] We Athenians either judge or, at least, weigh up various issues appropriately, without thinking that discussion is detrimental to action, but rather that it is detrimental not to be informed by discussion before taking action”.

This does not mean that hierarchies did not exist: as is well known, there were magistrates and strategoi. But “when the base of the pyramid is narrow, the apex cannot stand very high. The contrast between the horizontal idea and the vertical idea of politics must therefore be understood in this proportion: Greek verticality is extremely flattened compared to that of the territorial states.”⁴⁶ The more one moves chronologically away from the city-states, the more one witnesses political communities acquiring ever greater verticality⁴⁷.

From this follows an essential difference in the manner in which the two worlds—the Greek, and then the modern (whose roots are already discernible in the Roman and subsequently medieval worlds) – conceived the problem of power and command. In the *poleis*, the focus was upon the problem of inclusivity and the exercise of power; in modernity, upon its control and limitation, culminating in the establishment of liberal democracies: the outcome of a centuries-long process of transformations, advances, and regressions, they constitute the first form of peaceful political organization that, without denying command – since it remained necessary – succeeded in restraining it.

In general, then, what the past can offer us is an indispensable point of reference. Many of the problems that afflicted intellectuals and rulers 2,500 years ago remain current, and what Pericles said about the meaning of democracy and the values constituting human dignity has made Athens a

⁴⁶ *Ivi*, p. 260.

⁴⁷ *Ivi*, p. 260 ff., p. 272.

myth that still retains its validity⁴⁸. And yet, one cannot ignore a simple, banal fact: in the meantime, the world has changed, as has the mode of existence of power and of the communities upon which that power is exercised; the way of conceiving the relationship between those who wield power and the collective; the modalities and characteristics by which contemporary societies have gradually been structured – or perhaps, it should be said, de-structured.

Thus, the past becomes indispensable for understanding the present, but mostly in the negative sense: namely, for grasping the differences with respect to today, in order to better comprehend the latter in all its facets. Accordingly, what we may draw from that world cannot be practices to revive, but rather models of thought, enriched and adapted to the needs and characteristics of our own time. After all, Carl Schmitt's warning remains valid: "the metaphysical image that a given epoch constructs of the world has the same structure as what, at first sight, presents itself as the form of its political organization"⁴⁹.

One of the most important compasses in comparative law is the cautious and prudent approach toward models, principles, and practices of other politico-constitutional experiences and their possible importation, as well as the aversion to any form of automatism or determinism. This holds true not only in the synchronic perspective, but all the more in the diachronic. Otherwise, the result would be to fall into the trap of a chimera.

⁴⁸ It suffices to reread the speech for the fallen that Pericles delivered in 431 BC and reported by TUCIDIDE, *La guerra del Peloponneso*, cit., 37, 40-41, pp. 325-333.

⁴⁹ C. SCHMITT, *Le categorie del "politico"*, il Mulino, Bologna, 1972, p. 69.

3. The Democracy of the Moderns

Just as it is appropriate to briefly revisit the principles of ancient democracy, it is equally necessary to make a temporal leap in order to trace the development of our own democracy. To use a metaphor, it is necessary to set the table of representative democracy in order to reflect on its past or potential developments and evolutions. And this cannot be done without retracing the thread of constitutional history.

3.1. The Representative Government

In England, the thirteenth century constituted the first great turning point of constitutionalism, when the first conflicts arose between old and emerging institutions – a sort of constitutional civil war triggered by financial disputes, resolved and overcome thanks to the mediating role acquired over time by Parliament, which the English realm established from the outset, with peculiar characteristics that were, in some respects, proto-modern.

A few decades after the events that led to the drafting and signing of the Magna Carta, the first assembly referred to as “Parliament” was convened in 1248; it included representatives of both the secular and ecclesiastical nobility. In 1255, a magnum Parliamentum was summoned, composed of abbots, earls, and barons, which rejected a request for subsidies advanced by King Henry III. In 1258, another major crisis of the century took place: a new baronial revolt, led by the seneschal Simon de Montfort, compelled

the sovereign to grant the Provisions of Oxford, which further limited the powers of the King, established the regular convocation of Parliament—“three times a year to examine the state of the realm and the common needs of the King and of the realm”—set out electoral rules, extended representation to the guilds of towns and boroughs, and created the Privy Council, a body of fifteen members appointed by the barons with advisory and supervisory powers over the King’s actions. In 1265, Simon de Montfort, after defeating the royal forces at Lewes, convened a national assembly, in which two knights from each county and, for the first time, two representatives from every borough or town took part. This assembly constituted the earliest nucleus of what would become the House of Commons—that is, the chamber of non-nobles, namely the freemen, those economically able to support themselves independently, and thus the embryonic bourgeoisie. As G. Musca observes, “it was precisely those rebellious barons, so jealous and tenacious defenders of their own privileges against those of the Crown, who were shaping the history of Parliament and fostering its enlargement to include representatives of estates hitherto subordinate; and it was precisely during the reign of Henry III that those distant descendants of the Norman conquerors at Hastings, who had once despised everything Anglo-Saxon as barbarous, learned to say, with nascent national pride: *no-lumus leges Angliae mutari*”⁵⁰.

In 1295, the Great and Model Parliament was convened, comprising barons, bishops, archbishops, and two representatives from each county,

⁵⁰ G. MUSCA, *La nascita del Parlamento nell’Inghilterra medievale*, Edizioni Dedalo, Bari, 1994.

town, and borough, summoned by King Edward I – called the “English Justinian” – to deliberate on fiscal matters. It was the same King Edward who, in 1297, under constraint from Parliament, issued the celebrated and definitive *Confirmatio Cartarum* of the Magna Carta drafted a few decades earlier. Furthermore, it was precisely during Edward I’s reign that the convocation of Parliaments began to take place at Westminster, rather than in various cities of the realm, a factor which progressively contributed to granting greater stability to Parliament and to fostering the gradual expansion of its powers.

During the reign of Edward II, Parliament drafted the Statute, which established that “matters concerning the property of the King and his heirs, and the condition of the realm and of the people, must be treated, discussed, and resolved in Parliament, by the King and with the consent of the prelates, earls, and barons, and of the communities of the realm, according to established custom.” And in 1327, Parliament decreed the deposition of the King and the succession of his son, Edward III. This was a momentous event, for until then no King had ever been compelled to abdicate, and moreover at the hands of Parliament itself, thereby undermining for the first time the “inviolability of consecrated monarchy”⁵¹.

During the reign of Edward III, Parliament made further progress: the outbreak of war with Philip VI of France – the beginning of the Hundred Years’ War – compelled the King to summon Parliament annually; and the monarch, after an initial phase of tension caused primarily by increased

⁵¹ K.O. MORGAN, *Storia dell’Inghilterra*, Bompiani, Milano, 1993, p. 160.

fiscal burdens to sustain the conflict, eventually displayed greater compliance, “soon granting satisfaction to the petitions of the Commons when they sought redress of grievances.” Nor can one overlook the fact that already in 1376 – the Good Parliament – the English Parliament adopted the procedure of impeachment, applied on that occasion against some of the King’s ministers.

Thus, the Model Parliament of 1295, from the fourteenth century onwards, served as the model for all subsequent convocations; and it developed into a bicameral structure, as representatives of towns and boroughs began meeting separately in what became the House of Commons – at first in the refectory, later in the chapter house of Westminster Abbey. According to some documents, the first meeting of two distinct chambers occurred as early as 1332, although more reliable evidence places it in 1377, under the reign of Richard II.

In this way, an “unequal” bicameralism took shape, dominated by the House of Lords, although “the idea gradually gained ground that only the Commons represented the nation, while the Peers represented merely personal rights,” thereby initiating a bicameralism that tended increasingly towards parity, a development which continued over the succeeding centuries. Indeed, by the fifteenth century, under the reign of Henry IV, the House of Commons had already acquired the right of legislative priority in financial matters. The first half of the fifteenth century, under the Lancastrian dynasty, was characterized by another significant expansion of parliamentary activity. The Hundred Years’ War was still ongoing, and thus

Parliament's activity remained constant; and the Commons began to demand, and for the most part to obtain, that "the King's principal councillors be appointed in Parliament," though still far from asserting the modern principle of a government accountable to the nation. Such demands were facilitated largely by the fact that the Lancastrian monarchs themselves reigned by virtue of parliamentary investiture.

The ability of that monarchy to endow itself so early with such an organ, becoming in fact the paradigm for the parliamentary institution in all subsequent epochs, lies along the trajectory of that constant balancing of public powers which may be described as the *fil rouge* of English constitutional history⁵² – alongside the development and consolidation of the common law, whose pillars served as limits even upon the King's authority, as they predated political power itself. This principle of balance found its practical expression in the continuous bargaining underlying all those measures that innovated upon the established order, and was crystallized in the first and fundamental milestone document of constitutionalism, the *Magna Carta Libertatum*, granted by King John at Runnymede on 15 June 1215.

The events leading to the drafting of this Charter, and the text itself⁵³ – whose "clauses reflect the harshness of the times and the animosity of the

⁵² C. MARTINELLI, *Le radici del costituzionalismo. Idee, istituzioni e trasformazioni dal Medioevo alle rivoluzioni del XVIII secolo*, Giappichelli, Torino, 2016.

⁵³ The final straw was the defeat of John's mercenary troops at Bouvines, France. But the roots of the problem lay in the disastrous policies of his brother, Richard the Lionheart, who, with the Crusades to the Holy Land, his ransom from captivity in Germany and then the war against France, had emptied the Crown's coffers and bled the kingdom dry. John's repeated actions, culminating in the defeat at Bouvines, thus exasperated the English feudal class, accompanied by opposition to the Crown from the high clergy and serious dysfunctions and abuses of the administrative and judicial apparatus.

contracting parties” – demonstrate that it did not arise “in compliance with lofty principles, but on an empirical basis, as the agreed solution to a bitter conflict”⁵⁴. It reaffirmed feudal practices already recognized – since William I and reinforced under his grandson Henry II, the first king of the Plantagenet dynasty and promoter of itinerant courts – but not always observed. This empiricism decisively characterized English constitutional history, which would always be the fruit of intense clashes between centers of power, arising from their being called into question by concrete, real, and tangible situations. The development of the institutions of the island – relatively homogeneous inasmuch as it was characterized by a progressive ascendancy of parliamentary supremacy over the Crown, which certainly experienced moments of slowing but never destructive or definitive setbacks – was always marked by struggles for equilibrium among political and institutional forces, thus fought on the terrain of political conflict, and never primarily on that of abstract theorization. At most, the latter contributed to reinforcing and tilting processes and clashes already underway – as in the case, for instance, of the theory of the State elaborated by one of the giants of liberal thought and political philosophy, John Locke.

The manner in which English political structures were formed during the Middle Ages, where Parliament already constituted a limit of crucial importance, represents the core reason why the kingdom of England was the only one in Europe scarcely touched by the contagion of Absolutism.

⁵⁴ G. MUSCA, *La nascita del Parlamento nell’Inghilterra medievale*, cit.

Indeed, although the subsequent period of the Tudor and Stuart dynasties in the sixteenth and seventeenth centuries certainly led to greater centralization in the hands of sovereigns, the island never experienced absolutism with the same features and intensity as other European nations: “it is more correct to emphasize that the Tudor dynasty and, still more, the Stuart dynasty, related with impatience to the limiting function upon their power that Parliament was already exercising”.⁵⁵

It was precisely this role of limitation, balance, and intervention in the exercise of political power assumed for centuries by the English Parliament that proved decisive. In other nations, where this had not yet occurred, the institutional structures of the modern state were born and took shape through and thanks to the centralization of the three powers of the State in the hands of the sovereign. In England, by contrast, the parliamentary institution came into being from its inception to perform that essential role – not merely as an instrument of political representation of estates and territories constituting the realm, but something more: by virtue of its representative essence, a genuine interlocutor and participant in political power, alongside the monarch. If Parliament initially found its driving force in the baronial estate, it later consolidated its strength through bicameral division, which ensured the representation also of that part of the population initially excluded.

John Aylmer, writing in the sixteenth century, observed: “The political regime of England is not a pure monarchy, as some think from superficial

⁵⁵ C. MARTINELLI, *Le radici del costituzionalismo*, cit.

reflection, nor a pure oligarchy, nor a democracy, but a mixed system of all these elements. [...] Its image – and not merely the image but the very reality – is to be seen in Parliament, where you find these three estates: the King or Queen, who represents monarchy; the nobles, who are the aristocracy; and the burgesses and knights, who represent democracy”⁵⁶. Thus, even the dual form of Parliament was perfectly consistent with the stylistic features of the English tradition, where it found its most classical and traditional meaning, and it contributed to making the monarchy something more: a mixed government in the Polybian sense, where three forms of government blend together. In this way, by reading it through the doctrine of mixed government – which finds its roots in Polybius, but even earlier in Aristotle, and had been anticipated by Thucydides – one may speak of the English Constitution of that time in a descriptive sense, since what mattered was how the structure of society presented itself, as opposed to a prescriptive constitution. What one observes, then, is not separation but interaction; not impediment, but balance among the three parts of the Constitution.

With the second half of the fifteenth century, as a consequence not only of historical events of the period – chiefly, England’s defeat in the Hundred Years’ War – there arose the extraordinary power of the new Tudor dynasty, which ascended to the throne with its founder, Henry, who, having defeated Richard III at Bosworth Field and ended the bloody War of the Roses, re-

⁵⁶ J. AYLMEYER, *An Harborowe for Faithful and True Subjects against the Late Blown Blast concerning the Government of Women*, Strassburg, 1559, cit. by G. R. ELTON, *The Tudor Constitution*, Cambridge University Press, 1960, p. 16, available at www.archive.org.

solved the institutional impasse over the succession to the throne by convening Parliament, which recognized him as King and formalized his accession as Henry VII through the *Act for the Confirmation of Henry VII 1485*.

The Tudor monarchs ruled under the banner of expanding English political and economic power, aiming at the conquest of commercial routes to the new worlds and the construction of a colonial empire.

With Elizabeth I, who ascended the throne in November 1558, royal power was still strong and intact, and England acquired the role of hegemonic colonial power, supplanting Spain after repelling its expansion on English soil in 1588. Yet the accelerations imposed by the new epoch, as well as the transformation of society wrought by the foreign policy of the Tudors, meant that the Queen found herself governing a nation in full transition. County knights and representatives of towns and boroughs were chosen for the most part by country gentlemen, who were replacing the “rough barons of the shires.” Feudal society was disappearing, and “there was now in existence that middle class which had been lacking in feudal times, which would become the mainstay of parliamentary institutions, since it found in them the instrument to defend its interests – against the privileges of the Crown, more than against those of the waning baronial class, which, though it had promoted the historical process in the thirteenth century, was now yielding that role to the bourgeoisie”⁵⁷. By virtue of its growing economic power, the Parliaments of that age, although rarely con-

⁵⁷ G. MUSCA, *La nascita del Parlamento*, cit.

vened, demonstrated an “unexpected spirit of independence,” entering into frequent conflicts with the Queen – conflicts that in some ways prefigured the fierce struggles of the seventeenth century.

The age of the Stuart dynasty – succeeding Elizabeth I upon her death on 24 March 1603 – saw the breakdown of that interaction among Lords, Commons, and the Crown. The latter, eager to impose in England the absolutist model of Louis XIV, sought to govern alone, and the established equilibrium collapsed.

The seventeenth century thus constituted another, and indeed the most significant, turning point in English constitutional history. Parliament, and in particular the House of Commons, was the principal obstacle that the Stuarts wished to abolish, as well as the bulwark against the full absolutism into which the English kingdom risked sinking.

First under James I, and later under Charles I, there was a constant tension between the Crown and the Commons over financial matters. This appeared to reach a settlement with the King’s acceptance of the *Petition of Right (1628)*, but Charles soon made it clear that he had no intention of abiding by it.

Indeed, after the dissolution of Parliament in 1629, eleven years passed before it was reconvened, in 1640, when the King had no choice but to seek the consent of the Commons. Yet that Parliament lasted only a short time – the so-called Short Parliament – and when it was reconvened, it would go down in history as the Long Parliament, remaining in session until 1653. This experience persuaded members that it was necessary to

stabilize the institution further, and to impose on the King, through precise rules and timeframes, the obligation to convene Parliament: this was the *Triennial Act (1641)*, requiring regular convocation by the King and establishing safeguards in the event of noncompliance.

The Glorious Revolution of 1688-89 merely reinforced the conviction that Parliament's position had to take yet another step forward, culminating in a genuine supremacy of the Legislature over the other powers of the State, implemented also by its capacity to convene itself without any formal intervention of the sovereign. At the close of the century, the rupture and crisis that had begun to afflict balanced government in England with the rise of the Scottish and pro-French Stuarts was definitively overcome.

But what led to the events of the Glorious Revolution and to the necessity of altering the relationship among constitutional organs? The years of the Restoration, following Cromwell's republican dictatorship, constituted the ante-chamber of the crisis that erupted between the summer of 1688 and the winter of 1688-89. From the outset, Charles II showed no willingness to share with Parliament the function of determining the political direction of the kingdom, while also drawing the Crown ever closer to the Roman Catholic Church.

This process intensified with the accession of his brother, James II, who moreover presented himself as the British version of Louis XIV, who was then in France laying the groundwork for renewed persecution of the Huguenots. After numerous conflicts between King and Parliament between 1685 and 1688 – primarily over military and religious policy – the tension

culminated in June 1688 with the baptism of James II's firstborn son. This was the definitive signal that a Catholic, pro-papal, and pro-French dynasty was in the making, threatening to obliterate one of the crucial factors of English national identity.

Following conflicts between members of the Anglican Church and the King – especially concerning the suspension of the *Test Act* of 1673, which required an oath of allegiance to the Anglican Church in order to hold public office – Parliament invited William of Orange, *Stadtholder* of the United Provinces and son-in-law of James II, to invade England and effect the monarch's removal. In December 1688, Dutch troops occupied London without difficulty and without encountering resistance from the royal army, while James fled to France.

At that point, in order to prevent the kingdom from descending into permanent and destructive chaos, the political parties offered William the English crown, but on one condition: that he convene a Parliament to establish the foundations for a renewed constitutional order. The acceptance of that pact – through a solemn Declaration – thus inaugurated a transitional phase of constitutional reconstruction, conducted in the spirit of the juridico-constitutional tradition upon which the nation had developed. At its conclusion, that Declaration was translated into law: the *Bill of Rights 1689*. This was yet another contractual document between King and Parliament, by which the crown was granted to William on condition of imposing limits upon royal prerogatives, while at the same time reasserting parliamentary prerogatives and liberties. Upon this juridico-constitutional

foundation, the English monarchy began its evolution toward the liberal state, a full century in advance of continental Europe.

The results of the seventeenth century were aptly described by William Blackstone: “Like three different forces in mechanical physics, these branches united propel the machine of government in a direction that is not that which any one of them would impart if acting alone, but which is the resultant of the particular directions of each; and it is along this line that one finds the true path of liberty and the happiness of all”⁵⁸.

The Glorious Revolution bore little resemblance to its later French namesake in terms of radical revolutionary rupture. Rather, it was characterized not by a breach in the state’s architecture, but by an acceleration, a qualitative leap accomplished by the organization of public powers within a matter of months. It was an adjustment in the relationships among constitutional organs in the spirit of that mixed and balanced government that had characterized the island since the High Middle Ages. And it was rendered possible by the capacity of Parliament – especially the House of Commons and its members, Whigs and Tories alike – to unite political acumen with the strength of the nation’s historical-judicial, and thus constitutional, tradition, thereby setting in motion an institutional transformation that would carry England, over the course of the following two centuries, toward first a constitutional-monarchical and later a parliamentary-monarchical form of government.

⁵⁸ W. BLACKSTONE, *Commentaries on the laws of England (1765-69)*, New York, 1978, Libro I, Chap. II. The first original edition of the work, published by Clarendon Press, can be consulted at www.archive.org.

One of the greatest merits of the English system lay in its ability to build and adjust the machinery of state in accordance with the functioning of the forces of the real world: “[...] just as at that time mastery of the laws of physics had given birth to mechanical engineering (that is, the ability to foresee the interactions among physical forces and thus to order them rationally to produce desired functioning, thereby creating mechanical looms, self-propelled vehicles, lightning rods, and hot-air balloons), so too the discovery of the laws of ‘constitutional physics’ suggested the possibility of founding a ‘constitutional engineering’ – capable of foreseeing and consequently shaping the functioning of the ‘political machine,’ and, if necessary, of fabricating a new one from scratch. And if this was accomplished – or at least attempted – only on this side of the Channel or across the Ocean, it was solely because the English ‘machine’ functioned well enough that ordinary maintenance, and at most the replacement of defective parts, sufficed: as had unfortunately been the case with James II, whom the Glorious Revolution had been obliged to replace with a ‘spare King.’ Indeed, that this was the correct logic, and that James himself was the defective part, was incontestably demonstrated by the fact that, once the substitution had been effected, the machine began to function even better than before”⁵⁹.

These events reveal how the English Parliament – first the repository of aristocratic representation and later of that of the emerging bourgeoisie – was able to impose itself, thanks to its composition, to the relevance acqui-

⁵⁹ G. FLORIDIA, *Fortuna e crisi del governo misto nella Costituzione inglese*, in *Materiali per una storia della cultura giuridica*, in *Il Mulino*, 2, 2000.

red already in the medieval age by the common law system and the principle of the rule of law, as a participant in political action, as an interlocutor and limiter of royal power, until it imposed its own supremacy whenever monarchs exceeded their proper bounds. From the events of the late seventeenth century onwards, the further stabilization of Parliament proceeded almost without hindrance, for the point of no return had been passed, and it would be far more difficult to reverse that supremacy which the Legislature in London had achieved. Once Parliament had shown itself capable of doing so, it could and would do so again, in the event of another conflict.

On the European continent, the advent of modernity brought about a decisive transformation in the conception and modalities of the relationship between those who exercise power and those who are subject to it.

As is well known, the socio-economic and political structure of the medieval age was progressively surpassed in favor of a process of gradual centralization of power in the hands of a single authority. This entailed a radical reconfiguration of the traditional canons by which political power had been understood up to that time, and did so in a manner paradigmatically different from what had occurred across the Channel.

Indeed, the complexity and fragmentation of power centers – Empire, Papacy, monastic orders, municipal statutes, guilds, universities – constituted the defining feature of political organization during the Middle Ages. This was accompanied by a privatistic conception of power and a significant plurality of legal sources. Sovereignty was thus entirely decentralized and diffuse. Despite the considerable diversity that characterized medieval

Europe, these were the fundamental juridical and political traits that distinguished it and that had long regulated the lives of Europeans. These canons underwent, in a relatively short span of time, an overflow and dissolution, in support of the profound social and economic changes that emerged at the end of the fifteenth century, as a consequence of the great geographical discoveries, which in turn paved the way for the colonial expansion of the continental powers.

In the sixteenth and seventeenth centuries, one thus witnesses the decline of medieval parliaments. These assemblies, while not embodying, as in England, the principle of political representation, nonetheless ensured a certain degree of collaboration between peripheral powers and the Crown: if the former obtained at least a minimal control over the use of financial contributions, the latter achieved the indispensable task of “coalescing the nation’s consent by associating (and thus committing) peripheral powers to political decisions”.⁶⁰ It was, paradoxically, precisely the mosaic-like distribution of power in the medieval age that served as the premise for the emergence of such assemblies: “the decentralization of authority, the legacy of feudal organization, elicited the counterbalancing need for some unifying element”.⁶¹ One might therefore have expected the advancement of such parliamentary institutions, which were still in an embryonic stage in terms of fulfilling the criteria of modernity. Yet this trajectory was abruptly interrupted when medieval parliaments were relegated to a position of infe-

⁶⁰ M. COTTA, *Parlamento, ad vocem*, in N. BOBBIO, N. MATTEUCCI, G. PASQUINO, *Il dizionario di politica*, Utet, Torino, 2004, p. 667.

⁶¹ *Ibidem*.

rriority, subordinated to the sweeping centralization of power in the hands of absolute monarchs. The absence of a stabilizing mechanism capable of limiting royal prerogatives – the key to the supremacy of the English Legislature – proved fatal. As an example: the Estates-General in France convened for the last time in 1614, only to be recalled in 1789, on the eve of the Revolution.

Thus, between the fifteenth and sixteenth centuries, the absolute state emerged as the first historical form of the modern state⁶² – later to find in Thomas Hobbes one of its most enthusiastic theorists. Already in the *Leviathan*, as in the writings of other contractualist philosophers, one finds a decisive reconfiguration in the conception of the relationship between rulers and ruled, and in the very notion of sovereignty. The latter no longer drew upon the Hellenic idea of democratic liberty and rotation, but rather upon the principle of the legitimation of political authority through the consent and will of those over whom it was exercised⁶³.

In liberal versions of contractualism, the contract was grounded upon exchange: a *do ut des* whereby the state existed solely to guarantee the protection of individuals and their liberties – hence the necessity of a divided

⁶² See B. M. DOWNING, *The Military Revolution and Political Change. Origins of Democracy and Autocracy in Modern Europe*, Princeton University Press, Princeton, 1992; C. MARTINELLI, *Le radici del costituzionalismo*, cit.; ID., *Teoria e storia del costituzionalismo*, in T. E. FROSINI (ed.), *Diritto pubblico comparato. Le democrazie stabilizzate*, il Mulino, Bologna, 2019.

⁶³ In *Second Treatise of Government*, Chap. VIII, John Locke wrote: “[...] Thus, what gives rise to a political society, and truly establishes it, is nothing other than the consent of a certain number of free men, capable of forming a majority, to come together and associate themselves in such a society. This, and this alone, has given rise to, and could give rise to, a legitimate government in the world”.

and limited government. In Hobbes, by contrast, it was the renunciation of all liberty, in exchange for individual security, that constituted the *raison d'être* of the state entity. In either case, however, the common denominator distinguishing modernity from the pre-modern era lay in the fact that, “at the time when representative government was born, the kind of political equality at the center of the stage was now the equal right to consent to power, and not – or to a much lesser degree – the equal possibility of holding office. This meant that a new conception of citizenship had emerged: citizens were now seen primarily as the source of political legitimacy, rather than as individuals desiring to occupy office personally”.⁶⁴

In this new framework, election and sortition inevitably diverged. They corresponded to two different stylistic canons: once legitimacy was rooted in consent, sortition lost its *raison d'être*, since it could not serve as a source of consent, except indirectly. The elective method therefore prevailed, for it was the logic of the state's formation around *consensus* that triumphed⁶⁵, overshadowing the older nexus of liberty, equality, and rotation, and especially the concern with ensuring equitable distribution of offices. The pressing necessity was now to guarantee that rulers be legitimated by the members of the political community.

⁶⁴ B. MANIN, *Principi del governo rappresentativo*, cit., p. 104.

⁶⁵ However, this was not entirely new at the dawn of representative regimes: as Manin points out, the link between consent and elections can already be found, albeit in a proto-modern form, in medieval tradition, see B. MANIN, *Principi del governo rappresentativo*, cit., p. 97 ff.; cfr. altresì A.P. MONAHAN, *Consent, Coercion and Limit. The Medieval Origins of Parliamentary Democracy*, McGill-Queen's University Press, Kingston, 1987.

It was precisely in the years when, across the Channel, the renewed balanced government restored by the Glorious Revolution consolidated – marking the end of England’s quasi-absolutist phase – that, on the Continent, the decline of the absolute state began. Scholars of constitutional history have noted that, despite its undeniable defects and its irreconcilability with contemporary democratic principles, absolutism represented a necessary stage in the development of the modern state in Europe. The absolute state was indeed the first form of the modern state, characterized by the “tendency to monopolize political power and force in the hands of a superior authority, recognizing no higher power either at the international level (*superiorem non recognoscens*) or at the domestic level”.⁶⁶ With it, for the first time, there arose the foundations of that politico-juridical entity built upon the inseparable nexus of sovereignty, people, and territory – what we now call the *State*⁶⁷.

This structure developed through a gradual yet inexorable concentration of powers in the hands of a single subject, the absolute sovereign. “Absolute” in the literal sense of *ab solutus* – unbound – since the state machine responded solely to the acts of will of the monarch.

Modern sovereignty thus emerged as a unitary concept, intolerant of any division or competing determination. The reasons for this concentration

⁶⁶ N. MATTEUCCI, *Organizzazione del potere e libertà*, Utet, Torino, 1976.

⁶⁷ N. MACHIAVELLI, *Il principe. Dell’arte della guerra*, Bollati Boringhieri, Torino, 1992; N. BOBBIO, *Stati, governo, società. Per una teoria generale della politica*, Einaudi, Torino, 1995. It was Niccolò Machiavelli who used the word “state” – which had always referred to a social position or condition – to indicate the organisation of political power: the state is therefore the conceptual container of the various ways in which it can be expressed: the Florentine thinker speaks of principality, kingdom and republic.

were manifold and complex, revolving around profound economic, political, social, and geopolitical transformations occurring between the fifteenth and sixteenth centuries. Among these were the expansion of geographical horizons beyond previously known boundaries – with their far-reaching political, economic, philosophical, and sociological implications. Yet such change did not arise suddenly, but had its roots in the medieval world, particularly in the late Middle Ages (twelfth to fourteenth centuries): the progressive predominance of commerce and exchange economy over feudal agriculture; the increasing frequency of conflicts among states; religious wars; colonial expansion; the need for permanent armies and, consequently, for continuous financial support from all social classes rather than exclusively from nobles and feudal lords; the development of early administrative and bureaucratic structures; the birth of financial capitalism; and the demands of the bourgeoisie – engaged in trade and craft, and free from hereditary privileges – for institutions and infrastructures conducive to an expanding economy.

These were long and gradual processes, lacking abrupt ruptures, but which, from the sixteenth century onwards, provided the decisive impetus for the concentration of functions and powers in the hands of the monarch. Parallel to this, the juridical framework based on the *ius commune* and on the law of corporate bodies proved increasingly inadequate to meet the new demands, which required instead the greater efficiency afforded by the homogeneous production of norms applicable to the entirety of the new entity: the state.

It was thus natural that, once it had exhausted its historical function, the absolute state would sooner or later enter into decline. Indeed, the very transformation that had determined the necessity of creating a political-legal organization entirely different from the fragmented medieval structure of power did not halt, but rather continued, giving rise to further demands for change.

From the eighteenth century onwards, once again it was social and economic factors that progressively rendered the absolute state anachronistic and increasingly detested, both by the bourgeoisie and by the lower classes. Socially, the traditional division into estates of medieval origin, together with their privileges – especially in fiscal matters – which had persisted under the *Ancien Régime*, appeared ever more inadequate in light of the new economic impulses. These were driven by the gradual eclipse of mercantilist theories in favor of free trade, and by the increasingly insistent demand of the bourgeoisie that its prominent socio-economic role – dating back to the late Middle Ages – be acknowledged also on the political plane.

The *Ancien Régime* had indeed represented an improvement over medieval political and juridical arrangements, but in hindsight it was necessarily transitory and still too burdened with the ancient residues that had weighed upon Europe for centuries. A profound transformation was thus required. The call for institutional adaptation went hand in hand with a categorical rejection of existing structures, finding ideological support in one of the most celebrated currents of philosophical, juridical, political, and cultural thought that would forever change the West: the Enlightenment.

This ideological and theoretical *humus* prepared the ground for the two great revolutions of the late eighteenth century – true gateways to nineteenth-century liberal constitutionalism. It decisively contributed to constructing the foundations of modern man, presenting itself as the supreme exaltation of human Reason, the measure of judgment and verification for interpreting the world without any unconditional appeal to authority or tradition. Accordingly, if Reason permeated all things, the relationship with Power itself was subject to radical reconsideration: “The Enlightenment is therefore, essentially, individual critical thought; the desire for emancipation from every form of subjugation; an explosion of freedom, beginning with freedom of thought and of critique of power and entrenched social structures”⁶⁸.

The Enlightenment matrix⁶⁹ gave rise to renewed reflection on the relationship between rulers and ruled, under the premise that the management of public powers ought no longer to be entrusted to a single subject, but distributed among multiple and distinct organs of power. Each would fulfill specific state functions, with the objective of a balanced government – the paradigm of which was to be found in England.

⁶⁸ C. MARTINELLI, *Le radici del costituzionalismo*, cit., p. 91.

⁶⁹ Far from homogeneous, the common and fundamental character of the valorisation of human reason identifies the existence and development of a single strand, but one to which multiple theories and thoughts contributed, sometimes even conflicting with each other. The most immediate example, of course, is the gulf between the thinking of Montesquieu and Rousseau. Instead, to focus on the distinctive and highly important strand of Scottish Enlightenment, see C. MARTINELLI, *Percorsi costituzionalisti dello Scottish Enlightenment*, in ID. (ed.), *La Scozia nella costituzione britannica. Storie, idee, devolution in una prospettiva comparata*, Giappichelli, Torino, 2016, pp. 97-121; ID., *Libertà e Ragione: connessioni e parallelismi tra illuministi lombardi e scozzesi sulla strada della modernità*, in *Giornale di storia costituzionale*, 20, II semestre 2010, pp. 147-164.

This was the path pursued by the eminent Enlightenment thinker and one of the founders of liberal thought, Charles-Louis de Secondat, Baron de La Brède et de Montesquieu (La Brède, 18 January 1689 – Paris, 10 February 1755). His principle of the tripartition of state powers represents the central point and the outcome of a complex reasoning aimed at depriving the absolute state of its foundations. His theory, inspired by John Locke (Wrington, 29 August 1632 – High Laver, 28 October 1704), assumed the role of a guiding star. Locke, in harmony with the definitive emancipation that Parliament was achieving from the absolutist aspirations of the Stuarts at the end of the seventeenth century, had elaborated in his *Two Treatises of Government* the first comprehensive theorization of the separation of powers, grounded in natural law philosophy and binding together natural rights and the theory of the social contract.

Montesquieu, determined to bring to France what Locke and the English monarchy had achieved, and fully aware that the initial conditions were radically different, adapted that system for the management of public affairs to the continental European reality. With the characteristic Cartesian spirit of French thought, he constructed an *esprit géométrique* of state architecture designed to reproduce the liberal and moderate spirit of England. “Unable to rely either on the beneficial effects of the Glorious Revolution or on the balance guaranteed by the island’s legal tradition, Montesquieu devised a state architecture capable of reproducing its liberal and moderate spirit. Starting from Locke’s vision, he developed it in a geometrical manner, instituting that play of checks and balances which in the English mo-

narchy was implicitly guaranteed by harmony between form and substance, whereas in Montesquieu's esprit de géométrie it had to be explicitly formulated and preserved by the dialectic among the state powers".⁷⁰ His theory of the state thus became a geometrical theory of limits and counter-limits.

The idea of a division of public powers was certainly not new in Western political thought, as the first reflections may already be found in the Greek *poleis*. Plato had intuited the necessity of independence between the judge and political power; Aristotle's *politeia* conceived a mixed government uniting the virtues of monarchy, aristocracy, and democracy. Later, Polybius analyzed the "constitution" of ancient Rome as a paradigmatic mixed government: the assemblies as democratic institutions, the Senate as aristocratic, and the consuls as monarchic. All shared the conviction that only by combining different forms could degeneration be avoided.

Yet while classical theories of mixed government focused exclusively on the horizontal division of power among different classes and numbers of rulers, Montesquieu, though also an advocate of a mixed government – he favored the double incorporation of aristocratic and democratic principles through the bicameral structure of Parliament—developed a modern theory of the state. This theory identified the different functions of the state and attributed them to separate, independent organs, reducing the quantitative criterion of rulers⁷¹ to a merely indicative parameter.

⁷⁰ C. MARTINELLI, *Le radici del costituzionalismo*, cit., p. 110.

⁷¹ N. BOBBIO, *La teoria delle forme di governo nella storia del pensiero politico*, Einaudi, Torino, 1976, pp. 147-149; ID., *Stato, governo, società. Per una teoria generale della politica*, Einaudi, Torino, 1985, p. 104.

The result was a theory of moderated government, in which each organ had its own attributions and could not exceed them without encroaching upon those of the others. This reciprocal limitation was the most effective means of guaranteeing to citizens the protection of their liberties, conceived as the ultimate aim of every state organization. It was a theory of equilibrium, coexistence, and cohabitation between Power and Liberty.

This theory of moderated government became a genuine milestone of political and philosophical thought: not only as a historical and conceptual watershed, but also as the enduring core of contemporary systems of government, which – as is well known – are the result of a composite mixture of theories, practices, and concepts: some ancient, others quintessentially modern.

We thus return to the earlier point concerning the conceptual tension of “representative democracy” – or, if one prefers, its equivocation – which can be resolved only through a diachronic understanding of the term. This requires taking into account: what democracy had always been, since its inception in the Greek peninsula; the conceptual innovations introduced by contractualism and natural law theory, themselves products of the post-Roman, medieval, and early modern West; the progressive maturation, from contractualism onwards, of liberal thought; the theorization of the Enlightenment, which revitalized the human relationship with Power and inaugurated an era of political opening that culminated, over the next two centuries, in the recognition of sovereignty as residing in the people – Rousseau, naturally, being the reference here.

These are complex phenomena and concepts, but they are essential to understanding the underpinnings of the world in which we live and, consequently, the instruments available to safeguard its future – unless we resign ourselves to the equivocation of labeling as democracy any regime of liberty, thereby abdicating the task of comprehending the structural nodes of constitutional order and of the relationship between Power and Liberty, with the risk of losing the capacity to preserve them.

Within this framework, a pivotal innovation brought by modernity was representative government and representation itself – where, as briefly recalled, England served as forerunner thanks to the development of its parliamentary institution. In this model, the members of the political community legitimize those who govern, and participation in politics becomes indirect. Representation, to use the words of Carl Schmitt, becomes a “miracle”: for, if the sovereign people does not exist in his view, it nonetheless exists solely and exclusively by virtue of representation. Whether or not one shares this premise, the metaphor aptly captures the functioning of the representative mandate, for it is precisely what allows the political collectivities of contemporary states to express themselves.

As noted, the method of representation – or, more precisely, of proto-representation – had already been pragmatically practiced in medieval En-

gland, only to be definitively affirmed in the wake of the great revolutions of the late eighteenth century⁷². These, indeed, were liberal revolutions.

3.3. Liberalism and Democracy: the Two Distinct Tributaries of the Liberal-democratic River

So it was that, after having attempted to recapitulate on the one hand the fundamental traits of the ancient democratic system of government, and on the other the English and then continental development of limitations upon Power – together with the emergence of a different conceptual foundation for its legitimacy – one arrives at the connecting element: the principle of liberty.

Indeed, the essential features of Athenian self-government were ultimately aimed not only at guaranteeing equality, but also at enhancing, preserving, and extending liberty. These liberties, however, were necessarily and inevitably conceived in a radically different manner than today. It is no coincidence that Benjamin Constant opposed “the liberties that the ancient peoples valued so much” to “the liberty that is especially precious to the

⁷² Bruno Leoni draws on medieval representation to critically highlight the differences with contemporary representation. According to the medieval concept of representation, “representatives were conceived as delegates of the people, whose task was to formulate and execute the will of the latter”, where “the people were not conceived as a mystical entity, but rather as the collection of individuals in their status as citizens”. Therefore, in medieval England, “the people summoned by the king to Westminster were considered true attorneys and agents of their communities”: in short, representatives acted as agents of others and according to their will, which, according to Leoni, is not the case today, as representation has changed radically, see B. LEONI, *La libertà e la legge*, Macerata, Liberrilibri, 1994, p. 126 and p. 132.

modern nations”⁷³. A crucial distinction to be grasped, for, as he noted: “We are called by our happy revolution to enjoy the benefits of representative government – I call it happy, despite its excesses, because I am focusing on its results – and we could not find freedom and peace today except under the shelter of that form of government. Yet it was totally unknown to the free nations of antiquity, and it would be interesting and useful to inquire why this is so”⁷⁴. Thus, while the principle of liberty, in its abstract and very general sense, has ancient roots in European civilization, Constant systematically laid bare the innovations that transformed the ancient idea of liberty in his famous speech delivered in February 1819 at the *Athénée Royal* in Paris, which has since become one of the canonical texts of liberal thought⁷⁵. The liberty of the ancients, like equality, ended by being the privilege of the few, because it was – save for rare exceptions – collective political autonomy, not the private liberty of the individual: “Condorcet was right: the ancients had no notion of individual rights. Men were, so to speak, nothing but machines whose gears and cog-wheels were regulated by the law”⁷⁶. Since the community and not the individual was the vital center, there was no contradiction in limiting or grading liberty to those who could devote themselves to the exercise of political rights and thus be free – or, alternatively, subordinated to authority, as Constant put it. The

⁷³ B. CONSTANT, *The Liberty of the Ancients Compared with that of the Moderns*, cit., p. 1.

⁷⁴ *Ibidem*.

⁷⁵ See S. HOLMES, *Benjamin Constant and the Making of Modern Liberalism*, Yale University Press, New Haven and London, 1984, pp. 33 ff.

⁷⁶ B. CONSTANT, *The Liberty of the Ancients Compared with that of the Moderns*, cit., p. 3.

indispensable precondition was, naturally, the direct exercise of sovereignty, unmediated by the mechanisms that have since become necessary in modernity and contemporaneity, as a result of factors such as the expansion of political communities, the abolition of slavery, and the primacy of economic and labor activities. The liberty of the moderns, by contrast, is wholly private, centered upon the individual, who is sovereign only in appearance. Sovereignty, as structured within representative government, serves solely to enable individuals to abdicate it⁷⁷.

Thus, all the characteristics of ancient society aligned perfectly with its political manifestations; everything cohered. And if the error of the French revolutionaries lay in believing that this ancient concept of liberty could be transplanted into modern societies, this does not mean it should be erased or forgotten. On the contrary, precisely because of what it once was, we can gain a deeper awareness of what it has become: “[...] it serves to understand better, as is necessary, this idea in its actual and constitutive novelty”⁷⁸. Its cultural, political, and identitarian roots remain there; its influence upon the history of modern thought has been, and still is, decisive. The legacy it has left is an essential heritage – not only cultural, but also scientific: “Those regimes retain the perennial relevance of all great historical experiences in which great values and ideas were implicated or pro-

⁷⁷ *Ibidem*, “the individual is sovereign only in appearance, though he is independent in his private life. His sovereignty is restricted and nearly always suspended; and if at fixed and rare intervals – surrounded by precautions and obstacles – he exercises this sovereignty, all he ever does with it is to renounce it”.

⁷⁸ G. GALASSO, *Liberalismo e democrazia*, in *Il Risorgimento*, LXV, 1, 2018, pp. 9-22, p. 12.

fessed. Thus, the ideal value that moderns so often attribute to those ancient experiences of liberty does not rest merely upon an understandable need to claim an identity or a historical ancestry. It rests also upon the effective and concrete teaching those experiences offer to anyone wishing to grasp more deeply the theoretical horizons, recurring problems, and operative options of a free regime⁷⁹.

One understands better, then, the reversal that took place in the modern age. The reconfiguration of the relationship with power occurred alongside the rise of Enlightenment ideals, themselves cultivated in the wake of seventeenth-century liberal thinkers such as John Locke. The point of departure had shifted: the individual. The individual now became the center and motor of everything, and the structures of Power were to serve him, and to be modeled upon him, rather than the reverse. The state became the instrument for the protection and expression of the individual, and above all of his liberties. Thus was born the liberty of the moderns: liberty from the state – as non-interference, a sphere of enjoyment of private independence – and liberty within the state, which accompanies and guarantees the former, exercised through an indirect sovereignty. This distinction is still perceptible in English, in the nuanced difference between liberty and freedom: the latter referring primarily to the ability to act as one wishes, the former – more historical in origin – denoting the body of individual rights, typically used to indicate freedom from authoritarian control.

⁷⁹ *Ivi*, p. 13.

The truest and perhaps most precious achievement was confidence in the liberating and dynamic force of liberty itself⁸⁰. Tocqueville had already captured this energy when he described the industrious vigor of liberty, perpetually dynamic and tireless, for to stop would be contrary to its nature and would mean betraying itself⁸¹. English history demonstrates this well: what is it, if not the history of continuous and repeated affirmations of liberty? Once the seed of liberty and self-determination is firmly planted, it can only grow stronger. It may encounter moments of weakness, but even these will serve only to prepare for an even more forceful reaffirmation of the free regime.

Beyond the British Isles – where free regimes arose through a far less linear and secular process – the danger lay in the fear of losing such confidence. It was precisely this concern that, in the 1980s, prompted the Austrian Friedrich von Hayek to reflect at length on democracy in *Law, Legislation and Liberty*, in the wake of the postwar economic boom and the crisis of the welfare state⁸².

A free regime today is understood, naturally, as a liberal-democratic regime. And before its affirmation in the aftermath of the Second World War,

⁸⁰ G. GALASSO, *Liberalismo e democrazia*, in *Il Risorgimento*, LXV, 1, 2018, pp. 9-22, p. 14.

⁸¹ A. TOCQUEVILLE, *La democrazia in America*, edited by N. Matteucci, Vol. I, Utet, Torino, 1968-69, pp. 115 ff.

⁸² F. A. VON HAYEK, *Legge, legislazione e libertà*, il Saggiatore, Milano, 1989, pp. 470 ff. Also dating back to 1975 is the work by Michel Crozier, Samuel Huntington and Joji Watanuki *The Crisis of Democracy. Report on the Governability of Democracies to the Trilateral Commission*. According to their thesis, Western democracies had been overburdened by a series of bureaucratic, economic and social activities that had inflated citizens' expectations of democracy itself, which were now clearly disappointed.

and since the late eighteenth-century revolutions, it was liberal—that is, constructed from the theoretical foundations of the current of philosophical and political thought known as liberalism⁸³.

To summarize in a single phrase what liberalism is would be both difficult and futile. Difficult, because one cannot speak of liberalism without speaking of *multiple* liberalisms, of varied nuances. Futile, because such a summary would yield very little of the richness of the intellectual tradition that liberal thinkers have contributed to Western thought. Yet, broadly speaking, certain fundamental features can be identified.

First, liberalism is defined by an unyielding culture of individual liberty. The English historical experience was decisive in shaping this current of thought: from the outset, the English aristocracy demanded and obtained fundamental limitations upon public power – that is, upon the Crown. Hence John Locke, considered almost unanimously by scholars as the father of liberalism. Liberal thought is characterized by an individualistic vision of society, and the institutional and conceptual reversal previously mentioned was determined precisely by the emergence of liberal theories and practices, themselves rooted in England’s long history of aristocratic struggles with the Crown, and on the Continent in the intellectual upheavals of Humanism and the Renaissance, which from the fifteenth century onwards re-centered the individual in all fields of knowledge.

⁸³ On liberalism and a reconstruction of the main thinkers, see N. MATTEUCCI, *Il liberalismo in un mondo in trasformazione*, il Mulino, Bologna, 1972; G. BEDESCHI, *Storia del pensiero liberale*, Rubbettino, Soveria Mannelli, 2015. On Italian liberalism, see M. GRIFO, *Momenti e figure del liberalismo italiano*, Rubbettino, Soveria Mannelli, 2016; R. CUBEDDU, *La cultura liberale in Italia*, Rubbettino, Soveria Mannelli, 2021.

In the ancient conception of the individual – especially the Hellenic – he could be thought of only as a citizen, functionally tied to the community exercising political power. He was not conceivable as an individual in his exclusive personal condition, for the collective entity alone constituted the circle within which the individual could move and exist, and for which the institutional system was constructed. In liberal thought, by contrast, the individual exists in himself, ontologically and constitutively. Yet this individualistic vision is not egoistic or indifferent to the community; liberal thinkers always remained attentive to collective interests. However, since they conceived the community not as an abstract entity but as the sum of relationships among individuals, the nerve center became the force of individual liberty, dynamic and never static, oriented toward the fullest development of the person, thereby promoting the best possible flourishing of the collective. This is the foundational premise – both ideal and political – of the liberal regime: a synthesis of individual and society, grounded in individualism, yet generating a doctrine of the general interest.

Second, intimately bound to the exaltation of individual liberty is the elitist character of liberal thought. By ensuring and assuming the fundamental premise of individual development, liberalism inevitably produces a selection of “fortunes, positions, roles, interests, and other material and immaterial elements” that distinguish citizens’ conditions in society and politics. Yet this selection, arising from the free unfolding of individual energies, is not a defect or a fossilization of the liberal regime. On the contrary, it is a precious and irreplaceable source of human and moral resour-

ces, guaranteeing the liberal society its openness and mobility – without which it cannot exist. Indeed, full liberty elevates the moral quality of a society and balances individual impulses more effectively than any public intervention, in accordance with the general interest”⁸⁴. A natural selection resulting from that process of continuous growth and improvement of one’s tendencies and abilities, preserved where the enhancement, rather than the compression, of one’s freedom is allowed.

From these foundations, liberalism generated a conception of the state in which powers and functions are limited. The limitation of power is intrinsically linked to liberal individualism, for only by constraining public interference can the individual sphere be preserved. Safeguarding a political system that guarantees individual rights is thus the first condition for the endurance of the modern state. This link between liberalism and the limitation of power, and thus between liberalism and the separation of powers, is indispensable to a full understanding of the model’s logic and historical transformations. As Giovanni Bognetti remarked, “to study the separation of powers as a mere structure of apparatuses of command, detached from its genetic connection with the state of liberal individualism [...] prevents comprehension of the genuine spirit of the model and of its true characteristics”⁸⁵.

⁸⁴ G. GALASSO, *Liberalismo e democrazia*, cit., pp. 14-15.

⁸⁵ G. BOGNETTI, *La divisione dei poteri*, Giuffrè, Milano, 2001.

As such, liberalism stood – and still stands – in stark opposition to the absolute state, and to any aspiration to absoluteness, concentration, or unlimited power.

Once again, England’s peculiarity was to have planted the seed of liberalism long before its systematic elaboration and codification by modern intellectuals, and to have done so gradually, without the violent ruptures and juridical breaches that occurred on the Continent at the end of the eighteenth century – ruptures necessitated there by the suffocating grip of absolutism, which had to be torn apart. Thus, the political and social culture of the English Isles always constituted the primary antidote to any absolutist temptation à la Roi-Soleil.

Democracy, by contrast – rooted in Greek thought as “government of the many” and, in the modern age, diffused only little more than a century ago – has always carried a negative connotation. In political thought, it was long conceived as the government of the masses ignorant of their limits. One need only recall Plato’s reflections⁸⁶, or Aristophanes’ satirical portrayals⁸⁷, to see how democracy was associated with demagogy and disorder. By contrast, the doctrine of mixed government – celebrated by Aristotle in the *Politeia*, by Herodotus in his *Histories*, and later by Polybius⁸⁸ and Cicero⁸⁹ – proposed the blending of different principles, so that their fusion

⁸⁶ PLATONE, *Repubblica*, libro VIII, in ID. *Tutte le opere*, edited by G. Pugliese Caratelli, Sansoni, Firenze, 1974, pp. 1047 ff.

⁸⁷ Aristophanes paints a merciless picture of Athenian democracy in his play *The Knights*.

⁸⁸ POLIBIO, *Storie*, VI.

⁸⁹ CICERONE, *Repubblica*, I, XLV.

would yield the balance lost, for example, in Periclean Athens, whose democracy collapsed into demagogic oligarchy shortly after the general's death.

The “mixed” solution has thus always been conceived as a compromise “arising from recognition of the impasse into which every debate about forms of government tended to sink”⁹⁰. A circular deadlock well illustrated by Herodotus in the dialogue among the Persian leaders of the revolt against the Magi⁹¹.

In the post-war period, democracy became the only possible and desirable form of government. This represented a reversal of values – not sudden, to be sure, but grounded in the centuries-long development of political thought and practice. Everything, indeed, is relative and subject to change; immutability does not belong to the world of human affairs. Proof of this lies in the fact that with democracy there occurred, in some sense, a process opposite to that experienced by the concept of dictatorship: from its positive connotation in ancient Rome, it came, by the twentieth century, to designate the totalitarian practices of the modern era⁹². Over the vicissitudes of history, its original negative connotation had faded, as the concept itself had shifted over time, and its analytical meaning was gradually lost. Thus, the defeat of National Socialism and Fascism marked a decisive leap

⁹⁰ G. ZAGREBELSKY, *Imparare democrazia*, Einaudi, Torino, 2007, p. 4.

⁹¹ ERODOTO, *Storie*, III, 80-82; G. CARILLO, *Katechein. Uno studio sulla democrazia antica*, Editoriale Scientifica, Napoli, 2003.

⁹² See L. GAROFALO (ed.), *La dittatura romana*, vol. I-II, Jovene, Napoli, 2018; A. A. MARTINO, *Osservazioni sulla definizione di 'dittatura'*, in *Il Politico*, Vol. 43, 2 (June 1978), p. 273.

forward toward the opening of government to the masses – a process that had begun gradually at the turn of the century, but which the two world wars had threatened to obliterate. Naturally, this opening to the masses was permeated by the distinctive characteristics shaped by the development of constitutionalism, particularly of the liberal variety. It constituted a true milestone – momentous in importance and fraught with difficulty – since the phenomenon straddling the nineteenth and twentieth centuries compelled a return to ancient problems, now situated within an entirely new and different context. Here, as Giovanni Sartori reconstructed, the two dimensions of politics – vertical and horizontal – converged and intersected, though they had until then followed parallel tracks⁹³.

Within the reflections of modern intellectuals, one already finds valuable considerations on democracy – considerations that, some decades later, would become consolidated.

If liberalism had arisen from the need to limit state power, the *raison d'être* of democracy lay rather in distributing it. Democracy rested not on liberty and the individualist ideal, but on equality and the communitarian ideal, on social cohesion and maximum participation in community life. Some authors have warned that this defining characteristic of democracy often led to the mistaken assumption that equality and democracy were synonymous, whereas democracy properly denotes the ensemble of procedu-

⁹³ G. SARTORI, *Elementi di teoria politica*, Il Mulino, Bologna, 1995, p. 273.

res by which political decisions are determined, guided by the principle of distributing power and applying the rule of majority⁹⁴.

Yet equality remains the ideal that democracy and its procedures seek to realize, as Alexis de Tocqueville had already observed, distinguishing democracy as a set of distributive rules for political power from democracy as an idea of government grounded in substantive equality. If understood not as formal but as substantive equality, it stands opposed to liberty. From this perspective it was said, not coincidentally, that socialism is “the content of democracy”⁹⁵. Sartori, for his part, underscored that “[...] liberalism has a vertical impetus (favoring the differentiation that generates eminence), whereas democracy is horizontal diffusion”⁹⁶. Nonetheless, one conception presupposes the other. Tocqueville himself, in *Democracy in America*, used the expression “equality of conditions,” which opens his masterpiece on the United States, as synonymous with the democratic system. For him, this concept referred not only to economic, social, political, and legal conditions, but above all to cultural and spiritual ones: “if there are no essential differences of condition among the members of the collectivity, it is

⁹⁴ F. A. VON HAYEK, *Legge, legislazione e libertà*, cit. Thus, in the sense of democracy understood as a procedure, authors such as Joseph Schumpeter, Hans Kelsen, Norberto Bobbio, see J. A. SCHUMPETER, *Capitalismo, socialismo, democrazia (1942)*, Comunità, Milano, 1955; H. KELSEN, *La democrazia*, Il Mulino, Bologna, 1998; N. BOBBIO, *Il futuro della democrazia*, in ID., *Il futuro della democrazia. Una difesa delle regole del gioco*, Einaudi, Torino, 1984.

⁹⁵ *Perché non possiamo non dirci marxisti*, interview with N. Bobbio by E. De Luca, in *La Repubblica*, 20 February 1976.

⁹⁶ G. SARTORI, *Elementi di teoria politica*, cit., p. 145.

natural that sovereignty should be held by the whole of individuals”⁹⁷. The problem, therefore, is to govern democracy – or, more precisely, to educate it. The advance of equality had been unfolding for centuries: in French history over the previous seven hundred years, Tocqueville noted, not a single major event had failed to resolve in favor of social equality. Thus, in the face of democracy’s inevitability – as a form of power, and one exercised by men – it was necessary to domesticate it, embedding it not only in laws but also in customs⁹⁸, and avoiding the dangerous automatism of the theory of equality applied to intelligence, which would suggest that there is necessarily greater wisdom in the many assembled than in the individual⁹⁹.

In this context, Norberto Bobbio stressed the need to render effective the citizen’s right of choice through the guarantee of rights of liberty. If democracy was primarily procedure, it could not but rest also upon an individualistic foundation¹⁰⁰. Otherwise, one might consider democratic a

⁹⁷ R. ARON, *Le tappe del pensiero sociologico*, Mondadori, Milano, 1973, p. 215.

⁹⁸ A. TOCQUEVILLE, *La democrazia in America*, cit., p. 18.

⁹⁹ *Ivi*, p. 293.

¹⁰⁰ “1) All citizens who have reached the age of majority must enjoy political rights, without any discrimination on grounds of sex, race, religion or social status; 2) votes must have equal weight, which is why corrections to universal suffrage based on capacity criteria are incompatible with democracy; 3) votes must be cast freely, i.e. every citizen must be guaranteed the opportunity to form their own opinion freely, which implies the legitimacy of a plurality of competing political groups; 4) citizens must be able to choose effectively between different options, i.e. they must be in a position to have “real alternatives” both in terms of candidates and political programmes; 5) the majority rule applies to the election of representatives and collective decisions, although, in previously established cases, qualified majorities may be required; 6) no majority decision shall limit the rights recognised to minorities and, in particular, the right of the minority to become the majority in turn”, see N. BOBBIO, *Democrazia ed Europa (1987)*, in ID., *Teoria generale della politica*, edited by M. Bovero, Einaudi, Torino, 1999, p. 381.

system in which the majority decided to abolish parliamentarism and to vest decision-making power in a single leader or a narrow oligarchy¹⁰¹. This crucial clarification prevented the aporia that had marked Hans Kelsen's theory of democracy, whereby he had claimed that the only possible democracy was a purely procedural one, wholly detached from liberal content. According to Kelsen, "even if the extension of state power over the individual were unlimited, even if liberty were completely annihilated and the liberal ideal denied, democracy would still be possible, provided such state power were created by the individuals subject to it"¹⁰². Yet Kelsen himself ultimately admitted that modern democracy cannot in fact be separated from political liberalism¹⁰³, yielding a democratic theory that was contradictory and oscillated between pure proceduralism and the necessity of preserving liberal-democratic evolution.

This inextricable link between democratic proceduralism and liberal content was the achievement of the gradual evolution from the legislative state under the rule of law to the constitutional state under the rule of law. This evolution characterizes liberal democracies, as confirmed by the rigidity of twentieth-century constitutions and their designation as "of the people" – both of which signaled a departure from the flexible, *octroyée* constitutions of the nineteenth century.

¹⁰¹ N. BOBBIO, *I vincoli della democrazia*, in ID., *Il futuro della democrazia*, cit., pp. 57-58.

¹⁰² H. KELSEN, *Essenza e valore della democrazia (1929)*, in ID., *La democrazia*, il Mulino, Bologna, 1998, p. 52.

¹⁰³ H. KELSEN, *I fondamenti della democrazia (1955-1956)*, in ID., *La democrazia*, cit., pp. 245-246.

Liberalism and democracy are thus two distinct conceptual and institutional worlds, each with its own vision of the political order. As Wittgenstein would put it, there is a constitutive tension between two grammars that are different and, in many respects, irreconcilable. This irreconcilability cannot be overcome, but only negotiated and balanced: “there is something in democracy that cannot be reduced to liberalism, just as liberalism cannot be reduced to democracy”¹⁰⁴. This explains why liberal-democratic regimes – the foundation of contemporary democracy – emerged through a gradual convergence, wherein liberalism was democratized and democracy liberalized¹⁰⁵. In this way, the content of democracy became guided by the liberal compass, leading to the recognition that it is legitimate to impose limits on popular sovereignty in the name of liberty. After all, it was democracy that was grafted onto the structures of the liberal state, not the reverse.

Thus, liberalism and democracy, while conceptually distinct, are historically and factually intertwined. “As one approaches the contemporary age, the opposition between liberalism and democracy tends to disappear, and democratic government is increasingly interpreted as the continuation or natural development of liberalism – so much so that it becomes inconcei-

¹⁰⁴ G. GALASSO, *Liberalismo e democrazia*, cit., pp. 9-22, p. 15.

¹⁰⁵ C. B. MACPHERSON, *La vita e i tempi della democrazia liberale*, Il Saggiatore, Milano, 1980.

vable that there could be democratic states that are not also, from the outset, liberal and therefore liberal-democratic”.¹⁰⁶

The tension between liberty and equality – liberal democracy as the outcome of two impulses, not always convergent, of “protective liberty” on the one hand and “distributive democracy” on the other¹⁰⁷ – can only ever be stabilized provisionally, never permanently. There is no necessary relation between the two traditions, only a contingent historical articulation, the fruit of hard-won struggles. Such articulation requires a constant work of refinement and adaptation, based on dynamism, change, and the plurality of values.

These, indeed, are the common features of liberalism and democracy. Though differently combined, they are distinctive of both, and they express one of the defining traits of human civilization: never immutable, never predetermined. As one author put it, “the history of the political civilization of liberalism and democracy is a solemn refutation of every deterministic and prescriptive philosophy of history.”¹⁰⁸ Precisely for this reason, liberal-democratic institutions can never be taken for granted.

This is clear already from their roots: for, regardless of whether democracy is regarded as the natural development of liberalism¹⁰⁹, the overlap-

¹⁰⁶ N. BOBBIO, *Due secoli di democrazia europea*, Dipartimento di Scienze Storiche dell’Università di Perugia, Perugia 1987, p. 19.

¹⁰⁷ G. SARTORI, *La corsa verso il nulla*, Mondadori, Milano 2015, p. 7.

¹⁰⁸ G. GALASSO, *Liberalismo e democrazia*, cit., pp. 9-22, p. 19.

¹⁰⁹ See N. BOBBIO, *Liberalismo e democrazia*, in G. M. BRAVO (ed.), *Il pensiero politico contemporaneo*, Milano, Franco Angeli, 1985, Vol. I, p. 46; N. BOBBIO, *Salvemini e la democrazia*, in *Il Ponte*, 11-12, 1975, pp. 1257-1259.

ping and complementarity of liberalism and democracy have become so deeply ingrained that we often forget their reciprocal and undeniable alterity of orientation. Proof of this lies in the critiques – sometimes harsh, often lucid, and frequently transcending their own time – that nineteenth- and twentieth-century liberal authors addressed to the democratic ideal: from Tocqueville to Mill, from Friedrich von Hayek to Bruno Leoni. They did so through systematic analyses of the structural dynamics of democratic power, whether institutional or ethical-value-based.

From Tocqueville and Mill came warnings – rooted in the primacy of liberty – about the myth of progress and the dangers inherent in democratic dynamics, dangers potentially fatal to democracy itself. “Modern civilization and representative government naturally tend to slide down the inclined plane of mediocrity,” wrote Mill¹¹⁰, who saw the necessary counterbalance in the work of an elite group of intellectually and morally enlightened men. This *fil rouge* permeated Mill’s entire conception of the state¹¹¹, and in a more radical and systematic form, it reappeared in Gaetano Mosca. For both authors, there was no alternative but a representative government in which democracy and representation converged, even as universal suffrage expanded – albeit with qualifications, in Mill’s case, and rejected outright by Mosca.

By contrast, Bruno Leoni, in his critique of democracy as a coercive system hostile to liberty and grounded in a logic of representation incapable

¹¹⁰ J. S. MILL, *Considerazioni sul governo rappresentativo*, edited by M. Prospero, Editori Riuniti, Roma, 1999, p. 116.

¹¹¹ F. VALENTINI, *Il pensiero politico contemporaneo*, Laterza, Roma-Bari, 1991, p. 259.

of binding citizens and representatives, constructed the state on alternative premises. Friedrich von Hayek, though openly skeptical of the liberal democracies' ability to synthesize individual liberty and collective choice, nonetheless continued to affirm their vitality: "Although democracy itself is not liberty, it is the only peaceful method of safeguarding important bulwarks of liberty." For him, democracy was "a means, a utilitarian device for preserving internal peace and individual freedom."¹¹² It was, perhaps, "an ideal still worth fighting for to the end"¹¹³ – without presuming it to be a god on the brink of failure, or one already failed¹¹⁴.

3.4. *The Intuition of "Organized Minorities"*

Certainly, democracy – regarding which it is necessary to draw a diachronic distinction – is today anything but the self-government of the people. The idea that democracy consists in such a thing "[...] is a myth that history continually disproves," for "in all states, those who govern – and here we speak of 'governing' in the sense of making the ultimate decisions imposed [imposition: as Leoni noted] on all the members of a group – are always a minority, a small group, or competing minority groups." Therefore, "[...] the regimes we call democratic differ from those we do not so

¹¹² F. A. VON HAYEK, *La via della schiavitù (1944)*, Rubbettino, Soveria Mannelli, 2011, p. 110.

¹¹³ F. A. VON HAYEK, *Legge, legislazione e libertà*, cit., p. 377.

¹¹⁴ H. H. HOPPE, *Democrazia: il dio che ha fallito*, Macerata, Liberilibri, 2006.

classify not in the absence or presence of ruling minorities, but *in the way in which those minorities emerge, govern, and fall*¹¹⁵.

Reflection on oligarchies and their role constitutes a crucial stage in Western political thought. It matured organically and systematically during the second half of the nineteenth century, developed by certain Italian and German authors, and has continued to this day through a broad and diverse set of thinkers on both sides of the Atlantic. Some contributed more innovatively, others more applicatively, to one of the most fruitful branches of political studies: the theory of elites¹¹⁶. Some continued along the path set by the classics – Mosca, Pareto, Weber, Michels – as the “neo-classicists” of elitism; others enriched their political and sociological thought with this intuition, including Ortega y Gasset, Schumpeter, Aron, and Dahrendorf.

As is well known, elite theory may be defined as the theory according to which “political power [...] always and inevitably belongs to a restricted circle of individuals.” It explains “one of the indisputable uniformities of human history: it is always a very small fraction of people who tend to concentrate a large share of resources, thereby producing an unequal distri-

¹¹⁵ N. BOBBIO, *Quale democrazia?*, in AA.VV., *Prospettive di cultura 1959*, Industrie grafiche bresciane, Brescia, 1959, p. 90.

¹¹⁶ La pubblicistica internazionale che ha sviscerato in tutti i suoi aspetti la teoria delle élites è talmente ricca e composita che sarebbe impossibile indicare qui anche soltanto una parte di quelle opere. Tra i contributi più significativi degli ultimi trent’anni si possono segnalare Zuckerman 1977, pp. 324-344; Hamon 1985, pp. 77-90; Busino 1988; Eldersveld 1989; Cammack 1990, pp. 415-420 e correlativamente Higley, Burton, Field 1990, pp. 421-426. Per quanto riguarda la pubblicistica italiana oltre all’ormai risalente AA.VV. 1961, che raccoglie gli atti di un importantissimo convegno che si tenne tra Milano e Stresa nel settembre del 1959 nell’ambito del IV Congresso mondiale di Sociologia, e al classico Ripepe 1974, si segnala il più recente Sola, 2000, probabilmente il contributo più completo e organico sulla storia del pensiero elitista mondiale mai apparso in Italia.

bution, which translates into an equally unequal distribution of power”¹¹⁷. Despite the differences among the four classic theorists of elitism¹¹⁸, their common denominator remains the conviction that, regardless of the form of state, it is always an organized minority that holds and exercises power over a disorganized majority – whether to its detriment or in its representation¹¹⁹.

Thus, beginning in the second half of the nineteenth century – when pragmatic empiricism began to permeate the social sciences and the study of human phenomena – there flourished a vast and composite elaboration of elite theory. This represented a decisive step forward in confronting an ancient problem that had preoccupied thinkers since antiquity. Mosca, for example, sought to move beyond what he saw as the excessively formalistic theories of government offered by Aristotle, Machiavelli, and Montesquieu. He did so by systematically placing the role of political classes at the center of his interpretation and analysis of the evolution of power throughout history. Indeed, several eighteenth- and nineteenth-century authors had already intuited the role of minorities in power, though only incidentally, without any systematic conceptual organization. Tocqueville and Mill, to cite two celebrated examples, both offered reflections along these

¹¹⁷ G. SOLA, *La teoria delle élites*, il Mulino, Bologna, 2000, p. 7.

¹¹⁸ D. FIOROT, *Potere, governo e governabilità in Mosca e Pareto*, in E. A. ALBERTONI (ed.), *Governo e governabilità nel sistema politico e giuridico di Gaetano Mosca*, Giuffrè, Milano, 1983, pp. 79-102; S. SEGRE, *Mosca e Weber: rapporti intellettuali ed analisi comparata delle sociologie politiche*, in E. A. ALBERTONI (ed.), *Governo e governabilità nel sistema politico e giuridico di Gaetano Mosca*, cit., pp. 103-120.

¹¹⁹ G. MOSCA, *Elementi di scienza politica*, in G. SOLA (ed.), *Scritti politici di Gaetano Mosca*, Vol. II, Utet, Torino, 1982.

lines. In Mill's *Considerations on Representative Government*, one even finds a distinctly elitist interpretation of representation, qualitative and anti-quantitative, as the basis for the best and most desirable system of representative government.

For a long time, elite theory dominated the study of political science, transforming it into a true science *of and about* power¹²⁰, and granting it disciplinary and scientific autonomy through the formulation of the empirical theory of elites¹²¹. Moving beyond the search for the “best form of government,” elitist theorists identified an investigative perspective focused on the “[...] real actors of political dynamics and the effective modalities of the struggle for power.”¹²² They recognized the need to look beyond the juridical facade to the living substance of governance: who, how, and why directs and shapes political action. In so doing, they drew a subtle but crucial distinction between political science and political philosophy. The latter developed normative discourses on power, tied to principles of legitimation; the former pursued descriptive analysis, pragmatic and realistic,

¹²⁰ For the many difficulties of analysis and the tendency to be scientific theory or political thought, see the considerations in G. SOLA, *La teoria delle élites*, cit., pp. 8-10.

¹²¹ Claude Henri de Saint-Simon was the founder of political science and one of the precursors of elitism, along with Comte, Tocqueville and Taine, see E. VIDAL, *Saint-Simon e la scienza politica*, Milano, Giuffrè, 1959; D. FISICHELLA, *Il potere nella società industriale*, Morano, Napoli, 1965.

¹²² G. SOLA, *La teoria delle élites*, cit., p. 29.

directed at political actors¹²³. Ultimately, the two perspectives became complementary.

As has been aptly observed: “In recent years, the debate on the limits and possibilities of renewing democratic thought has begun to lose vitality. The season of criticism against elitist theories, whether in their classical forms or their pluralistic or neo-corporatist reworkings, seems to have ended. In postwar political thought, elitism was the dominant theoretical paradigm and the reference point for every alternative. At that time, it seemed inevitable to expose the errors of a conception of democracy that was too ‘liberal,’ one deemed incapable of resolving the legitimacy crisis of late capitalism. It seemed urgent to raise the issue of broader and more autonomous citizen participation in public life, thereby inaugurating a paradigmatic transformation of democratic thought that would overcome elitism and partitocracy. Today, we know these hopes were not realized, and indeed we cannot even agree on the conditions necessary for them to become reality”¹²⁴. Moreover, in the past two decades, the rhetoric of participation has not diminished; on the contrary, it has discovered new avenues to pursue. In this sense, perhaps it is useful to return to the classics and to

¹²³ On the relationship between philosophy and political science, see also Norberto Bobbio's reflections on political science as the study “of what is” and philosophy “of what ought to be” see ID., *Scienza politica*, in A. NEGRI (ed.), *Scienze politiche 1 (Stato e politica)*, Feltrinelli, Milano, 1970, p. 422; ID., *Dei possibili rapporti tra filosofia politica e scienza politica*, in AA. VV., *Tradizione e novità della filosofia politica*, Laterza, Bari, 1971, pp. 23-29; ID., *Considerazioni sulla filosofia politica*, in *Rivista italiana di scienze politiche*, 1971, 2, pp. 367-379.

¹²⁴ A. GREPPI, *Pluralismo e democrazia deliberativa*, in *Teoria politica*, XIX, 2-3, 2003, pp. 309-328, p. 309.

the past in order to confront the challenges posed by democracy today – particularly deliberative democracy.

Naturally, it would be impossible here to provide a complete and systematic analysis of elite theory, nor is this the objective of the present work. The span of time and the range of intellectuals who have contributed to its development are vast¹²⁵. The aim, rather, is the same that has guided the preceding pages: to identify some essential points necessary for a critical understanding of deliberative elaborations within democratic thought. Specifically, the relationship between elite theory and democracy will be considered, with a focus on the thought of Gaetano Mosca, Joseph Schumpeter, and Raymond Aron. In addition to being among the most significant figures of elitist theory, they are also those who, from differing perspectives, most directly confronted one of its most interesting questions: the relationship between democracy and the theory of organized minorities – or, more precisely, how to regard democratic mechanisms and participation in light of the intuition that power is always managed by minorities.

Elitism may today seem somewhat outdated, even unappealing, in an age that celebrates participation and proclaims the bright future of populisms of various hues. Precisely for this reason, however, revisiting it is perhaps all the more compelling – especially if the intention remains that of preserving liberal democracy. Indeed, it is the conviction here that the authors most critical of democratic mechanisms constitute an invaluable pa-

¹²⁵ A chronological and conceptual subdivision forms the basis of G. Sola's systematic work, *La teoria delle élites*, cit. The author briefly explains the periodisation, divided into five phases, on pp. 31-39.

trimony for critical yet constructive reflection on the well-being of liberal democracies. Such, then, is the legacy left to us by the elitist thinkers.

3.5. *Representative Democracy and Elitism: Debunking Certain Myths*

Founder of political science as an autonomous discipline within Italian doctrine¹²⁶, Gaetano Mosca holds a position of foremost importance among the classics of elite theory with his conception of the political class.

His intellectual orientation was liberal in nature, yet highly unique and unmistakable: inclined toward the empiricism inherited from the Anglo-Saxon current of Enlightenment thought, and resistant to all forms of idealism and abstractions detached from a realist approach. This was the substratum from which Mosca's entire elitist universe developed. His aversion to "non-realism," coupled with his positivist conviction that the scientific methodology of the natural sciences must be applied to the understanding of human phenomena, enabled him to definitively emancipate "politics" from abstract conjectures divorced from reality – as he believed characterized Rousseau's radical democratic thought.

This is evidenced by a "theorization" deeply rooted in the political reality of Italy at the time: Mosca began writing in the 1880s, and the vicissitudes of Italian politics played a decisive role in shaping his analysis of the largely negative evolutionary trends of the parliamentary system.

¹²⁶ "Before the publication of Mosca's work, political science in Italy (and perhaps even in Europe) had neither a well-defined name, nor a recognised status, nor a precisely defined content", N. BOBBIO, *La scienza politica in Italia: da Mosca a Sartori*, in *Mondoperaio*, 1985, 4-5, p. 90.

Thus politics became “science” – a science nourished by a vast array of disciplines: juridical, social, and above all, historical. For Mosca, historiography was the primary and indispensable source of knowledge for the political scientist, as it provided the contextual foundation for constructing a political theory that was not ephemeral but rather solid and enduring. Such a theory was the result of a rigorously scientific methodology, grounded in the confirmation and refutation derived from the study of how the dichotomy between rulers and ruled manifested itself over time: “For many centuries, thinkers have entertained the hypothesis that social phenomena unfolding before them were not mere accidents, nor manifestations of a supernatural and omnipotent will, but rather the effects of constant psychological tendencies that determine the actions of human masses. From Aristotle onwards, attempts have been made to discover the laws and modalities that regulate these tendencies, and the study dedicated to this object has been called ‘politics’”¹²⁷.

This framework helps to explain Mosca’s intellectual method in his study of the State, and particularly of power – the hard core of all his analysis. Power, for Mosca, “[...] is not so much an abstract ontological category as a very concrete system of relations, in which subjects and domination, coercion and consent, innovation and conservation, revolution and tradition intertwine”¹²⁸. It is therefore more than the mere possibility of coercion

¹²⁷ G. MOSCA, *Elementi di scienza politica*, cit.

¹²⁸ C. MARTINELLI, *L’organizzazione del potere nel pensiero di Gaetano Mosca*, in *Giornale di Storia costituzionale*, 17, 2009, pp. 177-205, pp. 178-179.

and force, as suggested by older juridical traditions¹²⁹, yet also distinct from Hannah Arendt's perspective, which emphasized that according to another equally ancient tradition – Greek *isonomia* and Roman *civitas* – the essence of power was not domination but the human capacity to act in concert, intrinsically linked to, rather than opposed to, liberty¹³⁰. Mosca's perspective was entirely pragmatic, oriented toward the study of constants and variables in the rise and decline of states, with attention focused on historical experience in the configuration and management of power across the centuries. His analysis of the ascendant and descendant trajectory of the absolute state, for example, led him to favor the representative state: it was the emergence of the bourgeoisie that had determined the structuring of representative government in the form of the liberal state¹³¹. Consequently, the decline of that social and political class – given the nexus forged between the crown, the bourgeoisie, and liberal constitutionalism – would be the primary cause of the end of that system of government¹³².

¹²⁹ See G. PRETEROSI, *Potere*, Laterza, Roma-Bari, 2007.

¹³⁰ H. ARENDT, *Sulla violenza*, Guanda Editore, Parma, 1996, pp. 33 ff.

¹³¹ And, in particular, through the Albertine Statute, a constitutional charter and therefore a legal document, which was nevertheless first and foremost a political pact between the Piedmontese Crown and the bourgeois elites, as Santi Romano had already pointed out, in accordance with his institutionalist vision and strongly influenced by reality: a non-dogmatic and far from formalistic approach, linked instead to the relationship between reality and legal phenomena. On Romano the constitutionalist, see P. BISCARETTI DI RUFFIA, *Il diritto costituzionale*, in ID. (ed.), *Le dottrine giuridiche di oggi e l'insegnamento di Santi Romano*, Giuffrè, Milano, 1977, pp. 85-110.

¹³² G. MOSCA, *La classe politica*, edited by N. Bobbio, Laterza, Roma-Bari, 1966, pp. 221 ff.

In his *Teorica dei governi*¹³³, Mosca's critique of liberal democracy was harsh and unyielding.

But how did he arrive at so hostile a judgment?

Remaining faithful to his empiricist methodology, Mosca defined the modes of legitimation of organized minorities as the political formula. In other words, this referred to the principles through which political classes establish the legitimating origins of their rule. The existence of a political formula was, for Mosca, inseparable from the needs of social psychology, since human nature is marked by the necessity of believing in and adhering to grand principles—principles that function by consolidating those in power, regardless of their inherent plausibility. Historically, two principal political formulas had prevailed: the divine derivation of the monarch's power, and popular sovereignty.

Through the political formula of popular sovereignty, democratic regimes produced the chimera of "self-government by the people." Decisions, however, were by no means made by the people, for the people. The mechanisms of representation rendered impossible the coincidence of rulers and ruled as envisioned by radical democratic theorists. It was always, and inevitably, the elites who exercised power, even within representative government. For Mosca, therefore, radical democratic doctrines of Rousseau's type were but a "specchietto per le allodole" – a lure based on an illusory and mythical conviction that did not exist in practice and which, in

¹³³ G. MOSCA, *Teorica dei governi e governo parlamentare*, in G. SOLA (ed.), *Scritti politici di Gaetano Mosca*, Vol. I, Utet, Torino, 1982.

fact, could sow the seeds of despotic drift. Evidence of this, in Mosca's view, was to be found in the recent experience of revolutionary France.

Thus, having recognized the decline of absolutism and the consolidation of representative regimes and liberal parliamentarism, Mosca nevertheless pointed out the shortcomings – the distortions – of these systems, based on his study of the historical tendencies of power. Not only was popular sovereignty nonexistent, insofar as it was impossible to render the people governors of themselves, but equally nonexistent and absurd was the notion that the voting citizen could exercise a wholly free and sovereign electoral choice. The elector, Mosca argued, did not autonomously express his will at the ballot box; rather, the outcome was determined by the party's capacity to secure the election of its candidates within a framework structured and guided by political forces through candidate selection. This reflected a perpetual and unrelenting struggle to consolidate positions of power. In other words, there was no genuine popular participation – or rather, the participation of voting citizens never truly reflected the will of the (disorganized) majority, but always and inevitably that of the organized minorities.

Such was the inescapable logic of a political system so designed, which became the central target of Mosca's polemic: the discrepancy between what appeared and what was, between what representative democracy promised and what it actually delivered.

It was on the basis of these considerations that Mosca became one of the most determined opponents of the extension of suffrage – a theme which,

as is well known, stood at the center of public and political debate at the end of the nineteenth century, particularly during the reform initiatives of the Historical Left in the 1880s.

Mosca's opposition to universal suffrage, however, did not stem from reactionary impulses, but rather from the logical consequence of the myth of participation and popular sovereignty. If the act of voting in fact amounted to the expression of the will of organized minorities, then it was impossible for the extension of suffrage to entail the genuine inclusion of broader sectors of the population previously excluded from influencing political direction. Instead, it would mean nothing more than extending the vote to individuals lacking the necessary capacities and competences to cast an informed ballot – particularly in light of the marked backwardness of a predominantly agrarian and illiterate state. In other words, if even within a restricted electorate such awareness was already deficient due to the mechanisms of the representative circuit, which prevented the full and free expression of voting, then extending the franchise would simply increase the number of individuals who could be manipulated by elites. This would only serve to reinforce, crystallize, and ultimately ossify existing power relations. Moreover, by pursuing the myth of popular sovereignty, the legitimating force of those minorities would be disproportionately strengthened. These minorities, especially in Italy, were far from being catalysts or aggregators of the majority's consent, and even less promoters of the common good.

From his analysis of the experiences of other nations – such as Great Britain and the United States – and the reflections of liberal thinkers such as Burke, Tocqueville, or Mill, Mosca acknowledged that political forces could, under certain conditions, play a role genuinely serving the common good. Yet constitutional systems are shaped by the contingencies of their respective histories, which endow them with particular characteristics, making them difficult to export elsewhere. Thus, the comparison between the Anglo-Saxon and the Italian experiences led Mosca – naturally influenced by the events in his own country – to develop a relative and strongly disenchanted view of political parties. This allowed him, on the one hand, to anticipate many of the flaws of the twentieth-century partitocratic state, but on the other, prevented him from recognizing the inevitability of the liberal state's opening to the masses, which was occurring in his own time, and from reflecting on what would be necessary to govern such a momentous turning point in history.

This intellectual orientation was driven by his concern with understanding how power arises and takes form within systems of government, moving beyond the merely juridical-formal or historical peculiarities of each system. To that end, he reversed the perspective: instead of beginning with mechanisms to limit power, he first sought to understand how power is formed – and it is *always and inevitably* formed and managed by organized minorities. As has been noted, Mosca's reflections grew out of his dissatisfaction with the theories of liberal constitutionalism¹³⁴, making him a

¹³⁴ C. MARTINELLI, *L'organizzazione del potere nel pensiero di Gaetano Mosca*, cit., p. 198.

wholly original liberal thinker, anything but superficial or reactionary, and faithful to his methodological approach grounded in experience rather than appearances¹³⁵. This quality earned him significant recognition, even among scholars animated by greater optimism or radically different ideological orientations, such as Piero Gobetti, Luigi Einaudi, and Antonio Gramsci¹³⁶.

The ultimate conclusions of his thought illustrate this point well. For although he remained consistently convinced of the contradictions and hypocrisies of democracy and parliamentarism, he nevertheless regarded representative government as the only system of governance capable of synthesizing increasingly complex societies. In other words, its advantages – classic motifs of liberal thought – lay, for Mosca, in the reciprocal checks between the elective and the administrative elements (thus in the division of powers), in the recognition of civil and political rights (thus in the limitation of public power), and in the circulation of the political class. These benefits outweighed the defects¹³⁷, alongside the intellectual and moral elevation of minorities, which was necessary to prevent mass democracy and its degenerations from destroying liberalism. Popular sovereignty, though false and misleading, was, for Mosca, a myth that could not be eli-

¹³⁵ F. MANCUSO, *Gaetano Mosca e la tradizione del costituzionalismo*, Edizioni Scientifiche Italiane, Napoli, 1999, p. 129.

¹³⁶ G. LOMBARDI, *Costituzione e diritto costituzionale nel pensiero di Piero Gobetti*, in *Diritto e società*, 2, 1984, p. 198; M. A. FINOCCHIARO, *Gramsci, Mosca, e la Massoneria*, in *Teoria politica*, 2, 1993, pp. 135-161; C. MARTINELLI, *L'organizzazione del potere nel pensiero di Gaetano Mosca*, cit., pp. 199-200.

¹³⁷ Su tali aspetti, cfr. G. SOLA, *Introduzione a G. Mosca*, in *Scritti politici*, Vol. I, Utet, Torino, 1982, pp. 70-71.

minated¹³⁸, but only balanced – a line of thought later developed in complementary and in some respects more advanced form by Einaudi¹³⁹. Above all, Mosca understood that perfection and simplicity did not exist in politics, particularly in the task of limiting power¹⁴⁰ – unless one wished to open the door to dictatorship¹⁴¹. It was in this spirit that he delivered a celebrated speech defending a moribund parliamentarism against the sword of fascism, delivered in the Senate on December 19, 1925: “I would never have believed that I would be the only one to deliver the funeral oration for the parliamentary regime [...] I, who have always harshly criticized parliamentary government, must now almost mourn its downfall [...]”¹⁴².

On the same wavelength, Joseph Schumpeter positioned himself. His sociological and psychological approach, however, enabled him to enrich his elitist and liberal framework by linking the characteristics of human nature to the political class’s ability to shape the will of the people. By acting upon emotional and affective factors rather than rational ones—thus operating upon the subconscious—and by exploiting the structural irre-

¹³⁸ L. EINAUDI, *Prediche inutili*, Einaudi, Torino 1962, p. 200; N. BOBBIO, *Dal fascismo alla democrazia. I regimi, le ideologie, le figure e le culture politiche*, edited by M. Bovero, Baldini, Castoldi Dalai, Milano, 2008, p. 242.

¹³⁹ A. GIORDANO, *Il mito della sovranità popolare. Luigi Einaudi, la democrazia e la teoria della classe politica*, in *Materiali per una storia della cultura giuridica*, 1, 2004, pp. 139-141.

¹⁴⁰ L. EINAUDI, *Parlamenti e classe politica*, in ID., *Cronache economiche e politiche di un trentennio*, Einaudi, Torino, 1965, p. 266.

¹⁴¹ This opinion formed by Mosca can be found in the second edition of *Elementi di scienza politica* (1923).

¹⁴² G. MOSCA, *Discorsi parlamentari*, Il Mulino, Bologna, 2003, pp. 359-363.

sponsibility, passivity, and disengagement characteristic of the average citizen, the political process, in Schumpeter's view, became comparable to the mechanisms governing commercial advertising. As a result, the will of the people did not manifest as authentic but was instead "[...] fabricated, and often this fictitious creation is all that corresponds in reality to the *volonté générale* of classical doctrine." Schumpeter thereby reached the crucial conclusion that "popular will is the product, not the driving force, of the political process"¹⁴³.

This does not mean, however, that the people had no role: while they possessed no direct power over decisions, they were tasked with producing a government or an intermediary body capable of producing an executive. Thus, "the democratic method is that institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote"¹⁴⁴. In this way, Schumpeter overturned the classical conception. Employing the same method that had led Mosca to study the political class, the Austrian economist arrived at a theory of liberal democracy as an instrument of government through the selection of elites. Citizens, in other words, do not determine decisions but only decide who will make them. Democracy was therefore *not the government of the people, but rather the government of the political man*¹⁴⁵, founded on electoral competition aimed at selecting leaders—lea-

¹⁴³ J. SCHUMPETER, *Capitalismo, socialismo, democrazia*, Comunità, Milano, 1954, pp. 250-251.

¹⁴⁴ *Ivi.* p. 252.

¹⁴⁵ *Ivi.* p. 271.

ders who, moreover, had to be professional politicians, since success in politics, and the intellectual and practical dedication it required, necessarily entailed the contraction of other activities by the individual.

Within this framework, political parties played a fundamental role: they structured the competition and “are the response to the inability of the electoral mass to act on its own initiative, representing an attempt to regulate political competition in a manner closely analogous to the practices of associations of merchants or industrialists aimed at regulating economic competition”.¹⁴⁶

For such a system to function within a liberal framework, the success of liberal democracy depended above all on the quality of the political class: on its openness (guaranteed by freedom of candidacy and freedom of discussion, both at electoral and inter-electoral moments), on the constant renewal of rulers, on the high intellectual and moral standards of politicians (marked by tolerance and respect for the rules of political contest), and, finally, on the community’s acceptance of these rules. Without such acceptance, “democracy operates at a disadvantage. And it may even cease to function altogether when issues and ideals arise over which the people refuse to compromise”¹⁴⁷.

A central function attributed to political parties, as well as to competition and selection, and a convergence between liberalism and democracy, is also acknowledged by Robert Aron, another intellectual of elitist tradition.

¹⁴⁶ *Ivi*, p. 258.

¹⁴⁷ *Ivi*, p. 281.

Unlike Mosca, in whom liberalism and democracy ultimately stood in opposition, in Schumpeter and Aron – likely already attuned to the epochal transformation that had become evident in Europe between the nineteenth and twentieth centuries – we find a theory of elites firmly anchored in the inevitably necessary role played by parties within pluralist regimes that had taken shape over the course of the twentieth century. Robert Aron emphasized the lesser degree of closure of organized minorities observable within multi-party states, due to the openness of the old liberal minorities to mass parties and the increased possibilities for education and social mobility that democratic government could provide.

Nonetheless, even if to a lesser extent, the fact remained that “[...] every regime is oligarchic [...]”¹⁴⁸. It is precisely through parties – which the author also refers to as sub-groups – that social and political communities are organized and compete for resources, for it is among these sub-groups that the political game unfolds. Here we reach a crucial point: social conflict is inherent in pluralist societies and cannot, nor should it, be suppressed; it is, Aron argues, a normal condition. Constitutional regimes accept competition among individuals and groups for the selection of rulers and for the organization of the community¹⁴⁹. That is, a peaceful competition, regulated by elections, for the exercise of power – power which, by virtue of all these dynamics, becomes legal and therefore necessarily temporary. A natural corollary of this will be, of course, freedom of expression and

¹⁴⁸ R. ARON, *Teoria dei regimi politici*, Comunità, Milano, 1973, p. 110.

¹⁴⁹ *Ivi*, p. 81.

debate, as well as the acceptance of the rules of the democratic game. These, for Aron, are the liberal principles that underpin the (proper) functioning of democratic societies: the “values of liberalism” that order and govern social conflict and the development of the democratic process. As early as 1733, Robert Walpole, writing in the *London Journal*, had already noted that in a representative government, citizens do not command nor hold authority over those who govern. However, they do choose them, judging them fit to assess which laws best serve the nation; and, should they be dissatisfied with their actions, they retain the freedom to choose others, once their term has expired: “this, and this alone, is our power [...]”¹⁵⁰.

Thus, “the very essence of politics is that decisions are *made for* the community, not *by* the community. Decisions could not be made by everyone. Popular sovereignty does not mean that the mass of citizens directly takes decisions concerning public finances or foreign policy. It is absurd to compare modern democratic regimes to the unattainable ideal of a regime in which the people govern themselves”¹⁵¹. Decisions are taken by those whom that mythical people – composed of individual citizens – chooses, or more precisely, *selects* through electoral competition. Elections embody the constitutional and governing practice of contingency: that is, the element of changeability, the internalization and acknowledgment that things could have been otherwise, and may always be otherwise. This characteristic is one of the most essential features of modern democracies, and is ap-

¹⁵⁰ R. WALPOLE, in *London Journal*, 26 May 1733.

¹⁵¹ *Ivi*, p. 111.

tly described by the philosopher Claude Lefort: “In monarchic regimes, power was embodied in the prince, thereby giving substance to society. In this way, there existed a latent but effective knowledge of what one meant for the other throughout the entire society. It is in contrast to this model that the revolutionary and unprecedented trait of democracy becomes apparent. The locus of power becomes an empty place. There is no need to dwell on the details of the institutional framework. What matters is that it prevents rulers from appropriating power or identifying with it. Its exercise is subject to a procedure of periodic contestation. It is reproduced through a formal competition, the conditions of which are permanently safeguarded. This phenomenon entails an institutionalization of conflict. Empty, unoccupiable, such that no individual or group can be consubstantial with it, the locus of power is also unrepresentable.”¹⁵²

Hence, when this framework – of competition, turnover, and the non-identitarian nature of power – is disrupted or broken, as has indeed occurred, the entire system is at risk of collapse.

¹⁵² C. LEFORT, *Saggi sul politico. XIX e XX secolo*, il Ponte, Bologna, 2007, p. 27.

3.6 *Caring for Democracy: Exercises in Retrotopia for a Present That Has Never Been*¹⁵³

Now, we are certainly no longer living in the Italy or Europe of a century ago. Yet the developments of recent decades are leading towards a structural crisis of liberal democracies, a hybrid crisis characterized by variables of differing natures and origins, as well as by more transversal factors that contribute to the gradual erosion of their equilibrium.

This is why the thinkers of the past can once again prove relevant, still having much to teach us. Through a joint reading of their reflections, authors such as Mosca, Mill, and Tocqueville – despite their not insignificant differences of approach (one need only think of Mosca’s functionalist thesis on voting, which justified restricted suffrage, as opposed to Mill’s arguments for universal suffrage) – offer a cautious yet optimistic perspective on representative systems. Their legacy invites us to shed any idolatrous view of democracy as a form of power organization—an arrangement far from easy and perhaps never definitively perfectible. On the contrary, democracy emerges as a path strewn with obstacles, highs and lows, requiring constancy and perseverance.

Indeed, as early as the beginning of the nineteenth century, Tocqueville’s acuity had allowed him to perceive not only some of the dynamics that would later emerge in mass societies – dynamics subsequently embraced

¹⁵³ This expression is borrowed from the concept that the German sociologist Zygmunt Bauman, as is well known, had of the relationship between community, culture and politics in the past, and reconstructed in Z. BAUMAN, *Retrotopia*, Laterza, Roma-Bari, 2020.

by another great liberal thinker, his admirer John Stuart Mill¹⁵⁴. From conformity and excessive social leveling to the suppression of individual originality, from the sway of passions to rampant individualism¹⁵⁵: all of these cultural variables rendered democratic government a potential danger to liberty, as they contained within themselves the conditions for its very annihilation. Yet Tocqueville pointed them out not as reasons to oppose the inevitable outcome of human progress – democracy – but “as indications of the weak points of popular government, of the instruments necessary to safeguard it, and of the corrections to be made, so that while its beneficial tendencies are fully encouraged, the others are neutralized or mitigated,”¹⁵⁶ namely, those most detrimental.

Mosca’s contribution, in turn, complemented and enriched the massive heritage of liberal constitutionalist thought since the time of John Locke – both upstream, in his reflection on the formation and possession of power, and downstream, in his conclusions that representative government was the preferred means of organizing power, notwithstanding the problems it entailed.

Perhaps these authors already understood that “representative democracy” required attentive care, support, critique, and continual adjustment, for its inherent difficulties remained, remain, and will always remain. They

¹⁵⁴ It will address these issues in *On Liberty*.

¹⁵⁵ In particular, it permeates the pages he devotes to the “legisti”, cfr. *ivi*, pp. 310 ff., and the second part of *De la démocratie en Amérique*.

¹⁵⁶ J. S. MILL, *Autobiografia*, edited by F. Restaino, Laterza, Roma-Bari, 1976, pp. 150-151.

cannot be eliminated because they stem both from the constitutive features upon which democracy is built – representation – and from the very nature of man, easily swayed by centrifugal impulses.

It may thus be wiser to recover the thread of representation, rather than to imagine new, and perhaps illusory, shortcuts to revitalize participation. As Gustavo Zagrebelsky observed in an essay some years ago, one of the great mistakes of contemporary democracy has been the absence of a genuine democratic pedagogy. By limiting itself to a cold, formal, and superficial education in democratic institutions – or even to their mere apologia – the importance of transmitting and deeply internalizing their spirit has been ignored¹⁵⁷, under the illusion that democracy could be its own teacher, that democratic virtue would spontaneously flourish once the engine was set in motion through the maximal diffusion of participatory rights¹⁵⁸. In this view, democracy's supposed self-pedagogical faculties would have sufficed to protect it from decline.

In reality, participation alone has not proven sufficient to cultivate responsibility, dedication to public affairs, and the profound awareness of no longer being passive subjects but active citizens in determining those who will decide for the nation. This deficiency has undoubtedly exacerbated those “atavistic features of the national public spirit”¹⁵⁹ – albeit with some distinctions – as well as those of the ruling classes of the Old Continent.

¹⁵⁷ G. ZAGREBELSKY, *Imparare democrazia*, cit., pp. 6-8.

¹⁵⁸ *Ivi*, p. 9.

¹⁵⁹ *Ibidem*.

For democracy to function properly, it requires citizens, and thus a public opinion that is mature and conscious of living within a *res publica* – a community of citizens whose active participation is a *conditio sine qua non* for, and beyond, the action of institutions. It requires rulers who guide rather than merely indulge the masses, rulers who act in the constitutional spirit and for the common good, as conceived by Kant and Montesquieu. The constitutional spirit and the common good, moreover, live only within a framework of shared values in which the culture of the *adversary* – and not of the *enemy* – must prevail, guaranteeing competition, alternation, and the peaceful circulation of those in power. Only thus can democracy hope to survive. For, as constitutionalists and political scientists often forget, the force of law alone – as history has abundantly shown – can never suffice. Otherwise, if we entrust ourselves to isolated norms or institutions – whether concerning participation or, for instance, the strengthening of executives – such measures will prove illusory and never sufficient in themselves. Otherwise, the chronic apathy of citizens too accustomed to democracy, together with self-referential and complacent political classes, risks turning democracy inward upon itself.

Thus, the absence of consistent democratic practice, coupled with citizens' indifference bred of habituation, results in the abandonment, by the governed, of their task of influencing politics through elections. In doing so, they abdicate their role within governing democracy and the representative circuit. This abandonment stems partly from the unreflective habit of living in a democratic regime and the increasing depersonalization of indi-

viduals, and partly from the lack of political classes that truly operate as *ruling* classes – that is, that lead.

The consequence is a discontinuous and polarized practice, in which political forces devoid of any perspective beyond their immediate self-interest inflame the masses, producing a destructive and deleterious dynamic rooted in a culture of enmity. This results in “participation” that is sporadic, ephemeral, and short-sighted, rather than broad, continuous, and conceived as part of the lifestyle and mindset of each individual. Such conditions instead exacerbate citizens’ growing distrust, gradually and more rigidly entrenching the very structural factors of representative democracy’s crisis, long ago identified by Norberto Bobbio as the “unfulfilled promises of democracy” in his celebrated essay *Il futuro della democrazia*¹⁶⁰.

It is therefore evident that a return to liberal culture remains relevant—especially in our country, where it has always been a minority tradition. Democracy needs liberalism to survive, for it rests upon individuals, upon conflict understood in Einaudian terms, and upon constructive and fruitful engagement with difference.

Moreover, liberal democracies – delicate constructions in which everything exists in balance – must survive within the dialectic between liberalism and democracy. For the democratic method can endure and generate justice only where there is social order. In this sense, Giovanni Sartori spoke of “procedural precedence”: first, the restraints upon power and the affirmation of the individual’s distinction from society; then, and only then,

¹⁶⁰ N. BOBBIO, *Il futuro della democrazia*, cit., pp. 8 ff.

the democratic method, through which the individual becomes equal within society. Otherwise, as Sartori warned, we might all be equal in abuse and subjugation, whereas free men will always and in any case be able to demand fairness¹⁶¹.

We, contemporaries of the twenty-first century, are perhaps experiencing the sad reality of a democracy increasingly distant from liberal logic and threatened by disintegrating and ruinous factors.

It is becoming clearer – today more than ever, as the West faces profound turbulence – that the end of history did not arrive with the fall of the Berlin Wall¹⁶². That event had generated a kind of blind collective magnetism toward democracy, wrapped in self-referential and deceptive rhetoric.

By “end of history,” one meant the full, total, and definitive triumph of the liberal-democratic paradigm following the collapse of real-socialist regimes: before us, as before Moses at the Red Sea, there was expected to lie a downward path free of obstacles, such was the strength and prestige attained by the democratic paradigm. Yet liberal democracy does not advance and consolidate effortlessly: it requires assiduous work. Instead, we chose to let the boat drift, without oars or rudder. Only later did some intellectual and civic circles propose abandoning those very traditions, searching instead for alternative democratic instruments: from digital technologies promising mythical direct and continuous popular participation, to

¹⁶¹ G. SARTORI, *Elementi di teoria politica*, cit., p. 147 ff.

¹⁶² F. FUKUYAMA, *La fine della storia e l'ultimo uomo*, Milano, BUR, 2003.

institutional and non-institutional solutions advocating greater citizen involvement, such as assemblies of randomly selected citizens.

The reasons that have led Western democracies to today's institutional and political difficulties are undoubtedly complex and varied: some are specific, tied to the historical-political dynamics of individual countries, while others are more transversal, linked to the changes of a globalized, post-industrial world. Untangling this web and elaborating solutions is no simple or obvious task. The efforts of those in academia, civil society, and associations who seek to redirect the declining trajectory of Western democracies are thus commendable. Nonetheless, one must ask whether – and how – it is possible to re-found a liberal-democratic culture and practice solely through norms, in the hope that these alone might serve as a driving force; and especially norms that are conceptually incompatible with representative dynamics.

The more pressing task, therefore, is to situate the field in which alternative forms of democracy have progressively been asserted – particularly deliberative democracy. This field lies between democracy and liberalism, between conflict and uniformity, between representation and participation. From these nebulous and multifaceted concepts – which this chapter has begun to address and which will permeate the following ones – it is possible to identify significant critical points in the theoretical and practical frameworks of deliberative democratic theories. At their core lies the effort to deny conflict and antagonism, traits immanent to the “empty” and unoccupiable nature of power as configured by modernity, traits that necessarily

render modern democracies democratic. These were factors already powerfully highlighted by the classics of liberal thought.

This may appear as an exercise in anachronism, an attachment to traditional forms that is blind and stubborn. The past cannot be returned to, nor does it contain ready-made solutions, as Zygmunt Bauman warned – perhaps too trenchantly – with his concept of “retrotopia”¹⁶³. Yet it is true that we can attempt to improve upon what has been. The conviction must remain that representation is still, perhaps, the best instrument we already possess. In line with Santi Romano’s conception of law and legal phenomena, it becomes a matter of preserving and reconstructing the social function of something that, in the end, remains a myth. What is required, then, is to put into practice, anew and in earnest, this necessary myth – the lesser evil that allows us to come to terms with democracy’s elephant in the room: the irreducibility of its essence.

¹⁶³ Z. BAUMAN, *Retrotopia*, cit.

CHAPTER II

THE SALVIFIC BREACH OF REPRESENTATIVE DEMOCRACIES

The very idea of democracy is always unfinished, always to be achieved.

MARC AUGI

SUMMARY: 1. Beyond Representation? – 2. Participatory Democracy, Deliberative Democracies, Participation – 3. Some Notes on Digital Democracy: Between Yet Another Utopia and Feasible Paths

1. Beyond Representation?

In public and political discourse, the narrative arc of participation, often portrayed in salvific tones, continues its upward trajectory. Indeed, the democratic ideology – if it may be referred to as such – does not appear to be detaching itself from the idea that the implementation of participation, in whatever form it may take, automatically ensures a healthy democratic process. And when I say “in whatever form it may take,” it often means, in practice, a failure to materialize at all. That is, political elites proclaim the need for greater participation without having either a concrete idea of how to implement or foster it, or the political will to do so: hence, a genuine rhetoric of participation, which cuts across virtually all political forces and

almost all Western democracies, thereby rendering it an issue apparently much less contentious than others. In other words, there is broad consensus on the idea that there should be more participation. How this participation should be structured, however, is far less clear.

In academic discourse, however, the situation is somewhat different. Scholars have long proposed more concrete alternatives, beginning as early as the last century, when, in the aftermath of World War II, certain difficulties began to emerge in the functioning of democratic systems. These difficulties, above all, concerned the concept and practice of representation.

This gave rise to reflections that led some to explore new ways of conceiving participation beyond its expression through representation. That is, to imagine new instruments that would allow citizens to express themselves at times other than during elections – that is, in the inter-electoral period – through diverse methods and on a wide array of issues. The aim was to somehow compensate for the shortcomings of representative theory and the inadequacies of the ruling classes.

This tendency has never entirely disappeared over time. Partly because, as is well known, the crisis of representation has progressively worsened, and thus the need for revitalization has only grown more pressing. And partly because these instruments have never truly found full or clearly defined application, except in limited temporal and spatial contexts. This may also be due to the fact that the wave of indifference now largely engulfing the electorate is so overwhelming that very few citizens – especially in Italy – are even aware of the existence of such instruments.

However, not only has that crisis deepened, but there is a growing sense that something within the democratic mechanism itself has become jammed or dysfunctional.

The complex societies of our time, shaped by the successive evolutions of constitutionalism, are sustained by a politics of mediation and can only exist within a form of state whose paradigmatic model, perhaps, remains that of representative democracy. In fact, democracy is “an ancient political term meaning government by the people – in classical Athens, where the word originated, rule by the demos. In current usage, it can refer to popular government or popular sovereignty, to representative government as well as direct participatory government, and even (not quite correctly) to republican or constitutional government – that is to say, government by law”¹⁶⁴.

Within this framework, a model of representative-participatory democracy emerges, where participation is not limited to elections, but also includes institutional participation¹⁶⁵ – namely, participation that is guided and regulated by mechanisms embedded in the legal and normative structure.

¹⁶⁴ *Democracy*, in D. MILLER, J. COLEMAN, W. CONNOLLY, A. RYAN (eds.), *The Blackwell Encyclopaedia of Political Thought*, Oxford, 1991, pp. 114-119, p. 114. Similarly, that is, on the relative nature of the concept, see *Democracia*, in F. BEALEY, *Diccionario de Ciencia Política*, Madrid, 2003, pp. 116 ff.; *Democracia*, in N. BOBBIO, N. MATTEUCCI, *Diccionario de Política*, Vol. I, Madrid, 1983, pp. 493 ff.

¹⁶⁵ Massimo Luciani lists the following characteristics: “a) it is structured in institutions and procedures formalized and standardized by law (generally by the Constitution or, at most, by statute); b) it is aimed at the activation, completion or definition of public decision-making processes (in particular, political ones); c) it is structured through the attribution of specific political rights; d) it can be practiced by all citizens, regardless of their membership of any social group and generally on the sole condition that they are holders of common political rights”, ID., *Democrazia rappresentativa e democrazia partecipativa*, in L. CARLASSARE (ed.), *La sovranità popolare nel pensiero di Esposito*, Crisafulli, Paladina, Cedam, Padova, 2004, pp. 181-192, p. 184.

re of the state. At the same time, representation does not constitute the sole or exclusive means of expressing the – one might say mythical – popular sovereignty¹⁶⁶.

Indeed, the Constitution does not reduce the latter to the singular will expressed by the representative organ of the people. On the contrary, the distinctive feature of the constitutional text lies precisely in its recognition of sovereignty as belonging to a concrete and plural people, as manifested through the social and institutional articulations that give it political form¹⁶⁷.

Thus, the concept of participation has evolved over time, revealing its multifaceted nature and its ability to manifest through a variety of forms and practices. In its multidimensionality, participation remains one of the *conditio sine qua non* of political regimes – even totalitarian ones. From Athenian democracy to representative democracy, their beating heart lies in

¹⁶⁶ See Corte cost., sent. n. 106/2002, with note by N. LUPO, *Dalla Corte costituzionale uno stop (definitivo) ai Parlamenti regionali. Nota a Corte cost. n. 106/2002*, in *Amministrazione in Cammino*, 10 July 2002; A. CHIAPPETTI, *Il referendum nel disegno e nella effettività costituzionale*, in AA. VV., *Referendum, ordine pubblico, Costituzione*, Milano, 1978, pp. 89-90; M. VOLPI, *Referendum nel diritto costituzionale*, in *Digesto disc. pubbl.*, Torino, 1997; M. LUCIANI, *Art. 75 Cost.*, in *Commentario della Costituzione* (fondato da Branca e proseguito da Pizzorusso), Bologna, 2005, pp. 12 ff.; G.M. SALERNO, *I referendum in Italia: fortune e debolezze di uno strumento multifunzionale*, in *Diritto Pubblico Comparato ed Europeo*, 3, 2005, pp. 1316 ff.; A. DI GIOVINE, *Democrazia diretta e sistema politico*, Cedam, Padova, 2001.

¹⁶⁷ V. CRISAFULLI, *La sovranità popolare nella Costituzione italiana (note preliminari)*, in *Studi in onore di Vittorio Emanuele Orlando*, Cedam, Padova, 1955; F. PIZZOLATO, *I sentieri costituzionali della democrazia*, Carocci Editore, Roma, 2019, pp. 26 ff.; ID., *Partecipazione e partecipazionismo nello Stato democratico*, in *costituzionalismo.it*, 1, 2023, p. 34. Incidentally, a different opinion is held by G. DUSO, *Reinventare la democrazia. Dal popolo sovrano all'agire politico dei cittadini*, Franco Angeli, Milano, 2022, 234, who also believes that direct democracy and representative democracy are not real alternatives to each other but rather two sides of the same coin: but by virtue of the fact that both constitute a reduction of plurality to a singular will.

participation; and certainly still today, it is within the latter that “the vices and virtues, the hopes and disappointments of our society are faithfully reflected”¹⁶⁸, while its absence, attributable to a wide range of causes, produces instead “shadow citizens”¹⁶⁹. Hence, the malaise and fatigue of democratic systems¹⁷⁰, which increasingly become “cold projects,” to borrow Ralf Dahrendorf’s incisive expression, marked by a descending trajectory of enthusiasm and passionate participation and an ascending trajectory of dissatisfaction, frustration, and irritation.

In modern stabilized democracies, political participation takes on a different character: it is, indeed, participation situated within the distinct contextual framework of contemporaneity. The ancient Greeks themselves were aware that their model of government could only function within small-scale societies¹⁷¹: this is the so-called problem of scale, discussed among others by Robert Dahl¹⁷², which is closely tied to the role of law in

¹⁶⁸ M. NIGRO, *Il nodo della partecipazione*, in *Riv. trim. dir. proc. civ.*, 1980, p. 236.

¹⁶⁹ G. PASQUINO, *La repubblica dei cittadini ombra*, Feltrinelli, Milano, 1991.

¹⁷⁰ As early as the 1970s, Norberto Bobbio spoke of the crisis of participation, see N. BOBBIO, *Crisi di partecipazione in che senso?*, in R. ORECCHIA (ed.), *Rapporto tra diritto e morale nella coscienza giuridica contemporanea. Il problema della partecipazione politica nella società industriale*, Giuffrè, Milano, 1971, pp. 82 ff.; see also G. BERTI, *La parabola regionale dell’idea di partecipazione*, in *Le Regioni*, 1974, pp. 3 ff. And “*la participación en la política del propio país es buena para la salud moral y cívica del individuo y para la vida política de la nación. Un pueblo que conoce las cuestiones políticas mantiene a los políticos en estado de alerta y se asegura de que solo se impongan aquellas medidas respaldadas por la aceptación general*”, cfr. *Participación política*, in F. BEALEY, *Diccionario de Ciencia Política*, Madrid, 2003, pp. 306-307.

¹⁷¹ ARISTOTELE, *Politica*, Libro VII.

¹⁷² R. DAHL, *La Democrazia e i suoi critici*, Editori Riuniti, Roma, 2005, pp. 37-38. Theorists of deliberative democracy aim to overcome this by reintroducing random selection through the formation of mini-publics, while theorists of direct digital democracy aim to find a solution thanks to the opportunities offered by modern technologies.

regulating human coexistence – a theme dear to the social contract theorists¹⁷³. However, reflections by numerous twentieth-century scholars¹⁷⁴ point to further distinctions that render the path of direct democracy increasingly unfeasible – and expose as clearly mistaken the widespread tendency to classify participatory, deliberative, or even referendary practices as forms of direct democracy. These critiques are not merely based on the quantitative dimension of nation-states – whose very formation, in opposition to the fragmented nature of medieval power, rendered them structurally incomparable to the ancient city-states. What is fundamentally lacking is the total devotion of citizens to public life, the reduction of all human interests to the interests of the πόλις, and the complete politicization of the individual – *conditiones sine qua non* for the realization of a functioning self-governing system¹⁷⁵. And today, in some respects, this is not necessarily a negative development. Indeed, “if by direct democracy we mean, literally, the participation of all citizens in all decisions that affect them, the proposal is senseless. That everyone should decide on everything in increasingly complex societies such as modern industrial ones is materially im-

¹⁷³ As is well known, authors such as John Locke and Thomas Hobbes, as well as many others, have clearly explained the rationale behind law and then the existence of the state. Although in different ways, the need for rules always emerges where there is a plurality of individuals. These dynamics are excellently represented in William Golding’s *Lord of the Flies* (1954), which was later adapted into the 1963 film of the same name directed by Peter Brook.

¹⁷⁴ *Ex multis*, G. SARTORI, *Democrazia e definizioni*, il Mulino, Bologna, 1958, pp. 18 ff.; H. KELSEN, *I fondamenti della democrazia*, il Mulino, Bologna, 1966, pp. 48 ff.; N. BOBBIO, *Il futuro della democrazia. Una difesa delle regole del gioco*, Einaudi, Torino, 1984, pp. 20 ff.

¹⁷⁵ N. BOBBIO, *Il futuro della democrazia...*, cit., p. 31.

possible. It is also undesirable from a human standpoint – that is, from the perspective of ethical and intellectual development [...] The Rousseauian individual called upon to participate from morning to night in exercising his civic duties would not be the ‘complete man,’ but the ‘total citizen.’ And the total citizen is merely the other, equally threatening, face of the total state”¹⁷⁶. Moreover, the presence of a more complex economic system, and the absence of small, homogeneous communities united by shared religious and political cultures¹⁷⁷ – now replaced by atomized, unbalanced, and disordered societies – cannot provide fertile ground for any viable form of self-government. These changes, entirely inevitable given the two and a half millennia that separate us from the era of the ancient Greeks, have thus led to a radical transformation of the very concept of democracy, which becomes, precisely, “representative.” Representation is not only its essence but also a necessary condition for the cohesion and functionality of the political communities of our time.

The experience of the ancient *politéia*, now distant, while still exerting a powerful intellectual appeal, can at most inspire theoretical models, but it can no longer serve as a viable practical framework, as Hannah Arendt already warned¹⁷⁸. Incorporating elements of “direct” participation within contemporary representative democracies is, systemically, far more difficult than it might seem. And along the shifting trends of modern democra-

¹⁷⁶ Ivi, p. 33.

¹⁷⁷ G. SARTORI, *Democrazia e definizioni*, cit., p. 157.

¹⁷⁸ H. ARENDT, *Vita activa. Sulla condizione umana*, Bompiani, Milano, 2019.

tic thought, there are two primary pathways through which participation has found, and continues to find, a renewed vitality.

What were, and are, then, these “new” instruments of democracy?

First and foremost, thanks to the new opportunities enabled by technological developments, there has been a revival of proposals aiming to transform the system toward a more direct form of democracy – a notion which, though initially “had become a mere curiosity,” is now being seriously revisited, “not coincidentally, by the political movement that was born from the internet, whose guru envisions the end of parliaments within a few decades”¹⁷⁹. In other words, the classical distinction between democracy as representation and democracy as (direct) participation once again re-emerges. From Rousseau to Constant to the authors of *The Federalist Papers*, this latter form has been deemed unworkable, if only because of the impossibility of applying it within territorially extensive political systems such as nation-states. As noted earlier, the American constitutionalists of *The Federalist* explicitly distinguished between modern “republics” and the “democracy” of the ancient *poleis*: the former revolving primarily around the principle of representation; the latter, around the assembly-based participation of all citizens holding political rights, with offices assigned through sortition and rotation. Yet, a veil of ambiguity surrounds these distinctions – an ambiguity arising from the evolving meanings of concepts and the transformations of political reality. For a representative republic, though opposed to direct democracy, is still democratic insofar as representa-

¹⁷⁹ G. CORSO, *La rappresentanza politica nell'era digitale*, in *Nuove Autonomie*, 2, 2018.

tion is elective and citizens *participate* in it through the electoral process¹⁸⁰.

The technological revolution could therefore allow for the revival of so-called “direct” democracy – despite the fact, as already noted, that it is imprecise to speak of truly “direct” government even in ancient Athens – deemed by some theorists of representation to be preferable in theory, yet practically unfeasible due to obvious operational obstacles. The new capacities offered by technology are now seen as tools capable of overcoming those very obstacles and of potentially bringing direct democracy into effect. As such, the proposal to harness significant scientific advances in the constitutional sphere has become both a consequence of the growing crisis of representation and, paradoxically, one of its causes. In fact, when technological applications are not confined to a mere improvement of democratic instruments, but rather aim – under certain conditions – to reshape decision-making processes, they risk reinforcing the perception of a deficit in representativeness, which is already in a state of considerable fragility. A direct model of power-holding, applied to decision-making processes in a world more pluralistic and globalized than ever before, would lead to a paralysis of synthesis and compromise between interests – processes that remain, more than ever, essential and achievable only through the practice of representation.

Furthermore, in the words of Domenico Fisichella, “it is in representative democracy that lies the possibility of exercising political control with

¹⁸⁰ D. FISICHELLA (ed.), *La rappresentanza politica*, Laterza, Roma-Bari, 1996, p. 16.

such procedural precision, with such relevance, discernment, and continuity of assessment, that only a specialized, ad hoc body is capable of achieving”¹⁸¹. Above all, this is evident when we consider the vital need for confrontation not only between elected and elector, but also between representatives themselves, since representation is both a collective institution and a system¹⁸². Nor can it be assumed that renewed forms of direct democracy would necessarily lead to broader collective participation. Rather, they might result in a form of “mobilization”, or even a “demobilization of the people” by a power capable of manipulating at will the tension between ‘public happiness’ and ‘private happiness’”¹⁸³. Within the broader context of the progressive relativization of popular sovereignty, shaped by the features of twentieth-century constitutionalism, mythologizing participation becomes both anachronistic and highly dangerous. To be sure, this principle of participation grants the people the perception and the possibility of contributing to the determination of a nation's political direction, primarily through the elitist notion of selecting the political class. And yet, it is necessary to acknowledge how, in liberal democracies, the very encounter between the democratic and liberal traditions has resulted in a further fragmentation of popular sovereignty, which is now exercised strictly within the forms and limits set by the Constitution.

¹⁸¹ *Ivi*, p. 30.

¹⁸² *Ivi*, pp. 19-21.

¹⁸³ *Ivi*, p. 22.

Secondly, there exists an entirely different domain – which this work intends to explore, particularly in its relation to the logics of representation – that concerns the new forms of citizen participation. These have been categorized in the literature under the headings of participatory democracy and deliberative democracy, both of which seek to integrate participatory elements within the representative framework, drawing inspiration, at least partially, from the Athenian model. These currents may be referred to as relational-participatory democracy and deliberative-participatory democracy.

Both share a defining trait: they were conceived as tools for revitalizing democratic life¹⁸⁴ and as mechanisms designed to liberate the citizen from the perceived burden of representation and the aggregative logic of traditional party systems¹⁸⁵ – especially in light of the crisis of the represented and the erosion of parties in the post-representative¹⁸⁶, post-democratic-era¹⁸⁷.

And yet, there remain some doubts regarding their effectiveness in this regard. What seems far less debatable, however, is their role as warning signals for established democracies.

¹⁸⁴ That these forms of participation emerge precisely because of the struggles of democracies is expressed by, *ex multis*, S. CASSESE, *La democrazia e i suoi limiti*, Mondadori, Milano, 2017, pp. 99 ff.; P. BILANCIA, *Crisi della democrazia rappresentativa e apertura a nuove istanze di partecipazione democratica*, in *federalismi.it*, 1, 2017, pp. 8-14.

¹⁸⁵ J. STREET, *Electronic Democracy*, in AA.VV., *International Encyclopedia of the Social & Behavioral Sciences*, Amsterdam, 2001, pp. 4397-4399.

¹⁸⁶ A. MASTROPAOLO, L. SCUCCIMARRA, *Introduzione. Alla ricerca dell'anello mancante*, in *Meridiana*, 58, 2007, pp. 15 ff.

¹⁸⁷ C. CROUCH, *Post-democracy*, cit.

Attempting to bring order to this intricate network of conceptual threads – without claiming exhaustiveness in the face of a vast body of literature and numerous practical experiments – this reflection will focus on the core of this political and philosophical current and on some of the practices that have emerged from it over time. In particular, the focus will be on the so-called citizens' assemblies, selected due to their recent proliferation across Europe and the numerous questions they raise in relation to the system of representation.

According to their advocates, do these assemblies truly function as instruments *beyond* representation? Or should they instead be understood as complementary to it?

2. Participatory Democracy, Deliberative Democracies, Participation

At the outset of this work, emphasis was placed on the nebulous and heterogeneous nature of any reflection on deliberative democracy in its relationship with representative democracy. This is, after all, a recurring feature in both constitutional law and comparative constitutional law – disciplines that necessarily call for the dismantling of disciplinary, ideological, and temporal barriers, owing to the need to encompass all that pertains to the *political sphere*.

Reflections on such a specific branch of democratic thought – which, nevertheless, invokes ancient concepts – do not escape this methodological and substantive prudence.

The issue of participation is, without doubt, the starting point. Central—albeit in different ways—to both democracy and liberalism, participation lies at the very roots of the political concept itself, referring etymologically to the participatory dynamics that characterized the ancient poleis. In modern democracies, it is the tension between representation and participation that constitutes the defining trait – with a clear predominance of the former over the latter. Yet, participation remains a necessary precondition for the practice of representation, as it underpins the exercise of popular sovereignty. The latter has developed thanks to the emergence of a public sphere in which interaction between citizens and representatives takes place¹⁸⁸, as well as through the impetus generated by the participation-equality-rights nexus that sustained democratic claims throughout the nineteenth and then the twentieth centuries.

In this way, the concept of participation has changed over time, revealing its multifaceted nature and its capacity to take shape through a wide range of forms and practices. In its multidimensionality, it nonetheless remains one of the *conditio sine qua non* of many political regimes – at least of those that are not authoritarian. From Athenian democracy to representative democracy, their vital core lies in participation.

¹⁸⁸ N. MAYER, P. PERRINEAU, *Les comportements politiques*, Paris, Armand Colin, 1992, p. 10.

In this context, participation becomes the driving force behind democratic revitalization at all levels, both institutional and non-institutional. It is aimed at redressing the imbalances of power that liberal thought and theory typically leave unchallenged¹⁸⁹ – by engaging citizens at a moment other than, and beyond, the electoral one, so as to give voice to those fractures in public opinion that lie outside the realm of political parties.

Participation of this kind would further generate dynamics akin to “schools of democracy”, designed to foster a deeper civic attachment to public affairs and their informed governance¹⁹⁰. In this way, participation would become autopoietic.

Theories of democratic participation and deliberation have rather ancient roots in Western thought – first in political science and philosophy, and subsequently in legal theory. The literature on the distinction, overlap,

¹⁸⁹ D. DELLA PORTA, *Democrazie*, cit., p. 51.

¹⁹⁰ C. PATEMAN, *Participation and Democratic Theory*, Cambridge, Cambridge University Press, 1970, pp. 42-43.

and intersection between deliberative and participatory democracy¹⁹¹ is vast. In fact, no definitive or universally accepted definition or distinction

¹⁹¹ See V. MOLASCHI, *Le arene deliberative. Contributo allo studio delle nuove forme di partecipazione nei processi di decisione pubblica*, Editoriale scientifica, Napoli, 2018; L. BOBBIO, *Dilemmi della democrazia partecipativa*, in *Democrazia e diritto*, 4, 2006; R. BIFULCO, *Democrazia deliberativa, partecipativa e rappresentativa*, in U. ALLEGRETTI (ed.), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze University Press, Firenze, 2010. Instead, one example among many in foreign doctrine, particularly Spanish doctrine, where participatory, direct and deliberative democracy are not clearly distinguished, with the author favouring a definition that outlines a theoretical distinction between participatory democracy and civic participation in the broad sense, see A. R. RAMÍREZ, *Democracia participativa. La democracia participativa como profundización en la democracia*, València, 2010. Generally speaking, foreign doctrine does not make a clear and distinct distinction between the two definitions, whereas Italian doctrine presents greater theoretical and conceptual differences, as is also appropriately emphasised by A. DI GREGORIO, *Democrazia partecipativa e integrazione dei gruppi deboli. Una premessa*, in *DPCE Online*, Sezione Monografica *Democrazia partecipativa e integrazione dei gruppi deboli*, 2, 2023, p. 1841. The literature on participatory democracy is virtually limitless: see *ex multis* G. PEPE, *Il modello della democrazia partecipativa tra aspetti e profili applicativi. Un'analisi comparata*, Wolters Kluwer, Milano, 2020; M. TRETTEL, *La democrazia partecipativa negli ordinamenti composti: studio di diritto comparato sull'incidenza della tradizione giuridica nelle democratic innovations*, Editoriale scientifica, Napoli, 2020; A. ALGOSTINO, *Participatory democracy and its dark sides*, in *federalismi.it*, 12, 2020, pp. 1 ff.; U. ALLEGRETTI, *Democrazia partecipativa*, ad vocem, in *Enciclopedia del diritto*, Annali IV, Milano, 2011, pp. 295 ff.; A. VALASTRO (ed.), *Le regole della democrazia partecipativa: itinerari per la costruzione di un metodo di governo*, Editoriale scientifica, Napoli, 2010. Finally, see the contributions in the published monographic section *DPCE Online*, 2, 2023.

exists in the academic literature¹⁹². Nonetheless, most scholars agree that these are two differentiated – though nearly simultaneous – currents of thought. Furthermore, deliberative democracy is often regarded as the theoretical foundation of participatory democracy¹⁹³.

They originate from different conceptual foundations: deliberative democracy found its theoretical flourishing, particularly in Europe, through the elaboration of communicative action theory, in contrast to strategic ac-

¹⁹² The literature on deliberation is also very extensive. See R. BIFULCO, *Democrazia deliberativa e principio di realtà*, in *federalismi.it*, 1, 2017, p. 4, note 5, where the author attempts to outline some of the cultural matrices of deliberativists, including, for example, their opposition to and distancing themselves from the political and cultural strand of liberalism. Furthermore, it is very difficult to speak of “a” theory of deliberative democracy, and it would be more accurate to speak of a very heterogeneous strand of theories, as appropriately pointed out by A. FUNG, *Deliberation before the Revolution. Towards an Ethics of Deliberative Democracy in an Unjust World*, in *Political Theory*, Vol. 33, 3, 2005, pp. 397-419. For an overview of the broad spectrum of theories and practices of deliberative democracy see J. ELSTER (ed.), *Deliberative Democracy*, Cambridge University Press, Cambridge, 1988. Another point of reference is certainly the work of B. ACKERMAN, J. FISHKIN (eds.), *Debating Deliberative Democracy*, Wiley-Blackwell, Malden, 2003; F. CATTANEO, *Democrazia deliberativa: l’idea (nuova?) e i modelli di realizzazione*, in *Teoria politica*, Vol. XXV, 3, 2009, pp. 107-135, where the author carries out a reconstructive and comparative reflection with the aim of identifying a conceptual model of deliberative democracy, drawing on the thinking of Hans Kelsen, Norberto Bobbio and Jürgen Habermas, with particular attention also paid to Joseph Schumpeter and realist theories of democracy. A useful contribution to the reconstruction of the concept of deliberative democracy is also provided by A. FLORIDIA, *Un’idea deliberativa della democrazia. Genealogia e principi*, il Mulino, Bologna, 2017. For some critical reflections on the effectiveness of the principles of deliberative democracy, see R. BIFULCO, *Democrazia deliberativa e principio di realtà*, in *federalismi.it*, 1, 2017, pp. 1-17. Authors who have explored the epistemological foundations of a deliberative theory of democracy include C. S. NINO, *La constitució de la democràcia deliberativa*, Barcellona, 1997; J. LUIS MARTÍ, *La república deliberativa. Una teoría de la democràcia*, Madrid, 2006; E. BELTRÁN, F. VALLESPIN, *Deliberación pública y democracias contemporáneas*, Madrid, 2012.

¹⁹³ R. BIFULCO, *Democrazia deliberativa, partecipativa e rappresentativa. Tre diverse forme di democrazia?* in U. ALLEGRETTI (ed.), *Democrazia partecipativa. Esperienza e prospettive in Italia e in Europa*, cit., pp. 67-69; ID., *Democrazia deliberativa e principio di realtà*, in *federalismi.it*, 1, 2017, p. 14. On the other hand, for a minority of scholars, in particular Luigi Bobbio, deliberative democracy is a form of participatory democracy see L. BOBBIO, *Dilemmi della democrazia partecipativa*, in *Democrazia e Diritto*, 4, 2006, p. 14.

tion, as formulated by Jürgen Habermas¹⁹⁴. Their geographical origins also diverge: participatory democracy found its cradle in Latin America, while deliberative democracy emerged in the Anglo-American world.

In this regard, the words of Umberto Allegretti – one of the first scholars in Italy to work on participatory democracy – are particularly insightful. He argues that the latter “finds in the deliberative moment one of its essential elements, just as deliberative democracy finds its privileged space precisely within participatory procedures. However, significant differences remain between the two schools of thought, mainly because, in participatory democracy, the deliberative component is merely one element within a more complex phenomenon, whose roots do not lie solely in an interest in the value and techniques of rational argumentation, which instead represents the central concern of deliberative democracy”¹⁹⁵.

Moreover, Allegretti further emphasizes that “they are undoubtedly linked by their very nature. The deliberative component, as will be seen, is present in the procedures of genuine participatory democracy, such as in the best participatory budgeting processes and public debates. In turn, deliberative procedures find in participatory democracy a privileged space for application – though not the only one, as they may also be applied within

¹⁹⁴ J. HABERMAS, *Storia e critica dell'opinione pubblica*, Laterza, Roma-Bari, 1971, 1° ed.; ID., *Teoria dell'agire comunicativo*, il Mulino, Bologna, 1986; ID., *Fatti e norme. Contributi a una teoria discorsiva del diritto e della democrazia*, Laterza, Roma-Bari, 1996. The philosopher recently returned to the subject in ID., *Nuovo mutamento della sfera pubblica e politica deliberativa*, Raffaele Cortina, Milano, 2023.

¹⁹⁵ U. ALLEGRETTI, *Democrazia partecipativa: un contributo alla democratizzazione della democrazia*, in ID. (Ed.), *Democrazia partecipativa: esperienze e prospettive in Italia e in Europa*, cit., p. 17.

representative frameworks, despite the predominantly aggregative character of the latter. They possess a vocation that brings them closer and opens the door to fruitful intersections. Nonetheless, significant differences remain regarding their genesis – participatory democracy being primarily Latin American, deliberative democracy Anglo-American or Anglo-Saxon; their general tone – the former rooted in practice, the latter in theory; and their modes of practical application. In particular, pure forms of deliberative democracy are often freely practiced within society or in cultural spaces, and only rarely are they activated by public institutions. Participatory democracy, on the other hand, is institutionally embedded. Furthermore, participatory democracy comprises elements that cannot be reduced to the deliberative dimension, even though the latter remains a necessary component¹⁹⁶.

A fundamental contribution to reflections on participatory democracy undoubtedly comes from the thought of Karl Marx, who, in formulating a model of direct democracy to be implemented with the advent of communism – and in overturning Hegel’s theoretical construction regarding the relationship between the public and private spheres, between civil society

¹⁹⁶ U. ALLEGRETTI, *La democrazia partecipativa in Italia e in Europa*, in *Rivista AIC*, 1, 2011, p. 4. On participatory democracy see also C. PATEMAN, *Participation and Democratic Theory*, Cambridge University Press, Cambridge, 1970; ID., *The problem of political obligation: a critique of liberal theory*, Cambridge University Press, Cambridge, 1985; N. POULANTZAS, *Il potere nella società contemporanea*, Editori riuniti, Roma, 1979; C. MACPHERSON, *La vita e i tempi della democrazia liberale*, Il Saggiatore, Milano, 1980. It should also be noted that J.P. VARGAS CÉSPEDES, D.A. ZAMUNER, *Dalla retorica partecipativa alla realtà quotidiana: lo stato attuale della democrazia partecipativa in America centrale*, in *Democrazia e diritto*, 3, 2006, p. 24 observe that in Latin America people are more willing to participate because of the so-called failed state: that is, they seek to achieve concrete results in contexts where the state does not substantially fulfil its functions.

and the state¹⁹⁷ – provided an important theoretical foundation for the developments of participatory democracy that flourished in the 1970s. These were followed by the experiments of the 1990s, when participatory democracy took shape in the wake of the invention of participatory budgeting in Porto Alegre, Brazil. This was soon complemented by other procedures, such as planning instruments in the field of urban development, environmental processes, or interventions concerning major public infrastructure projects—an institutionalized example of which, at the national level, is the Grand Débat Public in France.

It is nonetheless worth noting that the earliest reflections, in general, on the inclusion of social groups in public policymaking processes can be traced back to Alexis de Tocqueville. Observing the American experience, Tocqueville emphasized the necessity of free association among citizens as a condition for the development of democracy, for two main reasons. First, he saw associations as the contexts in which “sentiments and ideas are renewed, the heart enlarged, and the understanding developed”¹⁹⁸. Thus, he regarded them as privileged spaces of sociality, where individuals could approach politics by learning to temper the pursuit of their individual interest. Second, associational life potentially served as a check against the excessive concentration of power within legislative bodies. Tocqueville’s insights would later inspire political theorists throughout the twentieth centu-

¹⁹⁷ K. MARX, *La guerra civile in Francia (1850)*, Editori riuniti, Roma, 1973; ID., *Per la critica dell’economia politica (1859)*, Editori riuniti, Roma, 1974.

¹⁹⁸ A. TOCQUEVILLE, *La democrazia in America (1835)*, Einaudi, Torino, 1931, p. 36.

ry, such as Arthur Bentley, who introduced the pluralist framework into political science¹⁹⁹.

It is therefore possible to affirm that participatory and deliberative democracy are two distinct emanations of democratic thought, though they share important points of overlap. Nonetheless, deliberative democracy places greater emphasis on method and process – specifically on the deliberative process—which constitutes its defining feature²⁰⁰, regardless of the context in which it is applied, whether within representative institutions or in more informal deliberative forums²⁰¹.

Etymologically, this distinction is more clearly preserved in English than in Italian, where “deliberazione” has come to be synonymous with “decision.” In English, “deliberation” denotes the process – the dialogical and argumentative method – that precedes decision-making. This is evidenced by the fact that most Citizens’ Assemblies and other deliberative processes, such as the Citizens’ Initiative Review (CIR) – to which we shall return – are not designed with the aim of producing a final decision. These remain deliberative procedures, yet without decision-making outcomes. Moreover, they are not merely non-binding decisions, but processes that are not intended to produce a decision at all. Such assemblies often

¹⁹⁹ A. K. BENTLEY, *The process of government: a study of social pressures*, Harvard University Press, Chicago, 1908, on which see M. COTTA, D. DELLA PORTA, L. MORLINO, *Fondamenti di scienza politica*, il Mulino, Bologna, 2001.

²⁰⁰ Firstly, with regard to the instruments of participatory democracy, as clearly highlighted by Umberto Allegretti’s distinction.

²⁰¹In this sense, even the fully agreeable reflections offered by R. BIFULCO, *Democrazia deliberativa e principio di realtà*, cit., allow us to grasp very well the differences between deliberative democracy and participatory democracy.

aim not to decide, but to inform – as in the case of the CIR. The goals pursued through deliberative practices are, in fact, quite distinct.

First and foremost among these goals is the stimulation of citizens' interest in public life²⁰². This objective already appears to have been achieved in the participatory realm, particularly through numerous participatory budgeting processes, where “open” deliberative arenas have contributed to a significant development of social capital²⁰³. Building on Tocqueville's observations on town meetings and citizen juries in America, John Stuart Mill highlighted how these could function as “schools of public spirit”.²⁰⁴ Yet many scholars regard this effect as secondary – certainly desirable, but not essential – as argued, for instance, by Jon Elster²⁰⁵.

Among other relevant objectives, one should include: gathering informed public opinions on specific issues, and thus, potentially, producing better and more mutually acceptable decisions²⁰⁶ in the presence of value-based conflicts²⁰⁷; formulating public policies with the direct contribution

²⁰² N. NEBLO, *Thinking about democracy*, in *Acta Politica*, Vol. XL, 2, 2005, pp. 169-181.

²⁰³ S. RAVAZZI, *Una chiave per la democrazia deliberativa*, cit., p. 34; W. R. NYLEN, *Testing the Empowerment Thesis. The Participatory Budget in Bel Horizonte and Betim, Brasil*, in *Comparative Politics*, 34, 2002, pp. 127-145; G. BAIOCCHI, *Participation, Activism and Politics: the Porto Alegre Experiment*, in A. FUNG, E.O. WRIGHT (eds.), *Deepening Democracy*, London-New York, 2003; J. MANSBRIDGE, *On the Idea that Participation Makes Better Citizens*, in S. L. ELKIN, K. EDWARD SOLTAN (eds.), *Citizen Competence and Democratic Institutions*, University Park, 1999, pp. 291-325.

²⁰⁴ J. STUART MILL, *Considerazioni sul governo rappresentativo*, cit.

²⁰⁵ ID., *La democrazia deliberativa*, in *La società degli individui*, Vol. 36, 3, 2009, p. 40.

²⁰⁶ J. GASTIL, *By popular demand: Revitalizing Representative Democracy Through Deliberative Elections*, University of California Press, Berkeley, 2000.

²⁰⁷ L. PELLIZZONI, *Uncertainty and Participatory Democracy*, in *Environmental Values*, Vol. XII, 2, 2003, pp. 195-224.

of citizens²⁰⁸; reducing social conflict and increasing the legitimacy of decisions – and, potentially, of the authorities that choose to adopt such processes²⁰⁹; and generating positive influences and feedback on the responsiveness and effectiveness of administrative bodies²¹⁰.

Beyond conceptual, definitional, and theoretical issues, what Allegretti himself has termed the “dissemination”²¹¹ and stratification of all these practices – referred to by some as “deliberative arenas”²¹² – is steadily growing. These are spaces that combine participation and deliberation, understood as “social spaces in which all directly affected actors take part, in a structured manner, in a collective decision-making process grounded in the use of argument. In deliberative arenas, the task of decision-making is entrusted to equal and organized interaction among all the involved subjects, be they ordinary citizens, organizations, or public authorities [...]”. This development necessarily calls constitutional and public law scholars to engage with these practices.

A large number of deliberative practices have found fertile ground in what is known as the “democracy of sortition” – a model centered on the

²⁰⁸ J. ELSTER, *La democrazia deliberativa*, cit., p. 24; L. PELLIZZONI, *Opinione o indagine pubblica?*, in *Rivista italiana di politiche pubbliche*, 2, 2007, pp. 101-126.

²⁰⁹ L. BOBBIO, *La democrazia deliberativa nella pratica*, in *Stato e Mercato*, 73, 2005, pp. 67-88.

²¹⁰ A. FUNG, *Empowered participation. Reinventing urban democracy*, Princeton University Press, Princeton, 2004.

²¹¹ U. ALLEGRETTI, *La democrazia partecipativa in Italia e in Europa*, in *Rivista AIC*, 1, 2011.

²¹² L. BOBBIO, *Le arene deliberative*, in *Rivista Italiana di Politiche Pubbliche*, 3, 2002, pp. 4-29.

idea that random selection is the defining feature of new participatory forms. In fact, one may argue that nearly all existing experiences in this field rely on some form of “rationalized” lottery as one of their most distinctive characteristics. Beginning in the 1960s and 1970s, scholars such as Robert Dahl, Ted Becker, Peter Dienel, and Richard Mulgan began to reflect on sortition from the standpoint of political theory²¹³. These early reflections began to take shape in the 1980s, in parallel with the maturation of deliberative democratic theory. Out of these developments emerged Peter Dienel’s Planungszellen, Ned Crosby’s citizen juries, James Fishkin’s deliberative polls, Bruce Ackerman’s Deliberation Day, and the consensus conferences organized in 1987 by the Danish Board of Technology²¹⁴ – all of which served as forerunners to the contemporary Citizens’ Assemblies.

As previously mentioned, reflections on participatory and deliberative democracy, alongside direct democracy, inevitably require confrontation with the concept of participation itself. However, this immediately presents a major theoretical challenge. The term is inherently ambiguous and pro-

²¹³ R. DAHL, *After the Revolution? Authority in a Good Society*, New Haven, 1970; T. BECKER ET AL., *Un-vote for New America: A Guide to Constitutional Revolution*, New York, 1976; P. DIENEL, *Techniken bürgerschaftlicher Beteiligung an Planungsprozessen*, *Offene Welt*, n. 101, Opladen, 1970; ID., *Die Planungszelle. Eine Alternative zur Establishment-Demokratie*, Opladen, 1978; R. MULGAN, *Lot as democratic device of selection*, in *The Review of Politics*, 46, 1984, pp. 539-560.

²¹⁴ Cf. N. CROSBY ET AL., *Citizens’ panels: A new approach to citizen participation*, in *Public Administration Review*, Vol. 46, 2, 1986, pp. 170-178; J. FISHKIN, *Deliberative Polling: Executive Summary*, in Center for Deliberative Democracy at Stanford University, 1988; S. ELKIN, *Deliberative Democracy and Deliberative Polling*, in *The Good Society*, Vol. 9, 1, 1999, pp. 14-16; B. ACKERMAN, J. FISHKIN, *Deliberation day*, New Haven, 2004; I. ANDERSEN, B. JÆGER, *Scenario workshops and consensus conferences: towards more democratic decision-making*, in *Science and Public Policy*, Vol. 26, 5, 1999, pp. 331-340.

blematic, as it is applied – both in common usage and in political language – to a broad spectrum of situations and behaviors, in which “to participate” semantically refers both to *taking part in* and *being part* of something²¹⁵. These two meanings are not mutually exclusive; rather, they complement each other. Still, as some of the more attentive scholarship has pointed out, “participation implies [...] the interplay of two opposing principles: what unites – what can therefore be asserted collectively – and what differentiates, which constitutes the individual’s contribution to collective action”²¹⁶. Both “being part” and “taking part” entail processes of aggregation and equalization, as aggregation and equality – being together and being equal – lie at the very core of participation²¹⁷. It is “within the political sphere that participation most clearly emerges as an attempt to address the issue of power exercised by man over man. This is because participation entails both the reduction of asymmetries (equalization) and the softening of political command (limitation)”²¹⁸.

²¹⁵ M. COTTA, *Il concetto di partecipazione politica: linee di un inquadramento teorico*, in *Rivista Italiana di Scienza Politica*, Vol. 9, 2, 1979, pp. 193-227.

²¹⁶ L. PELLIZZONI, *Cosa significa partecipare*, in *Rassegna Italiana di Sociologia*, 3, 2005, pp. 479-511. On what *unites* and what *distinguishes*, the characteristics of Greek civilisation echo, as do the relationship between political community and individualism in antiquity, on which Hannah Arendt’s considerations remain a point of reference in ID., *Vita activa. Sulla condizione umana*, cit.

²¹⁷ P. CERI, *Partecipazione sociale*, in *Enciclopedia delle Scienze Sociali*, vol. VI, Roma, Istituto della Enciclopedia Italiana, 1996, pp. 508-516. In fact, “[...] too much aggregation accompanied by too much equalisation creates problems. In strongly cohesive groups, whether hierarchical or egalitarian, social control hinders the autonomous decision-making of the individual; moreover, if the individuals participating are equal in everything, the individual contribution is indistinguishable from that of others. There is joint action but no participation”, see L. PELLIZZONI, *Cosa significa partecipare*, cit., p. 482.

²¹⁸ F. RANIOLO, *Presentazione*, in *Quaderni di Sociologia*, 60, 2012, pp. 13-16.

Before the advent of modern constitutionalism, the problem of participation had no reason to arise, nor indeed to exist. In earlier states, social bodies were represented by mandate, and their members did not actively participate, except for those who held elevated social status. One's social position thus determined one's political position. To speak of participation was, therefore, unfeasible until the moment that this automatism was disrupted. The claim to popular sovereignty, along with the long process of the bourgeoisie's gradual appropriation of power in order to curtail the privileges of monarchs and aristocracies, gave rise to two parallel developments: on the one hand, the very structuring of the problem of participation; on the other, the formation of a professional governing class.

It is evident that the demand for an expansion of political rights implied the involvement of citizens in the political sphere – not merely as abstract legal subjects, but as members of civil and economic society, with concrete social positions and power. This gave rise, first and foremost, to a process of horizontal equalization among citizens. Indeed, the egalitarian logic introduced by the expansion of suffrage enabled citizens, through the act of voting, to distance themselves from the inequalities of society. The voter thus assumed a role within a unit directly related to the state. Yet, this horizontal equality coexisted with a vertical inequality between elites and citizens.

Those elites, within the liberal state, were the ones who had forced constraints upon absolute sovereigns, thus inaugurating the age of liberal constitutionalism. But as politics opened up to the masses through the irrever-

sible expansion of suffrage, those elites encountered mass parties and movements born of bottom-up demands to participate in determining the nation's political direction.

These liberal elites were characterized by their lack of structure; they represented private interests and positions in their own right, often directly. Later, “a permanent but amateur political class (which lived for politics but not from politics, as Weber put it), selected either through state co-optation or by personal vocation enabled by class-based resources, and theoretically unbound from any extra-political position, was gradually replaced by a professional political class – one that grounded its roots and legitimacy in the representation of civil positions, but which then acquired a specialization increasingly abstracted from any such representation (thus replicating the model of the political class of absolutist origin)”²¹⁹, albeit with a different legitimacy matrix.

And speaking of legitimacy, we return to the issue of participation, which follows two main directions: on the one hand, indeed, the construction of consensus; on the other, the use of participation as an instrument of political struggle against conditions of inequality, in the sense that “political participation is an action in solidarity with others, within the framework of a state or a class, aimed at preserving or modifying the structure (and thus the values) of the dominant system of interests”²²⁰. This, in particular, refers to the political participation expressed by voting citizens, which is di-

²¹⁹ A. PIZZORNO, *Introduzione allo studio della partecipazione politica (1966)*, in *Quaderni di Sociologia*, 79, 2019, pp. 1-32, p. 5.

²²⁰ *Ivi*, p. 12.

distinct from professional political activity and from participation as an organized movement. Political participation, in fact, manifests itself in various forms.

Even within political participation as the expression of an individual position within civil society, as is well known, there are different subtypes, variously conceived and classified by scholarly literature.

For some, the distinction between direct and indirect participation in turn determines the difference between participatory democracy and liberal democracy²²¹. However, other strands of legal scholarship²²², by emphasizing the presence or absence of any form of mediation – ranging from political parties to the media – enable a more rigorous historical-conceptual reconstruction, one that is more respectful of the stylistic features and distinctions that have always characterized modern constitutionalism. Firstly, the differentiation between democracy and representative government; secondly, that between direct democracy and participatory democracy of an institutional nature, which could be referred to as participatory-institutional

²²¹ F. RANIOLO, *La partecipazione politica*, il Mulino, Bologna, 2002, p. 64; L. PELLIZZONI, *Cosa significa partecipare*, cit., p. 484.

²²² In particular, that of Massimo Luciani, see ID., *Democrazia rappresentativa e democrazia partecipativa*, cit., and even earlier that of Carl Schmitt.

or representative-participatory democracy²²³; and also the distinction between direct democracy, relational-participatory democracy, and deliberative-participatory democracy. The latter encompasses the new forms of participation commonly categorized, within both political science and much of legal doctrine, under the label of deliberative democracy, and characterized by the use of sortition.

What differentiates representative-participatory democracy from relational- and deliberative-participatory democracy is, in particular, the nature of participation itself. Acknowledging that in the former, political participation primarily takes the form of electoral participation and the institutional participation described by Massimo Luciani – akin to what Domenico Fisichella once referred to as participation in the election of representatives as a mode of demos involvement²²⁴ – the latter models are based on participatory forms in which participation is understood as “the establishment of a relationship between society and institutions” that entails “an intervention of direct expressions of the former in the action processes of the

²²³ “A representative-participatory sub-model, in which the people have both the power to elect their representatives (and to monitor their actions, with the power to impose sanctions) and to participate in public decisions through appropriate institutions, to the extent that they can even proceed to their “direct” appointment through specific votes”, ID., *Democrazia rappresentativa e democrazia partecipativa*, cit.; ID., *Art. 75 Cost.*, in *Commentario della Costituzione* (fondato da Branca e proseguito da Pizzorusso), il Mulino, Bologna, 2005, pp. 12 ff., in which the author discusses the “representative-referendum” model. However, opinions vary. For Mauro Volpi, the repeal referendum was considered an institution of representative democracy *tout court*, see M. VOLPI, *Referendum nel diritto costituzionale*, in *Digesto disc. pubbl.*, Torino, 1997, p. 497, who emphasises that “the referendum lacks the elements of citizen participation and immediacy of decision-making that are found in popular assemblies”.

²²⁴ D. FISICHELLA, *Elezioni e democrazia*, il Mulino, Bologna, 1983, pp. 13-85.

latter”²²⁵. In other words, one might say that the defining element is the presence or absence of voting, which acts as a powerful mediating factor – a criterion of differentiation adopted, for instance, by those who consider popular legislative initiatives and petitions as examples of “participatory” democracy²²⁶.

In other terms, while participation within the representative-participatory sub-model of representative democracy, such as referendums, may appear as a form of participation that *confronts* representation, participation in relational- and deliberative-participatory democracy involves *engagement with* representatives²²⁷. In this sense, the distinction between a citizen who participates by voting in a referendum and one who participates as a member of a collective body becomes much clearer. The core issue, then, lies in understanding how this engagement with representatives is resolved.

And “at the root of this widespread experimentation lies a shared perception of the crisis affecting representative democratic institutions, both due to the eclipse of party democracy and the diminished reliability of centralized concertation between the government and major interest groups. The various experiences of citizen involvement in public decision-making represent an attempt to offer a non-populist response to the crisis of poli-

²²⁵ U. ALLEGRETTI, *Basi giuridiche della democrazia partecipativa in Italia: alcuni orientamenti*, in *Democrazia e diritto*, 3, 2006, pp. 151-66, p. 156.

²²⁶ E. ROSSI, G. MARTINICO, *Dibattito pubblico e partecipazione nell'esperienza della regione Toscana*, in *Riv. amm.*, 1-2, 2015, p. 17.

²²⁷ The effective and appropriate expression of A. VALASTRO, *Gli istituti di partecipazione tra retorica delle riforme e umiltà dell'attuazione*, in *costituzionalismo.it*, 1, 2017, pp. 35-95, pp. 45-46.

tics, as they outline structured and, to some extent, regulated pathways”²²⁸. More importantly, they do not represent a mere revival of direct democracy forms, both for the reasons mentioned above and because they continue to recognize representative institutions’ right to the final word. Moreover, when the people are entrusted with a “direct” decision, as in the case of referendums, some strands of deliberative theory view such procedures with suspicion, as they are aggregative rather than discursive in nature²²⁹.

Citizen participation is thus less mediated than in the dynamics of electoral democracy: “less mediated” but not “direct,” insofar as the citizens called to participate still represent a very small fraction of the whole. This is the inevitable outcome of the *problem of scale*, referenced earlier. In other words, one cannot claim that “the people, in a representative sample, are directly placed in power”²³⁰, as this would be an oxymoron – a consideration that, moreover, challenges the entire framework of sortition-based democracy²³¹. Participation, furthermore, is more “inclusive and not limited to those holding codified interests, and the type of process is more complex and more argumentative”²³².

²²⁸ L. BOBBIO, G. POMATTO, *Il coinvolgimento dei cittadini nelle scelte pubbliche*, cit., p. 46.

²²⁹ *Ibidem*.

²³⁰ H. KURTZ, *Volkssoveranität und Volksräpresentation*, Köln, Berlin, Bonn, München, 1965, p. 307, cited by A. ZEIL, *Il diritto e il caso...*, cit., p. 251.

²³¹ However, bearing in mind what was mentioned above.

²³² U. ALLEGRETTI, *Il cammino accidentato di un principio costituzionale: quarant’anni di pratiche partecipative in Italia*, in *Rivista AIC*, 1, 2011, 1-17, p. 3. For further information on the legal basis for these practices, see *Ivi*, pp. 2-4; ID., *Basi giuridiche della democrazia partecipativa in Italia: alcuni orientamenti*, cit.

Among the most significant participatory experiences are participatory budgeting, citizens' juries, and – though rarer – public debates found in the French legal system regarding major infrastructure projects. Additionally, there are growing trends toward participatory forms of land and environmental governance, as well as participatory interventions in the design of urban elements such as public squares, parks, or small public spaces and the reuse of historical buildings²³³. Evidently, these tools have found their most fertile ground within the *administrative and local spheres*.

Indeed, after noting that “participation (which is itself a concept configured in various ways and applicable in diverse contexts) is a very general notion; it denotes a class of processes, not a specific, legally or politically defined entity,” Umberto Allegretti recalls:

“To remain within the field of public law, the earliest and most essential manifestations of participation are those linked to the domain of representative democracy, the cornerstone of modern democracy: electoral participation, the structure and actions of political parties and associations that animate it, as well as individual, collective, and associative interventions by public opinion aimed at monitoring the activity of institutions. These should be regarded as just as central to the system of representation as elections themselves. Institutions of direct and referendary democracy are essentially participatory in nature, although they are typically used sporadically and mostly reduced to the simplified expression of a ‘yes’ or a ‘no’, carrying a merely propositional and optional character.

²³³ On the public debate in France and Italy, see *ex multis* C. LOMBARDI, A. LULLO, *Il dibattito pubblico quale strumento di democrazia partecipativa*, in *Amministrazione in cammino*, 15 July 2018; about *Grand Débat National*, which took as its model the *Débat public* that had already been in existence in France for over twenty years see P. PICIACCHIA, *La ricerca dell'incerta sintesi tra democrazia rappresentativa e democrazia partecipativa. Riflessioni a margine del Grand Débat National*, in *DPCE Online*, 3, 2020, pp. 3193-3223.

Forms of grassroots political action, such as individual and collective demonstrations exercising classical freedoms, movements, grassroots committees, and experiences of popular self-management of services and activities, as well as forms of social subsidiarity – are also expressions of participation. Likewise, participatory are the procedures in which institutions, individual citizens holding legal positions affected by public activities, and free organizations of society – whether included with their representatives within public collegial bodies or intervening in proceedings – interact in various ways and to different extents in the formation, and sometimes even in the decision-making, of institutional acts (Allegratti 2011).

Among these, some procedures – now widely analyzed in the literature – represent a more robust expression of the public sphere, being more complex than traditional ones and open not only to directly affected stakeholders but to the citizenry at large. These include participatory budgets, inaugurated by the Porto Alegre experience; participatory territorial planning and environmental interventions; public debates on major infrastructure projects, especially as regulated by French legislation; and various experiments involving citizen convocations to decide on the redevelopment or use of public spaces, and so forth. The term ‘participatory democracy’ aptly applies to these experiences in the strict sense (see Allegratti 2010). Within this materially and spatially diverse experience, participatory processes – particularly those that may be defined as cases of participatory democracy – are primarily concerned with administrative acts [...]”²³⁴

At the same time as these practices were emerging, deliberative theories of democracy were flourishing in the Anglo-Saxon context. Beginning in the 1970s, the first deliberative – or participatory-deliberative – practices began to develop alongside them, reaching a more mature and structured form in the early 2000s in Canada, and later spreading more widely in Europe in recent years. Despite the diversity of these experimental initiatives

²³⁴ U. ALLEGRETTI, *Recenti costituzioni partecipate: Islanda, Ecuador, Bolivia*, in *Quaderni costituzionali*, 3, 2013, pp. 689-705, pp. 689-690.

– which represent the common denominator of such experiences – there are three essential cornerstones of deliberative democratic processes.

The first is a fundamental and constitutive element of deliberative practices: the principle of sortition²³⁵. This raises a host of complex issues: When the ordinary citizen speaks, whom do they represent? Does this constitute a form of private-type representation?²³⁶ Or does the citizen speak, act, and engage strictly in a personal capacity? Clearly, the introduction of sortition into a system alien to it cannot be reduced to a mere mechanical adaptation. Borrowing such a mechanism does not necessarily mean incorporating it in a coherent and system-compatible way. Indeed, sortition remains detached from the systemic apparatus in which it originally emerged, namely, the democratic governance practices that predated representative regimes. Today, it is instead situated within the framework of representative democracies. In fact, proponents of these tools insist – often and explicitly – on their compatibility with the institutional structures of modern stabilized democracies, precisely in order to make them viable and politically expendable.

Moreover, the use of sortition is explicitly aimed at creating a body that numerically and qualitatively reflects a microcosm of society – including, and consequentially, for the purpose of enhancing the legitimacy of the Assembly's outcomes – while preventing the exclusion of certain categories

²³⁵ Reflections and conceptual justifications for the use of random selection have led to the emergence of a specific field of study, known as sortition democracy.

²³⁶ See L. CATALADI, *Promesse e limiti della democrazia deliberativa: un'alternativa alla democrazia del voto?*, in *Working Paper-LPF*, 3, 2008, p. 24.

of citizens²³⁷, curbing the misconduct of political actors who act in the interest of their party rather than the public good²³⁸, and containing the pressure exerted by interest groups²³⁹. All of this, perhaps, rests on the (illusory?) belief that citizens might make better decisions than elected representatives.

In short, it is a representative sample – a smaller-scale group mirroring the larger population – but still, fundamentally, a form of representation. It is a type of descriptive representation, however, that bears little resemblance to the ancient method of sortition as a means of selecting citizens who, with high probability, would be drawn to rotate in self-government roles. These practices amount to yet another delegated body: different, in that they lack the political weight and contest of electoral representation, but nonetheless still a form of delegation.

²³⁷ O. E. WRIGHT, *Envisioning real utopias*, Verso books, New York, 2010; G. SMITH, *Democratic innovations: Designing institutions for citizen participation*, Cambridge University Press, Cambridge, 2009.

²³⁸ L. CARSON, B. MARTIN, *Random selection in politics*, Praeger, Westport, 1999.

²³⁹ G. DELANNOI, O. DOWLEN, *Sortition: Theory and practice*, Imprint Academic, Exeter, 2016; D. C. MUELLER, R. D. TOLLISON, T. D. WILLETT, *Representative democracy via random selection*, in *Public Choice*, 1972, Vol 12, 1, pp. 57-68.

It is therefore evident that the conceptual substrate underpinning ancient Greek practices and the mechanisms of contemporary deliberative processes is fundamentally different²⁴⁰.

The random selection of citizens becomes both the conceptual and structural premise for the implementation of the remaining two key pillars of deliberative democracy²⁴¹ – both methodological and epistemic in nature – namely, information and discussion. The first must be diverse and pluralistic, allowing an issue to be approached and evaluated from multiple perspectives, in order to create a context as rational as possible. The second requires the opportunity to freely express one's opinion while simultaneously encouraging active listening²⁴². All of this stems from an awareness that representative democracy has evolved in ways that have distanced it from being a true space of reciprocal exchange.

Indeed, as B. Manin reminds us (and even earlier, Carl Schmitt), the liberal idea of 'government by discussion' once characterized the activity of Parliament and its mode of deliberation. In that phase, ideas were paramount, while votes and majorities remained in the background. This was

²⁴⁰ In theory, it has been argued that these differences can be traced exclusively to what has been called "the first wave" of deliberative instruments (mini-publics) – in particular, citizens' juries, deliberative polls and consensus conferences. Citizens' assemblies, on the other hand, are part of the "second wave" of mini-publics, which can be described not merely as complementary instruments to representative democracy, but as instruments of direct and participatory democracy, potentially becoming practices closer to Athenian "radical" democracy. On this point, see Y. SINTOMER, *De la démocratie délibérative à la démocratie radicale? Tirage au sort et politique au XXI siècle*, in *Dans Participations*, 2019, 1, pp. 33-59.

²⁴¹ Despite some deliberative systems claiming to be applicable to elected bodies as well, attributing a pretentious universalising dimension to deliberative democracy.

²⁴² S. RAVAZZI, *Una chiave per la democrazia deliberativa*, in *Meridiana*, 58, 2007, p. 22.

possible because representation was entirely internal to a homogeneous political class, allowing representatives considerable freedom of opinion based on the exchange of reasons”²⁴³. However, as is well known, the 20th century solidified different dynamics, rooted in the interaction between structured political forces. Given that deliberative democracy theory arises as a critique of both representation and the party system, and given its focus on the citizen as the primary actor, it is no coincidence that deliberative practices find their engine in sortition. Only a citizen who is not a representative, in the most classical and liberal sense, who is detached from the party machinery and from electoral pressures, can accept to bind their decision-making activity within the norms of deliberative democracy, where the capacity (which, in a sense, often becomes a duty) to change one’s opinion is a non-negotiable principle. In fact, it is highly unlikely that, in the realities of contemporary democracies, a representative would change their opinion as a result of discussion, whether within parliamentary chambers or in civil society²⁴⁴. Thus, “it is clear that deliberativists begin from a different assumption: namely, that preferences are not exogenous but have a social origin, and are therefore subject to change; from this perspective, public debate serves to filter out proposals based on impartiality and rationality”²⁴⁵. Yet, expecting such a process also implies expecting individuals

²⁴³ R. BIFULCO, *Democrazia deliberativa e principio di realtà*, cit., p. 8.

²⁴⁴ F. SCHAUER, *Talking as a Decision Procedure*, in MACEDO (ed.), *Deliberative Politics. Essays on Democracy and Disagreement*, New York-Oxford, 1999, 20-22; M. WALZER, *Deliberation, and What Else?*, in MACEDO (ed.), *Deliberative Politics. Essays on Democracy and Disagreement*, cit., pp. 59-66.

²⁴⁵ R. BIFULCO, *Democrazia deliberativa e principio di realtà*, cit., p. 8.

to conform to ethical norms and principles of social psychology – something which ultimately risks undermining pluralism in democratic systems, since preferences and interests are cast as negative and thus rejected. Even deliberativists themselves “cannot ignore the fact that, at the end of a deliberative process, there may be participants who remain unconvinced by the adopted decision. In such cases, it must be acknowledged that the deliberative process must give way to other methods, such as negotiation or voting”²⁴⁶.

There is, moreover, another core issue that must be addressed: the effectiveness of the outcomes of randomly selected assemblies. In deliberative practices such as Citizens’ Initiative Reviews (CIR), no particular problems arise in this regard, as their rationale and structure are fundamentally different. However, in the case of other types of experiences – such as single-issue, ad hoc Citizens’ Assemblies, as recently implemented in numerous European countries – the likely absence of follow-up by representative institutions may actually trigger a boomerang effect, exacerbating public frustration and deepening the underlying disillusionment that originally motivated the creation of such participatory-deliberative experiences.

This is, moreover, an almost inevitable risk, for it could hardly be otherwise: establishing binding decision-making mechanisms for elected representatives would be highly problematic, as it would risk generating a structural competition between elected assemblies and randomly selected ones. Indeed, it has been aptly noted that in those cases where such collec-

²⁴⁶ *Ivi*, pp. 11-12.

tive bodies are promoted by institutions, “the legislature rarely goes beyond requiring that the parliamentary assembly take the outcomes under advisement – a requirement that often results in mere acknowledgement,” or that “they are submitted to a popular vote at the initiative of the government or the legislature”²⁴⁷. Conversely, where the assemblies themself-

²⁴⁷ A. ZEI, *Il diritto e il caso ...*, cit., p. 238.

ves call for institutional action, this can only translate into a political – not legal – commitment²⁴⁸.

While all this constitutes a fully understandable impulse, born from the crisis of voting as an expression of democracy, doubts nonetheless persist.

²⁴⁸ In this sense, the Belgian model offers a compromise solution, albeit at the local level. Belgium stands out as a pioneer in the implementation of deliberative practices, being the first in Europe to have created an institutional link between the CA and Parliament, called *Permanenter Bürgerdialog*. In fact, in February 2019, the Legislative Assembly of the German-speaking province of *Ostbelgien* adopted a law establishing a *Bürgerrat* (Citizens' Council), a body with members selected at random and renewed by one third every six months, with the power to initiate a *Bürgerversammlungen* (Citizens' Assembly) – for a minimum of one and a maximum of three per year – on issues chosen by the Council itself. The results of the Assembly, in the form of non-binding recommendations, are then discussed in a specially established committee composed of members of the CA, the Parliament and a minister. The latter are required to report on the timing and manner in which these recommendations will be followed up, with the obligation to provide comprehensive justifications in case of failure to follow them. The permanent nature of this procedural chain, which is also fully institutionalised, makes the Ostbelgien model a prototype of deliberative democracy that is unprecedented in Europe and worldwide. At the same time, the Parliament of the Brussels-Capital Region also established so-called deliberative committees, bodies of the Parliament and within the Parliament, each consisting of 45 citizens selected at random and 15 parliamentarians, opting for a mixed composition as had been the case in Ireland during the 2013-2014 Convention on the Constitution. Once a year, a corresponding deliberative committee is created for each existing parliamentary committee, and 1,000 citizens have the opportunity to propose which topic/subject the deliberative committee should be created for, submitting their proposal through the Parliament's web channels. The committee's work continues for a maximum of four days, with discussions between citizens, MPs, experts and stakeholders, followed by final deliberations and votes on the proposals drawn up. MPs who abstain or vote against proposals approved by an absolute majority of the 45 citizens selected at random are required to justify their choice. Instead, all proposals approved by a majority of the 45 citizens and 15 MPs are incorporated into a report and submitted to the relevant parliamentary committee, which is required to present a report within six months on how and when it intends to implement the proposals contained in the report. For a detailed description of the organisation of the Council and the CAs, as well as the powers and functions of each, which in various passages draw on the experiences of previous CAs, as well as the phase of interaction and liaison with the institutional chain, see C. NIESSEN, M. REUCHAMPS, *Institutionalising Citizen Deliberation in Parliament: The Permanent Citizens' Dialogue in the German-speaking Community of Belgium*, in *Parliamentary Affairs*, 75, 2022, pp. 135-153, pp. 142 ff.; see also P. PICIACCHIA, *Le "vie infinite" della democrazia partecipativa e il dilemma costituzionale della sua integrazione nei processi decisionali basati sulla rappresentanza. Quali modelli per gli ordinamenti del XXI secolo?*, in *federalismi.it*, 22, 2024, pp. 216-258.

What emerges is a sense of contemporary disillusionment with politics, no longer perceived as a space of will-formation – or rather, only of an anemic will²⁴⁹ – but the conceptual and structural aporias of these theories remain numerous.

Today, then, deliberative practices represent that “participatory component” which increasingly seeks to carve out a space within democratic dynamics, and in which parts of the academic and civil society spheres – especially younger generations—are placing their hopes. It is a space to be claimed, as society itself is changing; yet political parties and parliaments struggle to keep pace. Nevertheless, the question of their complementarity with the core of representative democracy remains unresolved. In short, not all that glitters is gold: and pragmatically, many scholars have highlighted additional critical issues surrounding deliberative practices. Some have pointed to the inability of ordinary citizens to engage with complex issues²⁵⁰; others have argued that such deliberations would still be distorted by class and gender inequalities²⁵¹; and still others have raised concerns about the risk of polarization that these methods do not necessarily elimi-

²⁴⁹ P. ROSANVALLON, *Sulla crisi della democrazia*, in *il Mulino*, 4, 2020, pp. 692-701, p. 693.

²⁵⁰ Cfr. R. A. POSNER, *Law, Pragmatism and Democracy*, Cambridge University Press, Cambridge, 2004, p. 163.

²⁵¹ Cfr. L. M. SANDERS, *Against Deliberation*, in *Political Theory*, 25, 1997, pp. 347-376; I. MARION YOUNG, *Inclusion and Democracy*, Oxford Academic, Oxford, 2000, Chap. II.

nate²⁵², as well as their shortcomings in meeting the “reality principle”²⁵³ of contemporary democratic systems.

3. Some Notes on Digital Democracy: Between Yet Another Utopia and Feasible Paths

The breach opened by participatory-deliberative democracy thus offers significant insights for reflection within democratic thought, particularly of a critical nature. However, its implementation is currently hindered by various factors: institutionalized models—although already present in some countries—are highly complex to construct. This is, in fact, a branch of democratic reflection that necessarily entails a profound rethinking of the representative apparatus, a challenge that governments and parliaments in certain countries, such as Italy, are not yet politically prepared to face.

Despite the rhetoric surrounding increased participation encountering few obstacles at the level of abstract political discourse, identifying a legally applicable path remains a very different matter. This is a rather obvious observation to the Italian constitutional scholar, who is well aware of it due to its similarities, in some respects, with the long-standing issue of reforming perfect bicameralism. And yet, in many European countries, the path of deliberation is steadily gaining traction.

²⁵² See C. R. SUNSTEIN, *Deliberative Trouble? Why Groups Go to Extremes*, in *Yale Law Journal*, 110, 2000, pp. 71-119; ID., *The Law of Group Polarization*, in J. FISHKIN, P. LA-SLETT (eds.), *Debating Deliberative Democracy*, Blackwell Pub, Oxford, 2000.

²⁵³ R. BIFULCO, *Democrazia deliberativa e principio di realtà*, cit.

To some extent, these characteristics are absent in the other major avenue of new forms of participation – namely, digital participation²⁵⁴. At least for a simple reason: technology and the internet, as methods, already exist, and are therefore more readily implementable. The obstacles to application are thus considerably less pronounced.

This form of participation also finds its origin in the perceived inadequacy of traditional political bodies to act as effective mediators between society and institutions. On the one hand, such inadequacy has contributed to a growing detachment and inertia among citizens; on the other, it has simultaneously generated a strong push toward greater participation. This is the so-called counter-democracy described by Rosanvallon²⁵⁵.

Thus, the idea of a new form of participation gradually took shape—one in which all citizens could intervene directly, through electronic and digital means, in the decisions affecting the collective. The proposed solution was to harness technological progress in order to revitalize, in revised form, the Athenian model of self-government, where the *agorà* would be replaced by a digital political space – one capable of eliminating geographic and temporal distances between individuals, and of resolving the long-standing dilemma of direct democracy, namely the aforementioned problem of scale. This new model would also allow for the full realization of the so-called

²⁵⁴ On digital democracy see G. FIORIGLIO, *Democrazia elettronica. Presupposti e strumenti*, Cedam, Padova, 2017; G. GOMETZ, *Democrazia elettronica: teorie e tecniche*, Edizioni ETS, Pisa, 2017.

²⁵⁵ P. ROSANVALLON, *La contro-democrazia. La democrazia nell'era della diffidenza*, in *Ricerche di storia politica*, 3, 2006, pp. 1 ff.

“wisdom of the crowd”²⁵⁶, moving beyond the aggregative and piecemeal logic of electoral democracy. Such a system of governance would thus pull the ailing representative model toward a more advanced form of government of the people, by the people: an immediate democracy in which the permanent and pervasive consultation of citizens²⁵⁷ would become its fundamental pillar.

These were the lines of thought that, already from the past century – when the potential of new technologies first began to emerge – led some theorists to speak of the construction of a direct and deliberative democracy. Often, in fact, the conceptual foundations of deliberative theories overlapped with, and reinforced, the premises of immediate democracy, thereby opening digital democracy to “deliberative ambitions”. Citizens, through the internet, would be able to access information and, in a genuinely deliberative fashion, discuss and ultimately decide²⁵⁸. In this sense, what was

²⁵⁶ P. LEVY, *L'intelligenza collettiva. Per un'antropologia del cyberspazio*, Feltrinelli, Milano, 2002, pp. 1-248; C.S. SUNSTEIN, *Infotopia: How many minds produce knowledge*, Oxford University Press, Oxford, 2006, pp. 1-288; J. WALDRON, *Principio di maggioranza e dignità della legislazione*, Giuffrè, Milano, 2001. In order to build a strong democracy, see B. BARBER, *Three scenarios for the future of technology and strong democracy*, in *Political Science Quarterly*, vol. 113, 4, 1998, 585, in contrast to the distortions of plebiscitarian democracy, that is “a democracy that embodies majority opinions assembled from the unconsidered prejudices of private persons voting private interests”.

²⁵⁷ P. LEVY, *L'intelligenza collettiva...*, cit., 91-92, talks about “real-time democracy”.

²⁵⁸ For example, B. BARBER, *Three scenarios for the Future of Technology and Strong democracy*, cit., pp. 585 ff.

envisioned was a veritable “electronic republic”²⁵⁹, in which technology itself was endowed with an intrinsically democratizing character²⁶⁰.

As is often the case, however, utopia soon clashed with the harshness of reality. In particular, the digital turn quickly revealed the difficulties in pursuing the models proposed by what are now referred to as cyber-utopian theories. From a sociological perspective, it became increasingly clear that the internet’s effects were more deleterious than salvific: rather than facilitating the construction of a deliberative political space, it often produced one that was polarizing, even violent²⁶¹; it generated an overload of information, frequently distorted or manipulated, which risked leading citizens to make decisions driven by impulse rather than reasoned deliberation²⁶². From a legal standpoint, several challenges emerged: issues concerning security, transparency, and verifiability in the use of technology²⁶³; the management of the vast volume of online consultations; and, above all, the

²⁵⁹ L. K. GROSSMAN, *The Electronic Republic: Reshaping Democracy in the Information Age*, Viking, New York, 1996. For a historical reconstruction of the currents of thought on the subject, see P. VILLASCHI, *La crisi del rappresentato e del rappresentante ai tempi della rivoluzione digitale*, Giappichelli, Torino, 2024.

²⁶⁰ N. KERSTING, H. BALDERSHEIM, *Electronic Voting and Democratic Issues: An Introduction*, in N. KERSTING, H. BALDERSHEIM (eds.), *Electronic Voting and Democracy. A comparative Analysis*, Palgrave Macmillan, Palgrave, 2004, pp. 251 ff.

²⁶¹ P. COSTANZO, *La “democrazia digitale” (precauzioni per l’uso)*, in *Diritto Pubblico*, 1, 2019, p. 76 states that “the greatest disappointment seems to stem from the fact that, instead of the hoped-for, perhaps harsh but constructive, debate among Internet users, the Web often gives rise to irreconcilable conflicts and encourages the flaunting of radical or extremist intentions”.

²⁶² E su cui aveva già avvertito G. SARTORI, *Homo videns. Televisione e post-pensiero*, Laterza, Roma-Bari, 1997, pp. 1-166.

²⁶³ This problem persists in the case of digital voting in the context of a representative government system, see G. DI COSIMO, *La partecipazione nell’era digitale*, in *Osservatorio sulle fonti*, 2, 2022, pp. 102-110, pp. 102-105.

question of what legal value should be attributed to citizens' votes. This is particularly relevant in contexts such as Italy, where such voting could become a near-daily occurrence, as Norberto Bobbio sharply noted: "judging by the number of laws passed each year in Italy, the good citizen should be called upon to vote at least once a day." Thus, far from providing a means to reverse the decline of intermediary bodies and the resignation provoked by a dysfunctional system²⁶⁴, "an excess of participation – which produces what Dahrendorf, with disapproval, termed the 'total citizen' – may ultimately lead to a saturation with politics and an increase in electoral apathy"²⁶⁵.

Once the once-hopeful theories of a totalizing digital democracy – nostalgically modeled on ancient Athens – became increasingly marginal, e-democracy redirected its focus not so much toward transforming the system of government itself, but rather toward modifying its methods. Indeed, the potential offered by new technologies could be – and in some cases already is – exploited more or less effectively through tools such as email voting and electronic voting. These mechanisms are certainly more

²⁶⁴ C. GALLI, *Il disagio della democrazia*, Einaudi, Torino, 2011, pp. 71 ff., which refers to democracy as an "empty throne".

²⁶⁵ N. BOBBIO, *Il futuro della democrazia*, cit., 14; R. DAHRENDORF, *Cittadini e partecipazione: al di là della democrazia rappresentativa?* in *Il cittadino totale: partecipazione, eguaglianza e libertà nelle democrazie d'oggi*, scritti di G. Sartori, R. Dahrendorf, Einaudi, Torino, 1977, p. 56.

feasible and less problematic than the ambitious projection of an electronic republic in which the people, digitally, govern themselves²⁶⁶.

Electronic voting remains largely impractical, primarily due to the persistent dangers of manipulation of consent²⁶⁷, as exemplified by the well-known remark by Israeli historian and philosopher Yuval Noah Harari: “The crisis of liberal democracy is not only playing out in parliaments and ballot boxes, but also in the neurons and synapses of our brains”²⁶⁸, as well as the risk of vote tampering. Email voting, on the other hand, is already a reality in contexts such as the United States and Germany – after the latter

²⁶⁶ “[...] And this is the truly decisive objection: in order to encourage greater participation by individuals in the decision-making processes that affect them, e-democracy, precisely because it is first and foremost democracy, must also require that decisions be taken in the place that is institutionally and constitutionally designated for that purpose. And this is where technology and e-democracy inevitably come into conflict, precisely because e-democracy is only possible within an environment in which technology exercises its dominance. The desire of technology to increase its power indefinitely is incompatible with the desire of e-democracy to allow the need to preserve the institutional place where decisions affecting people are taken to continue to exist. This is clearly a contradiction in terms. All this, of course, provided that we do not claim to create new forms of democracy, which, however, requires that they be precisely defined, connoted and denoted before embarking on one-way paths with unexplored and inadequately considered consequences. [...] that policies can only appropriate the tools developed from time to time within the technological apparatus in which they exist at a given moment in history. However, politics can never take ownership of technology, which is the true domain and environment in which politics operates. To think that this is possible is pure utopia. To hypothesise a place where this could happen is dystopia. Of course, politics can set limits on the use of technological tools, but that is another matter entirely”, R. NOBILE, *Democrazia elettronica, tecnica e politica: tre nozioni che non dialogano*, in *Ceridap*, 2, 2022, p. 82.

²⁶⁷ P. CIARLO, *Democrazia, partecipazione popolare e populismo al tempo della rete*, in *Rivista AIC*, 2, 2018; E. MOSTACCI, *Critica della ragione algoritmica: internet, partecipazione politica e diritti fondamentali*, in *Costituzionalismo.it*, 1, 2019, pp. 102 ff.; R. MONTALDO, *Le dinamiche della rappresentanza tra nuove tecnologie, populismo, e riforme*, in *Quaderni costituzionali*, 4, 2019, pp. 789 ff.; M. BETZU, G. DEMURO, *I big data e i rischi per la democrazia rappresentativa*, in *Medialaws*, 1, 2020, pp. 218 ff.; O. SPATARO, *Diritti di partecipazione politica e piattaforme digitali, alcune riflessioni*, in *Dirittifondamentali.it*, 2, 2022.

²⁶⁸ Y. N. HARARI, *Lezioni per il XXI secolo*, Bompiani, Milano, 2019, p. 68 ff.

reversed course on electronic voting, based on the rationale that “when carefully managed, postal voting prevents recognition of the voter, because the mailing envelope is neither stamped, nor – of course – registered or signed”²⁶⁹.

In this context, Italy has implemented electronic methodologies at a stage preceding the vote itself: that is, not only through limited use – given the constraints posed by e-democracy²⁷⁰ – during the electoral phase, but also within the process of collecting signatures for the submission of referenda and popular legislative initiatives. Indeed, Law no. 178 of 2020 (Art. 1, paras. 341–344) provided for the creation of a digital platform for the collection of signatures for referenda and citizen-initiated laws. Decree-Law no. 77 of 2021 (Art. 38-quater) initiated the possibility of collecting signatures in digital form. Pending the creation of an institutional platform, initial provisions allowed for the use of authorized private platforms. The functioning of the public platform was definitively regulated by the Prime Ministerial Decree of 9 September 2022. Subsequently, Decree-Law no. 144 of 2023 assigned ownership of the platform to the Ministry of Justice, and the public platform has been fully operational since July 2024. The digitalization of the signature collection process constitutes one of the first and most compelling examples of the harmonization between technology

²⁶⁹ P. FELTRIN, G. IERACI, *Facilitating voting and electoral participation in Italy. On some possible measures to contrast involuntary and imposed abstentionism*, in *Rivista di Digital Politics*, 1, 2023, pp. 29-47, p. 39.

²⁷⁰ For the problems associated with the convergence of the e-democracy model with direct democracy, see R. NOBILE, *Democrazia elettronica, tecnica e politica: tre nozioni che non dialogano*, cit.

and law, aimed at using technological tools to facilitate the exercise of constitutionally protected rights²⁷¹. Moreover, it appears to circumvent the primary objection raised by skeptics of digital technologies in the political realm: while it is legitimate to fear that digital tools applied to electoral processes may fragment and diminish reflective space, this concern seems not to apply to the use of technology for collecting signatures. The qualitative integrity of the process would not be compromised, since a smartphone would merely serve as a means of more rapidly accessing information about a referendum and expressing support for its potential launch²⁷².

Nonetheless, one cannot ignore the potentially anti-parliamentary – or rather, supplementary – character that referenda could or already may have assumed. There is a growing trend to resort to the referendum route – much as occurred with electoral systems in the 1990s – on matters that Parliament continues to avoid legislating on or updating, even in the face of evolving societal conditions. This is further compounded by the increasing

²⁷¹ N. FIANO, *Il legislatore alla prova della digitalizzazione della raccolta firme per promuovere referendum e leggi di iniziativa popolare e...la presentazione delle candidature alle elezioni?*, in *La Rivista del Gruppo di Pisa*, 1, 2023.

²⁷² R. BORRELLO, *Firma digitale e slow democracy*, in *Nomos*, 3, 2021. On the distinction between e-democracy and e-voting see G. GOMETZ, *Democrazia elettronica: teorie e tecniche*, cit., pp. 6-8.

Critical views also regarding the collection of signatures online, due to an increase in disintermediation and the vindictive and abusive effects of the referendum see G. DONATO, *Gli strumenti di democrazia partecipativa alla prova del digital switchover*, in *DPCE online*, 2, 2021, p. 1534; N. LUPO, *La nuova vita "digitale" del referendum abrogativo. Origini e conseguenze*, in *School of Government LUISS*, Policy Brief, 31, 2021, p. 3; F. PALLANTE, *Referendum digitali e autodelegittimazione del Parlamento*, in *Osservatorioaic.it*, 6, 2021, p. 7; see also F. PACINI, *Verso un mutamento costituzionale tecnicamente indotto? Note sulla digitalizzazione delle firme per il referendum*, in *Quaderni costituzionali*, 4, 2021, pp. 943 ff.; N. ROSSI, *Firma digitale per referendum e leggi di iniziativa popolare. Una meditata rivoluzione o un improvvisato azzardo?*, in *Questione giustizia*, 15 settembre 2021.

number of referendum proposals that surpass the necessary thresholds and reach review by the Court of Cassation and the Constitutional Court.

The appropriate course, then, would be to contain this tendency within physiological limits – first and foremost by considering whether to raise the thresholds required for referendum proposals to be admitted for legitimacy review. Otherwise, instead of seizing the opportunity for potential “bursts of fresh air”²⁷³, there is a risk that technology will end up distorting popular participation mechanisms, turning them into long-term outlets for deeper pathologies affecting the form of government – roles for which these instruments were never intended.

²⁷³ *Referendum, Invecchiamento e Rete*, in *riforming.it*, 20 October 2024.

CHAPTER III

A BRANCH OF THE TREE: THE FOUNDATIONAL PILLARS OF DELIBERATIVE THEORY

Democracy enters a crisis because it – meaning modern quantitative democracy – was conceived under the assumption that there were stable, fixed values shared by all

ERSILIO TONINI

SOMMARIO: 1. Why a deliberative theory of democracy – 2. Participation and deliberation: “deliberative participation” – 3. The theoretical-philosophical pillars of deliberation – 3.1. The classics – 3.2. Twentieth-century thinkers – 3.3. Jürgen Habermas: public sphere and communicative action – 3.4. John Rawls and “moral liberalism” – 4. “Rational consensus” and “uniform democracy”.

1. *Why a deliberative theory of democracy*

The lowest common denominator of all these strands of democratic thought lies, first and foremost, in their reactive tendency in response to the crisis of representative democracy – particularly in the form of party-based democracy – as well as in the structural difficulty of navigating an increasingly complex and fragmented socio-political context.

The crisis of legitimacy affecting stabilized democracies is well known, having long occupied the attention of scholars and researchers in law, poli-

tical science, sociology, philosophy – in short, scholars from a variety of disciplines. These thinkers have pursued different lines of inquiry, beginning first and foremost with the question of *whether* democracy is indeed in crisis, and subsequently, *why* it is undergoing a pathological phase that has now assumed systemic dimensions²⁷⁴.

The strain endured by traditional forms of representation has thus driven – and continues to drive – some scholars toward reflections and theoretical developments that either rely on advanced technological tools to support the existing mechanisms of democracy, or, more substantially, aim to redefine traditional paradigms. This involves a shift from mass and party-based democracy toward *participatory* democracy, an archetype characterized by the aspiration to revive citizens' active and responsible participation through means other than (and not limited to) electoral democracy. Among these approaches, deliberative democracies stand out precisely because of this characteristic, which makes them particularly distinctive in a number of respects, starting with their foundational theoretical and conceptual orientation.

As is well known, the critical issues facing Western democracies stem fundamentally and primarily from the crisis of representation and political parties, with inevitable downstream effects on the functioning and performance of systems of government and their interaction with the broader sta-

²⁷⁴ As pointed out by M. F. PLATTNER, *Liberal democracy's fading allure*, in *Journal of Democracy*, Vol. 28, 4, 2017, pp. 5-14, "The real question now is no longer whether democracy is at risk but why the condition of democracy has become so troubled".

te structure²⁷⁵. Representative regimes now face the destabilization of traditional frameworks that no longer seem capable of absorbing and translating the complexity of reality. The shifting centers of power, globalization, transformations in governance, increasing complexity across levels of government, the strengthening of executive powers and the retreat of parliamentary assemblies, the disintegration of political parties' ability to synthesize the needs of a "liquid society"²⁷⁶, and the emergence of new and diverse demands that impose equally new challenges on those in power – these are just some of the core issues within a web of interrelated factors.

Together, they have contributed to the emergence of transformations so profound that they are arguably comparable in intensity to those that occurred in Europe between the 19th and 20th centuries, during the expansion of suffrage and the opening of political systems to mass parties. Hence, a growing narrative, both scholarly and popular, has begun to spread, emphasizing the need to "update" old paradigms, which are increasingly seen as anachronistic in light of the implosion of the representative circuit and everything it entails. This update would be triggered, in light of the failure to meaningfully reform the representative system, precisely through the institutionalization of additional – and no less diverse – forms of citizen participation.

Indeed, it is the widely recognized decline of political parties as catalysts of societal needs – aggregating preferences and representing them in

²⁷⁵ According to the well-known teachings of Costantino Mortati, C. MORTATI, *Le forme di governo*, Cedam, Padova, 1973.

²⁷⁶ Z. BAUMAN, *Modernità liquida*, Laterza, Roma-Bari, 2002.

institutional forums – that lies at the heart of the crisis of representation. In the twentieth century, parties were indispensable mediating bodies, primarily by virtue of their role as guiding elites. This is no longer the case today, and the vacuum left by the absence of a leading role for political forces has created social, political, and institutional imbalances that Western democracies have been struggling with for some time.

However, the problems within the party system are secondary to – and derivative of – a more fundamental “crisis of the represented”, brought about by the pluralistic character of the state and the increasingly tenuous identity of the *demos*²⁷⁷. It is precisely from this condition that the deliberativist conviction arises: that deliberation can serve as a response to growing social complexity²⁷⁸.

Moreover, the progressive withdrawal of politics – marked by the shrinking of its operative spaces over the past thirty years – has undermined the mechanisms of representation, further encouraging democratic thought to

²⁷⁷ 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*, Giuffrè, Milano, 2001.

²⁷⁸ “In particular, the resolution would constitute the solution to all those problems encountered by public choice theory and game theory: regulatory incompleteness and asymmetry, the ambiguity of situations and the limited rationality of actors, uncertainty and ignorance of cause-effect connections, systemic interdependencies, environmental turbulence and temporal inconsistency. A deliberative process, in other words, should enable actors with limited rationality, and therefore with a necessarily partial view of reality, to reach compromises and agreements that are sustainable over time. In fact, good deliberation should be productive, i.e. capable of creating added cognitive value, cognitive innovation [...] A pluralistic and open context, as pluralist theory asserts, has a greater capacity to bring out possibilities that were previously invisible and/or unfeasible”, L. CATALDI, *Promesse e limiti della democrazia deliberativa: un’alternativa alla democrazia del voto?*, in *CentroEinaudi - Laboratorio di Politica Comparata e Filosofia Pubblica*, Working Paper, 3, 2008, pp. 2-38, p. 25.

turn toward alternative solutions. These alternatives aim to breathe new life into democratic systems now marked by pronounced distress.

Deliberative democracies thus emerge from the need for a form of legitimacy that goes beyond that which is conferred through electoral processes. They are situated within a broader context – one that, for some time now, has been turning toward alternative approaches, that is, methods distinct from the traditional party system and the classical notion of consensus. This latter concept of consensus, rooted in contractarian thought, locates the legitimacy of rulers in the consent of the governed and finds its operational center in the mechanisms of power. Deliberative democracy does not aim to replace this paradigm entirely, but rather to complement and, in some ways, supplement it – always in relation to the logic of representation. This characteristic will be emphasized repeatedly in the course of this analysis, as it is essential to fully understand the deliberative model.

Deliberative approaches are also alternative with respect to the dominant strands of twentieth-century democratic theory, which were largely characterized by an aggregative understanding of democracy. These models centered on the translation of individual interests into collective decisions through voting and the rule of the majority. In contrast to reflections, often critical, on elitism and neo-elitism, or to empirical political theory (descriptive rather than normative in nature), whose foundational text is arguably Anthony Downs' *Economic Theory of Democracy*²⁷⁹, and in contrast to the democratic pluralism of scholars such as Giovanni Sartori and

²⁷⁹ A. DOWNS, *Teoria economica della democrazia*, il Mulino, Bologna, 1998.

Robert Dahl, who shaped much of last century's debate, the deliberative ideal positioned itself as a new and alternative path. Its aim is to develop "methods for making binding decisions that establish conditions of free public reasoning among equals subject to those decisions"²⁸⁰.

.It is within this context that we must place the new strands of democratic thought that began to emerge in the second half of the twentieth century: novel theoretical frameworks around the concept – or rather, concepts – of democracy²⁸¹, as well as new reflections on politics and deliberative democracy²⁸². These ideas began to mature with the work of scholars such as the German philosopher and sociologist Jürgen Habermas²⁸³ and the American philosopher John Rawls²⁸⁴.

What remains to be understood is whether, and to what extent, the type of legitimacy offered and generated by deliberation can find a meaningful place within the representational canon. That is: does deliberation possess

²⁸⁰ J. COHEN, *Democracy and Liberty*, in J. ELSTER (ed.), *Deliberative Democracy*, Cambridge, Cambridge University Press, 1998, p. 186.

²⁸¹ See D. DELLA PORTA, *Democrazie*, il Mulino, Bologna, 2011.

²⁸² The term 'deliberative democracy' appears for the first time, according to J. BOHMAN, W. REHG, *Deliberative Democracy. Essays on Reason and Politics*, Cambridge University Press, Cambridge, 1997, in an essay by Joseph Bessette, ID., *Deliberative Democracy: The Majority Principle in Republic Government*, in R. GOLDWIN, W. SHAMBRA (eds.), *How Democratic is the Constitution?*, American Enterprise Institute for Public Policy Research, Washington, 1980, pp. 102-116.

²⁸³ J. HABERMAS, *Storia e critica dell'opinione pubblica*, Laterz, Roma-Bari, 1971, 1° ed.; ID., *Teoria dell'agire comunicativo*, Bologna, 1986; ID., *Fatti e norme. Contributi a una teoria discorsiva del diritto e della democrazia*, Milano, 1996. Il filosofo è recentemente tornato sul tema in ID., *Nuovo mutamento della sfera pubblica e politica deliberativa*, Raffaele Cortina, Milano, 2023.

²⁸⁴ J. RAWLS, *Una teoria della giustizia (1971)*, Feltrinelli, Milano, 2017; ID., *Liberalismo politico (1993)*, Einaudi, Torino, 2005.

the necessary characteristics to effectively support the mechanisms of representation? And can deliberative theories and practices truly offer more than a mere warning signal about systems that are now, quite clearly, struggling to function?

In other words, the question is whether, having originated as a response to the struggles of democratic discourse and practice, these theories can go beyond critique and instead propose feasible models and frameworks for democratic renewal.

2. Participation and deliberation: “deliberative participation”

As noted earlier, the specificity of deliberative democracies lies, first and foremost, in a fundamental conceptual divide, which gives rise to a rather distinct and peculiar *Weltanschauung*. That is, deliberative democracy begins from a true reversal of the Schumpeterian conception of democracy, and more broadly of elitist thought, to which it stands in stark conceptual opposition. This reversal manifests in two key aspects: a different understanding of representation, and a different conception of how decisions are made. Both of these elements are encapsulated in the very name attributed to this current of democratic thought: deliberative democracy. Indeed, in deliberative democracies, just as in participatory democracy, citizens actively participate in the management of public affairs, which no longer remains the exclusive domain of political elites and public administration.

While keeping in mind what has been previously stated regarding ancient Athenian democracy, the participation of citizens here should not be understood as a manifestation of the mechanisms of direct democracy – otherwise, we would fall into a double conceptual trap: both assuming that Athenian democracy was “direct,” and classifying deliberative democracy as a form of direct democracy. Rather, participation is characterized by its quality: a form of participation that engenders a different kind of representation, more akin to private law, in that it is tied to specific interests and bound by a limited and revocable mandate²⁸⁵. Nevertheless, as mentioned in Chapter I, this does not negate the relevance of references to antiquity.

Moreover, this is a deliberative form of participation, where “deliberation” should not be understood in its more reductive sense of “making a decision,” but rather in the richer meaning of “discussing” or “engaging in dialogue” – a meaning rooted in the Greek world and particularly in Aristotle’s *Nicomachean Ethics*²⁸⁶, and still preserved in the Anglo-Saxon linguistic tradition, where the verb to deliberate refers to a process of discussion and dialogical exchange. While in Italian the term *deliberazione* has come to mean the decision itself, in English *deliberation* refers to the *process* – the dialogical and argumentative method – that precedes decision-making. In the deliberative perspective, then, communicative forms of ex-

²⁸⁵ L. CATALDI, *Promesse e limiti della democrazia deliberativa: un’alternativa alla democrazia del voto?*, cit., p. 5. In reality, this concept does not always come into play in deliberative theory, especially with regard to which interests are brought forward and “represented”. Indeed, deliberative theory arises, as we shall see, within a moral dimension that calls upon the impartial citizen.

²⁸⁶ ARISTOTELE, *Etica Nicomachea*, cit., III, 1112a 18–1113b, p. 14.

change and information, grounded in rational argumentation, become essential. One of the defining features is the intrinsic legitimacy derived from the very procedure itself, which is constitutionally distinct from the traditional paradigm of representation²⁸⁷. Hence, if the term *democrazia deliberativa* may seem obscure or confusing in Italian, once the original etymology is kept firmly in view, it becomes clear that deliberative theory is grounded in the value of the process through which decisions are reached, rather than in the final act itself. This renders largely unconvincing the attempts by some scholars to propose alternative definitions in place of “deliberative democracy” – definitions which, at first glance, are no less ambiguous than the original²⁸⁸.

Thus, a new space opens for a new articulation of participation: a space in which two fundamental dimensions emerge. The first is properly deliberative, in the etymological and conceptual sense described above. The second is democratic, from which follows the emphasis on public and inclusive procedures, often made possible through the use of sortition, itself another essential pillar of deliberation.

²⁸⁷ Literature refers to the ‘transformative power’ of deliberation, see. J.S DRYZEK, V. BRAITHWAITE, *On the Prospects for Democratic Deliberation: values Analysis Applied to Australian Politics*, in *Political Psychology*, Vol. 21, 2, 2000, pp. 241-266. In other words, initial preferences are transformed and refined to take into account the views of others (D. MILLER, *Deliberative Democracy and Social Choice*, in *Political Studies*, 40, 1992, pp. 54-67), since “the path to decision-making takes place through arguments offered by and to participants on the basis of values of rationality and impartiality”, J. ELSTER, *Deliberative Democracy*, Cambridge University Press, Cambridge, 1998, p. 8.

²⁸⁸ The suggestions gave rise to expressions such as “democracy based on arguments” and “discursive democracy” (Dryzek 1990), “reflective democracy” (Beck, Giddens, Lash 1994; Olson 2006), “dialogic democracy” (Giddens 2008).

It is precisely from these reflections on the crisis of representative democracy that the contributions of political scientists and legal scholars emerge – at times polemical or even provocative – regarding deliberative methods as complementary tools (or, for more radical authors, even substitutive ones) to attempt to contain the erosion of democratic systems²⁸⁹. Deliberative democracy thus becomes one of the many outcomes of the decline of the democratic architecture of the late twentieth century.

Accordingly, for a vibrant and living democracy, something more is required than the mere aggregation of individual preferences. Indeed, it would be preferable to go beyond the traditional mechanisms through which modern societies make decisions – aggregation and voting – and to incorporate deliberation as a means of transforming preferences, recognizing in it a genuine “transformative power”²⁹⁰. For the quality of decisions derives not so much from the vote itself, but from the quality of public debate

²⁸⁹ In fact, there is no shortage of authors who propose and theorise the total abolition of representative methods in favour of mechanisms based exclusively on random selection, see T.G. BOURICIOUS, *Democracy through multi-body sortition: Athenian lessons for the modern day*, in *Journal of Public Deliberation*, Vol. 9, 1, 2013; D. VAN REYBROUCK, *Against Elections: The Case for Democracy*, Random House, New York, 2016; B. HENNING, *The End of Politicians: Time for a Real Democracy*, Unbound Digital, London, 2017. Another radical solution is the proposal to introduce parliamentary chambers composed of members selected by lot, thus fully and completely institutionalising CA within the bicameral structures of parliaments and, therefore, within the mechanisms of government.

²⁹⁰ See note 10.

that precedes it²⁹¹. In other words, the quality of decisions depends on an extensive process of argumentation over political choices, even before those choices are subjected to voting. In this sense, deliberative democracy is discursive and rational, because it is based on horizontal and reasoned flows of communication, openness to listening, and the transformation of preferences through the inclusion of others' perspectives. And it is by virtue of collective deliberation that decisions become legitimate: legitimacy is conferred by the process through which decisions are formed. This legitimacy thus becomes the central concern and primary interest of deliberative democracy²⁹² – closely tied to the epistemic value of participation. Deliberative processes, in fact, hold considerable potential for enhancing the quality of decision-making and cognitive learning, thereby contributing to the rationality of political decisions²⁹³.

Thus, rational argumentation becomes the primary instrument – substituting the aggregation of preferences with their transformation – most capable of contributing to the production of the best possible decision for the

²⁹¹ J. ELSTER, *The Market and the Forum*, in J. ELSTER, A. HYLLELAND (eds.), *Foundations of Social Choice Theory*, Cambridge University Press, Cambridge, 1986; L. BOBBIO, *Come smaltire i rifiuti. Un esperimento di democrazia deliberativa*, in *Stato e mercato*, 64, 2002, pp. 101-141. See also J.S. DRYZEK, *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*, Oxford, 2000; ID., *Legitimacy and economy in deliberative democracy*, in *Political Theory*, Vol. 29, 5, 2001, pp. 651- 669; J. COHEN, *Deliberation and democratic legitimacy*, in J. BOHMAN, W. REGH (eds.), *Deliberative Democracy: Essays on Reason and Politics*, Mit Pr, Oxford, pp. 87-106; J. PARKINSON, *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy*, Oxford Academic, New York, 2006.

²⁹² B. MANIN, *On Legitimacy and Political Deliberation*, in *Political Theory*, Vol. 15, 3, 1987, pp. 338-368, pp. 351-352.

²⁹³ J. COHEN, *An Epistemic of Democracy*, in *Ethics*, Vol. 97, 1, 1986, pp. 26-38.

community. On the one hand, then, the deliberative process would be preferable in itself due to its ability to foster greater learning and dialogue²⁹⁴. On the other hand, it would be preferable because it is assumed to lead, almost automatically, to the “best way” forward. Indeed, many deliberativists tend to rely on a simplified automatism to justify the normative validity of deliberative outcomes: that is, the quality of the deliberation would deterministically guarantee the quality of its outcomes. However, this deterministic link is far from established. Evaluating the quality of a process is one thing; assessing the external effectiveness of its results is another²⁹⁵. Conflating these two dimensions reflects a significant conceptual flaw.

To illustrate the mechanisms underlying the deliberative model, Jon Elster proposed a particularly insightful analogy that clearly highlights the distinction between deliberative and aggregative democracy²⁹⁶. He identifies two opposing models: the Market and the Forum (or Square), each corresponding to distinct, albeit imaginary, physical spaces.

The Market is the space of commercial exchange, where individuals buy and sell goods. In this setting, individuals act according to their needs and

²⁹⁴ All factors that indicate the high quality of the decision, as reported by G. F. LANZARA, *La deliberazione come indagine pubblica*, in L. PELLIZZONI (ed.), *La deliberazione pubblica*, Meltemi, Roma, 2005, pp. 51-73, p. 55.

²⁹⁵ Several studies have also addressed, in particular, the issue of the legitimacy of deliberative mini-publics. On this subject, reference should be made, among others, to a specific study on the CIR, K. MÄR, J. GASTIL, *Do Voters Trust Deliberative Minipublics? Examining the Origins and Impact of Legitimacy Perceptions for the Citizens' Initiative Review*, in *Political Behavior*, 45, 2023, pp. 975-994.

²⁹⁶ J. ELSTER, *The Market and the Forum: Three Varieties of Political Theory*, in J. BOHMAN, W. REHG (eds.), *Deliberative Democracy*, Cambridge, Mid Press, 1997, pp. 3-34.

means, driven solely by the pursuit of personal satisfaction and resource maximization. There is no need to establish any form of legitimacy, nor is there any implicit obligation to orient one's actions toward the common good. Individuals participate only as long as it serves their private objectives.

The Forum, by contrast, is the space where citizens engage in collective life without pursuing material interests. It becomes a venue for the cultivation of disinterested civic education.

These two spaces reflect two corresponding models of democracy: the market-based, aggregative model and the deliberative model. The Market represents a conception rooted in consent and the selection of rulers through the aggregation of preferences via voting, in other words, the majority rule. In this model, public decisions are the product of that process, which essentially reflects asymmetries of power. The Forum, on the other hand, embodies the deliberative model of collective decision-making, oriented toward the common good – a good understood not as the sum of individual preferences, but as a goal attainable through the encounter, confrontation, and transformation of individual preferences through rational discourse²⁹⁷. In the deliberative perspective, public decisions are not the outcome of asymmetries in economic power or social status that citizens carry into non-deliberative processes. Rather, they “[...] should result from consideration of the interests of all citizens. The common good thus achieved is

²⁹⁷ In addition to Jon Elster's essay, see also F. CUNNINGHAM, *Theories of Democracy*, Routledge, London, 2002; D. HELD, *Models of Democracy*, Stanford, Stanford University Press, 1996.

not the mere sum of individual interests, but a good that both includes and transcends them”²⁹⁸.

The pressing question, however, is whether, and to what extent, individuals can genuinely adopt this perspective. Is it really plausible to imagine that citizens participating in public and political life do so without pursuing any form of self-interest? Often, participation simply means seeking political recognition and validation of one’s own needs. In other words, can these two moments, personal interest and public engagement – truly be separated?

This does not mean, of course, that we should disregard the importance of commitment to the common good, nor abandon the difficult, ongoing work required to sustain the *res publica* as a community of shared life. Rather, it means acknowledging the need to reconcile this ideal with the empirical reality that such a community is always composed of individuals, each bearing their own unique, specific, and personal sphere of interests.

3. The theoretical-philosophical pillars of deliberation

3.1. The classics

In order to engage more thoroughly with the key issues that characterize deliberative theory and practice – and to attempt to piece together the im-

²⁹⁸ M. BONINU, *Modelli di democrazia deliberativa*, in *Ragion pratica*, 1, 2007, pp. 285-292, p. 288.

mense puzzle of which it is composed – it is necessary, even if briefly, to confront those authors whose reflections have been essential and indispensable to the development of deliberative democratic theory. This is particularly important for a more analytical and in-depth understanding of what lies behind deliberative practices: their conceptual meaning, the ideological aspirations that inspire them (even amid internal diversity and ongoing controversies regarding the origins of deliberative thought).

Indeed, the roots of deliberation remain the subject of lively debate, with perhaps the only broadly agreed-upon point being that deliberation predates the theoretical paradigm which, from the 1980s onward, has come to be known explicitly as “deliberative democracy.”

In this regard, Jon Elster famously observed that the idea and practice of deliberative democracy are as old as democracy itself²⁹⁹: an assertion both striking and entirely plausible. One need only rewind the history of political thought to recognize that the deliberative ideal was not, in fact, a twentieth-century novelty: from the *pòleis* to the ideal of “government by discussion”, deliberation has always been a recurring theme within political theory, both democratic and liberal. Indeed, it is the liberal tradition in particular that has emphasized deliberation, to the point that Carl Schmitt considered it one of liberalism’s distinguishing features³⁰⁰.

If in ancient Greece deliberation was intrinsically linked to the democratic practices of the city-states, the practice of governing through discussion

²⁹⁹ J. ELSTER (ed.), *Deliberative Democracy*, Cambridge, Cambridge University Press, 1998, p. 1.

³⁰⁰ C. SCHMITT, *Parlamentarismo e democrazia*, cit., p. 93.

eventually became, first and foremost, a feature of the liberal universe – prior to its incorporation into twentieth-century democratic theory. More specifically, it came to define liberal parliamentarism, the essence of which, according to Schmitt, lies in the fact that “laws arise from a contest of opinions (not a struggle of interests),” that is, from discussion grounded in mutual openness to persuasion, independence from partisan ties, and impartiality in the face of self-interested demands. In this view, “parliament is the place where deliberation occurs, that is, where access to relative truth is made possible through a discursive process, through argument and counterargument”³⁰¹.

Thus, according to Schmitt, even the earliest theorists of representative government – such as Locke, Burke, and Madison – placed considerable trust in the capacity and virtue of debate and rational argumentation as intrinsic to the essence and functioning of parliamentarism. This interpretation, however, is not universally shared. Bernard Manin, for instance, offers a different reading: he argues that such trust derived not so much from a belief in debate per se, but rather from “the assumption of the principle of the equality of wills and the collective and plural nature of the representative body”³⁰². According to Manin, it was this structural assumption that led, as a methodological consequence, to the deliberative orientation of the institution and its members.

³⁰¹ C. SCHMITT, *Parlamentarismo e democrazia*, Cosenza, Marco Editore, 1998, p. 27, p. 89.

³⁰² B. MANIN, *The Principles of Representative Government (1995)*, Cambridge (Mass.), Cambridge University Press, 1997, pp. 186 ff.

In theories of representative government, then, the centrality attributed to discussion was not merely normative, but functionally linked to the idea that deliberative procedures constituted a fundamental phase of the decision-making process – capable, in the end, of producing a convergence of wills³⁰³, to which such procedures were thus subordinated and instrumental.

To be honest, however, the two perspectives tend to converge in the sense that the framing of discussion both as an epistemic method and as a tool aimed at reaching agreement seems to persist equally and simultaneously. It suffices to recall how Edmund Burke, in his famous speech to the electors of Bristol, defined Parliament not as a “congress of ambassadors,” but rather as the deliberative assembly of the nation, thereby emphasizing deliberation as the principal and epistemic function of representative bodies: “Parliament is not a congress of ambassadors from different and hostile interests, interests that each ought to maintain as agent and advocate against other agents and advocates. Parliament is instead a deliberative assembly of one nation, with one interest, that of the whole, where local aims or prejudices must not guide decisions, but rather the common good as determined by the general reason of the whole”³⁰⁴. In other words, for Burke deliberation is not only aimed at producing broad consensus but also has a genuine epistemic function, enabling the identification, through rational discussion, of the true interest of the nation. This interest, as is well known,

³⁰³ *Ibidem*.

³⁰⁴ E. BURKE, *Speech to the Electors of Bristol (1774)*, in *Select Works of Edmund Burke*, a cura di F. Canavan, Indianapolis, Liberty Fund, 1999, vol. IV, pp. 11-12.

is objective, definable, and independent of any individual desire. It is precisely for this reason that Burke recognizes the necessity of deliberative procedures, since they allow this interest to be identified rationally. Thus, the epistemic virtues of deliberation constitute, in Burke's thought, the confluence point of his understanding of politics and the science of government, where reality determines ideas and from which every political actor must start. Indeed, "[...] to govern and legislate are matters of reason and judgment, not inclination. And what kind of reason would it be in which the decision precedes discussion, in which one group of men deliberates and another decides, and in which those who draw conclusions may be three hundred miles away from those who listen to the arguments?"³⁰⁵. For the Anglo-Irish thinker, reason and the activity of reasoning are not a mere intellectual exercise but are intrinsically tied to morality, and "political problems do not primarily concern truth or falsehood. They rather concern good or evil [...]"³⁰⁶, so that political reason is "a principle of calculation, a long series of sums, subtractions, multiplications and divisions, all moral operations – not metaphysical or mathematical – among genuinely moral factors," and is thus deeply indebted to experience. He further argues that "the science of building a state, or of its renewal and reform, must not, like any other experimental science, be taught *a priori*. Nor does a brief exercise suffice to make us experts in such a practical science, since the concrete effects of moral causes are not always immediate; in fact, what initially

³⁰⁵ E. BURKE, *Speech to the Electors of Bristol*, cit., p. 11.

³⁰⁶ E. BURKE, *Ricorso dai nuovi agli antichi Whigs*, in E. BURKE, *Scritti politici*, a cura di A. MARTELLONI, Torino, Utet, 1963, p. 539

appears deleterious may ultimately prove excellent, and this supreme quality may often arise even from the bad effects initially produced. The opposite can also happen, and very plausible projects with promising beginnings often produce shameful and sad results. There are often obscure and latent cases in states, realities of little apparent importance at first glance, on which enormous parts of prosperity or ruin may depend”³⁰⁷.

Consequently, a natural aristocracy becomes an essential prerequisite, composed of intellectually and morally gifted individuals capable of identifying the nation’s interest³⁰⁸, to which this aristocracy does not constitute a separate interest but rather a fundamental and integral part. All the qualities that representatives must possess become complementary to the representative function in deliberative terms, since deliberation allows members of Parliament to acquire indispensable information that enables them to fulfill their role³⁰⁹: in essence, that celebrated “to know in order to deliberate,” echoing the memory of Einaudi. It is thus that deliberation becomes an essential node of the representative function itself, within a politico-constitutional geometry that, as is well known, leaves no room for democracy and the extension of suffrage, intrinsically incoherent and dysfunctional to the logic of the free parliamentary mandate and the necessity of a selected aristocracy.

³⁰⁷ E. BURKE, *Riflessioni sulla Rivoluzione in Francia*, Roma, Ideazione, 1998.

³⁰⁸ E. BURKE, *Speech to the Electors of Bristol*, cit., pp. 10-11; E. BURKE, *Riflessioni sulla Rivoluzione in Francia*, cit., p. 67 he highlights them in comparison with the French National Assembly.

³⁰⁹ H.F. PITKIN, *The Concept of Representation*, Berkeley, University of California Press, 1967, pp. 188-189.

In short, Burke's conception can be described as deliberation from a fully liberal perspective, distant from democratic aspirations but no less resonant in the thought of twentieth-century deliberativists. The importance of the deliberative method and its logic, closely tied to the strongly realist perspective animating Burke and his conception of the world and politics, constitutes a fundamental precedent for them – beyond the systematic framework of his scientific universe, and therefore all the more interesting to highlight³¹⁰.

If for Burke the relationship between deliberation and representation was essential – though limited to parliamentary assemblies and their members—John Stuart Mill is considered the spearhead among the precursors of deliberative democracy, owing to his reflections not only on the relationship between deliberation and representation – thus considering discussion, rather than lawmaking, the primary task of Parliament – but also on the relationship between deliberation and representative government, extending it primarily to public discussion and the virtues that deliberative reflection brings to citizens as active and informed voters.

It is indeed this deliberation, extended and intrinsic to the public sphere, that is the necessary precondition for deliberation as a practice carried out

³¹⁰ Equally influential, but for different conceptual reasons, was Jean-Jacques Rousseau. In other words, twentieth-century theories of deliberation are indebted to his reflections, even though he had a radically different approach to the dialogical method. However, the link between deliberativists and the Genevan philosopher took root where he emphasised the general will and the collective good, thus finding common ground with the aims of deliberative theories, which seek to identify and achieve the good of the community through discussion, which Rousseau did not agree with because of its inconsistency with the basic approach of his democratic thinking and the Genevan philosopher's aversion to "partial societies", which a dialogical method would ultimately have promoted.

by and among representatives. A true mode of being a citizen, more closely linked to an Athenian conception of participation. Whereas for Burke deliberation and democracy were wholly incompatible – indeed, deliberation was possible only within a narrow elite – for Mill, it is precisely by stimulating and developing attention to public affairs and civic responsibility that Parliament can truly fulfill its role.

The powerful emphasis Mill places on deliberative procedures represents the point of convergence of a political system conceived as inclusive, participatory, more legitimate, and pedagogical in purpose—one which demands rather high levels of moral engagement and responsibility from citizens. One need only consider his reflections on the voter's role, likened to that of a juror. Voting, therefore, does not become a means aimed at aggregating preferences, mirroring different and divergent interests, but rather a tool oriented toward the pursuit of the most accurate identification of the public good transcending individual preferences³¹¹. Indeed, “every voter has the irrevocable moral duty to put the public interest before any private gain. The individual must cast their vote according to rational criteria, as if they alone were voting and the outcome of the consultation depended on their choice”³¹². In such a framework, deliberation among citizens, and thus public discussion, becomes indispensable to these ends, fostering greater knowledge and awareness among the electorate about public affairs

³¹¹ J. BRENNAN, J. BUCHANAN, *La ragione delle regole*, Milano, Angeli, 1982, p. 136.

³¹² J.S. MILL, *Considerazioni...*, cit., pp. 154-155.

and naturally promoting a moral education aimed at pursuing real rather than apparent interests.

This is thanks to the transformative qualities of discussion, to the close relationship between deliberation and rationality, capable of influencing individuals' opinions – especially through the rational virtues of confronting ideas – “because [...] the only way a man can come to some extent closer to a comprehensive knowledge of a subject is by listening to what people of every opinion say about it, and studying all the ways it can be considered from every point of view. No one has ever attained wisdom otherwise; nor does the nature of the human intellect permit other ways of becoming wise”³¹³.

Better decisions; greater legitimacy of those decisions; civic spirit: these are thus the three outcomes of Mill's system, which tends toward reconciling democratic-representative government – with Mill's well-known support for universal suffrage, both male and female, fully consistent with the pillars of his good governance and politics – and deliberation.

These are precisely the main effects championed by twentieth-century deliberative theories.

3.2. Twentieth-century thinkers

Over time, then, the deliberative ideal has undergone significant changes and slowdowns, followed, finally, by strong accelerations starting from

³¹³ J.S. MILL, *Saggio sulla libertà*, Milano, Il Saggiatore, 1997, pp. 24-25.

the last century. These leaps forward did not simply consist in the recovery of the deliberative ideal as it evolved throughout human history, but also – and above all – in the application of this ideal at a more pragmatic level, much like the more pragmatic application of deliberation in the ancient Greek world.

It is therefore necessary to make distinctions, primarily in light of the transformations humanity has undergone, which have inevitably led, especially in the Western world, to changes in the norms and conventions that governed human coexistence, encapsulated within the historical process of constitutionalism. Just as democracy has much deeper roots and cannot be said to have originated in the twentieth century, and just as contemporary democratic systems cannot be superimposed onto the democracy practiced in ancient Athens, the same holds true for deliberative methods, which inevitably cannot be the same today as they were in the past. And while the past cannot fail to be a point of reference, it is above all its negative aspect that matters: that is, allowing us to identify the differences between yesterday and today, which begin with a radically changed context, including intellectually.

Indeed, it can be argued that the paradigm of modern deliberative democracy began to take shape around 45-50 years ago and has gradually matured theoretically since then: the encyclopedic volume of writings and works on the subject, as well as the internal complexity that deliberative thought has developed – and consequently the impossibility of identifying a single, unified strand – along with the possibility of engaging with deli-

berative theory through different approaches, are tangible proof of this. Initially, the issue was addressed from a philosophical perspective, analyzing the concepts both historically and semantically; two other approaches can be identified: one formal and mathematical, concerned with verifying and constructing functioning models based on the analysis of collective bodies and their decision-making modes³¹⁴; and the other, more strictly empirical, where formal models have been applied to specially formed or pre-existing groups, of which James Fishkin's deliberative polls certainly represent a paradigmatic example.

Within this context, doctrine has proposed a tentative minimal categorization of the vast literature on deliberation according to a relational criterion³¹⁵. Within intellectual debate, it is possible to distinguish between those studies that remain confined to the theoretical and, in some way, ideal moment, staying strictly within the deliberative framework. In this case, the primary concern of these authors is the elaboration and justification of an ideal deliberative model that demonstrates its intrinsic value: some authors limit themselves to mental abstractions, without worrying too much about practical consequences and empirical verification; others, more pragmatic, attempt to justify the model by practical means³¹⁶.

³¹⁴ D. LANDA, A. MEIROWITZ, *Game Theory, Information, Deliberative Democracy*, in *American Journal of Political Science*, Vol. 53, 2, 2009, pp. 427-444.

³¹⁵ M. BONINU, *Modelli di democrazia deliberativa*, cit., p. 289.

³¹⁶ Ne è un esempio in tal senso proprio James Fishkin, cfr. ID., *The Voice of the People*, New Haven, Yale University Press, 1995.

Secondly, it is possible to identify scholars who tackle deliberation within a broader scope, relating it, for example, to other strands of political thought – above all, liberal doctrine and representative institutions: a perspective typical, often, of those who approach deliberation as scholars of public law and constitutional law, whereas the former perspective is more typical of those working mainly in philosophy.

From a legal and especially constitutional perspective – also attentive to the history of political doctrines, systems of government, and the norms that govern today's forms of state and government – this second lens is undoubtedly the more interesting one, as it allows connecting theory to historical experience and to the normative systems in which deliberative practices must be situated.

Nevertheless, the theoretical-philosophical approach remains indispensable to understanding what deliberation, deliberative theory, and deliberative practice are, and how they relate to the realm of representation. It is necessary to keep firmly in place the theoretical-philosophical foundations of legal and political systems. This is indeed what happens when studying constitutional dynamics in liberal democracies, where knowledge of the history of liberal and democratic thought constitutes a significant and non-deferrable resource.

I believe, therefore, that the same methodological compasses must guide the approach to and study of deliberative democracy.

Although it is impossible to retrace in detail the entire thread of deliberative theory and politics, some milestone authors can be identified as refe-

rence points. Among them, two twentieth-century thinkers stand out for having offered a systematic and organic reflection on deliberative thought, with considerations spanning philosophy, political science, and sociology. These correspond to two different conceptions of deliberation: Jürgen Habermas and John Rawls

3.3. Jürgen Habermas: public sphere and communicative action

Habermas's intuition of the normative and counterfactual idea of communication free from domination, which can be established within democratic societies, constitutes the red thread³¹⁷ that unites the extensive and multifaceted body of work by the German intellectual, as well as the philosophical questions that have driven it from the outset.

From the beginning, his approach was not only rooted in philosophical inquiry proper but also – and above all – in a civic and civil spirit that led him to engage with multiple disciplines and fields of knowledge, ultimately constructing a rather innovative system based, as mentioned earlier, on communication and its mechanisms. This intellectual endeavor took into account and intertwined these mechanisms with the factual observation of reality in established democracies. This system, however, was made possible by Habermas's intellectual roots, having been formed within the Frankfurt School alongside Horkheimer and Adorno, from whom he eventually

³¹⁷ M. CALLONI, *Introduzione all'edizione italiana*, in J. HABERMAS, *Nuovo mutamento della sfera pubblica e politica deliberativa*, Raffello Cortina Editore, Milano, 2023, p. X.

distanced himself while still maintaining a focus on the critique of domination and oppression.

His departure from the approach of his mentors stemmed from a different conception of rationality, which led Habermas to overcome the negative interpretation of reason that the Frankfurt School had offered. This was achieved through the identification and distinction between strategic action and communicative action, grounded precisely in the idea of communicative rationality.

The German philosopher's project, therefore, can be seen as an intellectual operation and intuition based, on one hand, on a renewed faith in reason and, on the other, on the conviction that individuals are able and entitled to fully express themselves. These are two distinct but intertwined issues insofar as reason in the Enlightenment became a means to understand oneself as well. Indeed, Enlightenment modernity referred to *reason* as what had previously been called the *soul*.

This trust in reason gradually waned, beginning with Immanuel Kant and his reflections on the self and the rejection of a "rational doctrine of the soul," to which he applied his general theory of knowledge. Consequently, knowledge pertains to the *phenomenon*, not the *noumenon*, by virtue of knowledge arising from the senses and their intellectual processing. Thus, there is an almost absolute impossibility of knowing one's true essence or vital core as it really is, with only the possibility of grasping the phenomenon, and therefore its psychic manifestations such as sensations,

emotions, and feelings – essentially, an “empirical doctrine of the soul”³¹⁸, where the individual understands oneself through praxis and reality, that is, through free action in the world.

In the twentieth century, Habermas’s mentors fully denied the Enlightenment hope of reforming everything, and all knowledge, on the basis of reason, speaking of the “dialectic of enlightenment”³¹⁹. Habermas’s work moves beyond this dialectic by assigning a primary role to the normative counterfactuality of language—that is, language’s capacity to evaluate and foresee alternative circumstances, to understand causal relations in the world, thus constituting a fundamental element for reasoning and decision-making. This capacity “forms the foundation for a theory of universal pragmatics and discourse ethics, where linguistic interaction lays the groundwork for understanding among participating subjects equally involved in discourse, which serves as the basis for the public sphere”³²⁰. This inquiry has never ceased to evolve, transform, and refine throughout the decades of the German intellectual’s activity, particularly in adapting and reshaping the deliberative perspective in response to the development of new media, a conceptual pairing to which Habermas has devoted, for example, one of his most recent works³²¹.

³¹⁸ I. KANT, *Critica della ragion pura* (1787), edited by Pietro Chiodi, Utet, Torino, 2005, p. 332.

³¹⁹ M. HORKHEIMER, T. W. ADORNO, *Dialettica dell’illuminismo* (1947), Einaudi, Torino, 1993.

³²⁰ M. CALLONI, *Introduzione all’edizione italiana*, cit., p. XIV.

³²¹ Si veda, a proposito, ID., *Nuovo mutamento della sfera pubblica e politica deliberativa*, cit.

Thus, the elaboration of concepts such as “communicative action,” “strategic action,” and the “public sphere” were the results and fruits of his tireless intellectual laboratory, subsequently becoming the conceptual and theoretical cornerstones of deliberative thought – an area to which much, therefore, is owed to Habermas.

However, he did not “invent” the mechanisms and tools of deliberative democracy: the German philosopher developed a *discursive theory of democracy*, an ethics of discourse based on certain ideas and insights that contribute to creating a conception of the public sphere, within which citizens are free to express themselves – thus laying the foundations for an alternative path to representative democracy, that is, a democracy where public deliberations matter: in other words, where it is not only votes that count, but arguments. Therefore, deliberative democracy has been and continues to be inspired by it as its *humus*, that is, as its intellectual background, where its *raison d’être* lies in attempting to allow the ways and times for the unfolding of such a public sphere, which Habermas calls, in the German language, *Öffentlichkeit*: that is, “an open, participatory space.”

Within this space, there is free interaction among citizens, where humans possess three types of rationality: epistemic rationality, teleological rationality, and communicative rationality. While the first is oriented toward thinking and the second toward doing and success, communicative rationality is oriented toward speaking and understanding. The concept of

communicative rationality is based on the idea that humans are capable of fully expressing themselves through language, which is therefore the ultimate means of mediation and always renders thought communicable. Hence, the idea of rationality as a set of relations – speaking, doing, thinking – or rationality as a reflection of what a subject thinks, does, and says, expressed in the world and to the world through language itself.

It can be said that if Habermas, on the one hand, reassembles the distrust in “negative dialectics,” thus positioning himself differently from the Kantian school and later the Frankfurt School, on the other hand, he follows Kant’s path where, in the theory of the knowledge of the self, Kant asserted that only through practice in the world can the soul of individuals be expressed; and, likewise, he aligns with the Frankfurt School – of which he is, as is well known, one of the most illustrious representatives – where the conception of the public sphere is contextualized within a strongly critical discourse on the conditions of society and aimed at the emancipation of individuals: from his perspective, precisely through a true theory of communication, by virtue of the functionality of the public sphere for the expression of individual freedom.

Therefore, rationality is not exclusively functionalist, that is, aimed at a purpose and reducing individuals to mere instruments, but it can be *discursive*, arising from dialogue among subjects not isolated in the social world and thus constitutive of their emancipation. Just as language is not merely a set of terms but a discourse aimed at understanding the interlocutor, so too the legitimacy of political institutions depends largely on “communica-

tive rationality,” capable of fostering the formation of a collective will and promoting democratic participation by individuals who are not subordinated, thanks precisely to the role of language in a space where citizens can be co-authors of rights.

The development of the discursive theory of democracy finds its source in a historical reconstruction put forth by the German philosopher, empirically and not formally addressing political practices dating back to the late eighteenth-century revolutions³²². That era, in fact, was the time when a public sphere was structured, autonomous and distinct from political forces, “as a place of participation and the formation of collective identities”³²³, where power was being built upon the circuit of representation. At that time, a bourgeois public sphere took shape in public or semi-private places such as salons and literary cafés, and “developed in the tension field between state and society, but in such a way as to remain itself part of the private sphere”³²⁴. Indeed, the public sphere was born from the combination of two essential ingredients that only the advent of modernity could bring: on one hand, the emergence of the distinction between public and private, excluding state intervention and thus opposing completely the conception that had forged citizenship in antiquity; on the other hand, the electorate’s claim to exercise control over political decisions beyond the moment of voting.

³²² J. HABERMAS, *Fatti e norme...*, cit., pp. 369-433.

³²³ D. DELLA PORTA, *Democrazie*, cit., p. 59.

³²⁴ J. HABERMAS, *Storia e critica dell’opinione pubblica*, cit., p. 171.

It is now appropriate to take a further step. We spoke earlier of the three forms of human rationality, and based on this distinction, Habermas reformulates, in *Theory of Communicative Action*, a theory of communicative actions through which he attempts to found an ethical rationality alternative and different from strategic rationality by developing the original concept of communicative action.

As Weber had done before, he identifies four types of action: strategic action, norm-regulated action, dramaturgical action, and communicative action.

For Habermas, only strategic action and communicative action are politically relevant, since dramaturgical and norm-regulated actions derive, in some way, from the other two.

Norm-regulated action depends, indeed, on who decides those norms; dramaturgical action, instead, is considered by him as a mere subjective expression. Drawing from Goffman³²⁵, dramaturgical action refers to a social interaction in which “[...] participants constitute for each other a visible audience and perform something”³²⁶, that is, they express subjective experiences, feelings, desires, impulses. In short,

Strategic, or teleological, action is instead aimed at achieving an objective, guided by calculating utility, taking into account the placement of individuals in a world of individuals who act in an equally instrumental way and thus are in potential or almost certain conflict.

³²⁵ E. GOFFMAN, *La vita quotidiana come rappresentazione*, Il Mulino, Bologna, 1969.

³²⁶ J. HABERMAS, *Teoria dell'agire comunicativo*, II Vol., Il Mulino, Bologna, 1986, p. 164.

Communicative action, instead, is aimed at understanding, and here the concept of interpretation is fundamental, which “primarily refers to agreeing upon definitions of situations susceptible to consensus”³²⁷. Therefore, understanding is achieved through communicative actions precisely because the two actors in this case no longer refer to something concrete in the objective, social, or subjective world, but rather because they develop a reflection on the other three worlds and elaborate common definitions and, in other words, understand each other.

According to Habermas, only this type of action presupposes language as a tool for understanding and agreement. That is, the linguistic dimension, among the characteristics that distinguish humans from animals, is that “interaction of at least two subjects capable of language and action who (through verbal or nonverbal means) establish an interpersonal relationship”³²⁸. Therefore, only action aimed at understanding is communicative: it is communicative that political and ethical dialogue through which different subjects can bring about a change within the world they belong to, rationally. It is thus possible to distinguish communicative action from other types of action because it is the only kind of action in which active reflection is directed toward founding a shared normativity valid in the social and objective world, and it is the only one that does not presuppose the unilateralism that, conversely, characterizes the other types of action.

³²⁷ *Ivi*, p. 167.

³²⁸ *Ivi*, p. 166.

In this way, Habermas founds a philosophical and conceptual system capable of justifying, in turn, a political-decision-making system that finds its pillars in a representative and deliberative circuit, where public debate can lead to valid political decisions because they are based on rational and participatory arguments.

In other words, a political system is democratic when “the legitimacy of legislative power emanates from public deliberation” and from the “reasoned agreement among free and equal citizens under ideal conditions”³²⁹.

3.4. *John Rawls and “moral liberalism”*

In the tradition of democratic thought, and in particular of democratic thought in its deliberative form, John Rawls has occupied a leading role. Among the most prominent political philosophers of the second half of the twentieth century, he is known for having attempted to develop an original theory of justice, contained in his 1971 work *A Theory of Justice*³³⁰, which is essentially based on the triad of justice–equality–freedom.

This theory, which inaugurates the strand of normative political theory, arises in opposition to and as a departure from the aggregative vision, and finds its foundation in the premise of the rational choice of the principles to which institutions should conform in order to be considered just. Thus, by identifying the aggregative model as the source of the struggles of liberal-

³²⁹ J. BOHMAN, W. REHG, *Introduction*, in ID. (eds.), *Deliberative Democracy*, MIT Press, Cambridge (Mass.)/ London 1997, pp. IX e XVIII.

³³⁰ J. RAWLS, *Una teoria della giustizia (1971)*, Feltrinelli, Milano, 2017.

democratic systems and drawing on the Kantian tradition, Rawls essentially develops a neo-contractualist theory of social justice, in which liberal and pluralist conceptions are not abandoned: what he asserts, however, is the possibility of recovering their moral dimension and thereby achieving a consensus that goes well beyond mere procedures. In short, a consensus that is moral in fact – broader and deeper – the result and outcome of free reasoning among equals.

It is not the aim of this work to retrace in detail the stages of Rawls's intellectual development; the focus will instead be on the reflections found in *Political Liberalism*, which place him fully among the main theoretical reference points of deliberative democracy, from a perspective that in many respects differs from the one being developed, in the meantime, by Habermas.

The starting point is the problem of pluralism – or rather, as Rawls calls it, the “fact” of pluralism: namely, the presence, in democratic societies, of an extreme variety of conceptions of the good. How can the problem posed by this *de facto* pluralism be resolved? In other words, is it possible – and if so, how – to conceive of a just structure that is also legitimate and stable, when citizens hold worldviews that are reasonable, yet in mutual conflict and, at times, seemingly incompatible?

In particular, what drives Rawls's later writings is precisely the attempt to find an alternative and distinct path to reconcile the liberal theory of justice with pluralism: alternative and distinct, of course, from those liberal perspectives that had made neutrality their central focus – perspectives

that, being distant from rationalism and morality, had relied on procedures to manage conflicts between differing worldviews.

Rawls, on the other hand, seeks a different path, through a theoretical framework that involves concepts such as public reason, overlapping consensus, and the duty of civility. A framework whose *humus* develops from the conviction that something more than rules for a *modus vivendi* is necessary – namely, a deeper and more rooted consensus, of a moral kind. In fact, according to Rawls, democratic societies are those in which it is possible to reach a stable consensus among free and equal citizens, even though they have not renounced their own personal conceptions of justice.

It is essential that such conceptions be held by reasonable citizens – that is, “those who have sufficiently developed their two moral powers to be free and equal citizens of a constitutional regime, and who also have a continuing desire to honor fair terms of cooperation and to be fully cooperating members of society”³³¹. Democracy thus becomes a political tool for identifying those reasons that hold for everyone, and therefore, for building consensus.

John Rawls defines it as an “overlapping consensus”: it is the core of values that each worldview present in a democratic society must share. In other words, seeking such a consensus means identifying and emphasizing what unites the different. Complementary to this shared core is what the philosopher refers to as the “duty of civility”: any measure that has binding force for all citizens must not be based on values that belong to a single

³³¹ J. RAWLS, *Liberalismo politico* (1993), Einaudi, Torino, 2005, p. 52.

worldview, but rather on that common core of shared values. Here again, the moral character of Rawls's political liberalism is strongly evident: it is not a matter of reaching agreement on a set of institutional arrangements based on personal or contingent interests, but rather of affirming, on moral grounds, principles of justice that are themselves inherently moral³³². Where constitutional consensus is not sufficiently broad and inclusive – since “among supporters of liberal principles there is disagreement about the exact content and precise limits” of fundamental rights and freedoms³³³ – this does not generate stability and justice, but rather insecurity and hostility. This is because the principles of a liberal constitution, which guarantee such rights and define the procedures by which they are implemented, are not based on a political conception, thus giving rise to disagreement about the content of those rights. According to Rawls, the solution lies in agreeing upon “their content *once and for all*”³³⁴ – that is, a content derived from the overlapping consensus on a conception of justice as fairness, which provides a deeper form of agreement than one limited solely to the essential elements of a constitution. The very purpose of justice as fairness is to establish consensus on a notion of public reason whose content is defined by a political conception of justice, which consists of two parts: the political values of justice and the conceptions of virtue that make public

³³² C. MOUFFE, *Il paradosso democratico, Pluralismo agonistico e democrazia radicale*, Mimesis, Milano-Udine, 2024, p. 60.

³³³ J. RAWLS, *Liberalismo politico (1993)*, cit., p. 146.

³³⁴ C. MOUFFE, *Il paradosso democratico*, cit., p. 61.

reason itself possible³³⁵. In other words, by “political conception of justice,” Rawls means a system in which certain fundamental rights, liberties, and opportunities are specified; in which such rights, liberties, and opportunities are assigned special priority; and finally, in which measures are implemented to ensure the effective exercise of those freedoms.

In other terms, the philosopher demands the possibility of achieving concordance in the political realm, even where such concordance is not possible among differing moral, religious, or philosophical doctrines. By relegating these doctrines to the private sphere, consensus becomes possible within and on the level of the public sphere – a consensus grounded in (public) reason. As Rawls puts it, “political liberalism holds that the insistence on the whole truth in political matters is incompatible with democratic citizenship and with the idea of legitimate law”³³⁶.

In this regard, the concept of public reason plays a key role. In philosophical discourse, reflection on public reason is relatively recent, emerging at the intersection of the Enlightenment and post-Enlightenment periods³³⁷. While the origins of the idea of public reason can be traced back to the

³³⁵ J. RAWLS, *Liberalismo politico* (1993), cit., pp. 229-230.

³³⁶ J. RAWLS, *The Idea of Public Reason Revisited*, in *University of Chicago Law Review*, n. 64, 1997, p. 771.

³³⁷ F. D’AGOSTINO, G.F. GAUS, *Introduction. Public Reason: Why, What and Can (and Should) It Be?*, in F. D’AGOSTINO, G.F. GAUS (eds.), *Public Reason*, Aldershot, Dartmouth, 1998, pp. XI-XXII.

thought of Immanuel Kant and Thomas Hobbes³³⁸, the dominant conception in the eighteenth century was one of unity between reason and public reason, by virtue of the universality that characterizes it within the Enlightenment worldview. The emergence of the concept of public reason coincides with the increasingly complex structuring of contemporary societies – pluralistic, fragmented, and differentiated. This evolution has thus given rise to the need to identify common ground among multiple, diverse forms of reason. Undoubtedly, in twentieth-century literature, it is Rawls who plays a leading role in the conceptualization of public reason. In developing a political conception of justice capable of justifying and ensuring political stability within contemporary democratic societies, marked by the pluralism of reasonable comprehensive doctrines, Rawls recognizes public reason as the instrument capable of securing such stability. For Rawls, public reason is “the reason of citizens, of those who share the status of equal citizenship. The object of their reason is the public good, that is, what the political conception of justice requires concerning the basic institutional structure of their society, as well as the aims and purposes that they, as citizens, should serve”³³⁹.

Moreover, Rawls argues that there are limits to public debate, which derive from the particular *status* of citizenship. This status is characterized

³³⁸ Suffice it to consider the distinction between public reason and private reasons that Kant discusses in his famous essay *What is Enlightenment?* For a detailed account of the origins and evolution of public reason, see A. SCHIAVELLO, *Ragione pubblica o ragione senza aggettivi? Riflessioni critiche sulla nozione rawlsiana di ragione pubblica*, in G.L. BRENA (ed.), *Etica pubblica e pluralismo*, Editrice Il Messaggero, Padova, 2001.

³³⁹ J. RAWLS, *Liberalismo politico* (1993), cit., p. 183.

by the fact that individuals are born and live their entire lives within a given state; it is not comparable to membership in an association or religious denomination. In fact, while one can dissociate from the latter, one cannot dissociate from the state—at least not in the same way – when conflict arises between personal convictions and those of the state. Public reason, therefore, is singular, as it pertains to the general body of citizens. In this context, the duty to restrict public discourse within the bounds of public reason is, for Rawls, not a legal obligation but a moral one. Were it legal, it would violate the principle of freedom of expression, a cornerstone of any liberal state.

The doubts raised by Rawls's position are numerous. First and foremost, how can democracy actually generate this consensus? The author does not provide a clear answer, nor does he specify what institutional forms such a democracy should take, thereby failing to distinguish between the ideal-theoretical dimension and the real, that is, the legal-constitutional dimension of political processes. Or rather, his idea of a democratic society is that of a free association of citizens who adhere to the principles of public reason: “one reason for introducing the idea of public reason is that political power, though always coercive [...], is also, in a constitutional regime, the power of the public — that is, the power of free and equal citizens as a collective body. But if each citizen has an equal share in political power, then this power, insofar as possible, should be exercised — at least when constitutional essentials and matters of basic justice are at stake — in ways that all citizens can publicly accept, in light of their own reason. This is the

principle of political legitimacy that justice as fairness must satisfy”³⁴⁰. Yet how to realize this institutionally remains vague: democracy is expected to mirror the structure of a theory of justice, but the modes through which this should happen are far from clear.

Secondly, Rawls seeks a conception of democracy capable of balancing two distinct yet complementary aspects of the political process: on the one hand, the participation of all in the formation of political will; on the other, the appropriate recognition of the will of citizens engaged in democratic deliberation. However, this “all” refers exclusively to those citizens deemed “reasonable”, that is, those who endorse the values of reflective equilibrium³⁴¹. Referring back to Rawls’s own definition of reasonable citizens, these are identified as such based on what is claimed to be a moral necessity, when in reality it is a political decision. In doing so, the philosopher ultimately conflates the two levels. As Chantal Mouffe rightly points out: “[...] the distinction between the reasonable and the unreasonable serves to draw a boundary between doctrines that accept liberal principles and those that oppose them. That is to say, its function is *political*, and it aims to discriminate between a pluralism of religious, moral, and philosophical conceptions which is admissible only insofar as such ideas remain confined to the private sphere and comply with liberal principles, and a kind of pluralism that, by challenging the supremacy of liberal principles in the public

³⁴⁰ J. RAWLS, *Giustizia come equità. Una riformulazione*, Feltrinelli, Milano, 2002, p. 102.

³⁴¹ J. ELSTER, *Introduction*, in ID. (ed.), *Deliberative Democracy*, Cambridge University Press, Cambridge 1998, p. 7.

sphere, becomes inadmissible”. This distinction, therefore, is political rather than moral, since “antagonistic principles of legitimacy cannot coexist within the same political association without undermining the political reality of the state”³⁴². But Rawls is unable to acknowledge this, due to the absence of a theoretical-conceptual framework that incorporates a constitutive perspective on “the political” – a dimension to which Chantal Mouffe, alongside Ernesto Laclau, has strongly drawn attention³⁴³. Indeed, Laclau and Mouffe have proposed an approach to political theory that emphasizes the constitutive role of the political, grounded in an analysis of political discourse. Politics, according to Mouffe, is not merely a tool for achieving certain goals; it is something more complex and profound. It is not an isolated event but an ongoing process of construction and conflict. In this sense, politics is a “sea of meanings” in which different actors engage with competing interpretations. Politics is, in other words, a creative activity of social reality and consciousness. Rawls, by contrast, does not attribute such a role to the political, but insists instead on its moral dimension: “Political liberalism can generate broad consensus among reasonable people who, *by definition*, are those who accept the principles of political liberalism”³⁴⁴, thus falling into a tautological and ultimately unconvincing line of argument.

³⁴² C. MOUFFE, *Il paradosso democratico. Pluralismo agonistico e democrazia radicale*, Mimesis, Milano-Udine, 2024, p. 58.

³⁴³ Cf. E. LACLAU, C. MOUFFE, *Egemonia e strategia socialista. Verso una politica democratica radicale (1985)*, il Melangolo, Genova, 2011.

³⁴⁴ *Ivi*, p. 59.

It is certainly clear that Rawls's primary concern is to identify and elaborate the conditions for the stability of a just society, rather than the institutional forms of a democratic system. It is also understandable that his focus shifts toward the justification of obedience to rules and the structuring of society, with the theory addressing primarily the cultural and ethical dimensions of a democratic society.

However, it is equally clear that, on the one hand, Rawls constructs a utopia – desirable, certainly, but nonetheless a utopia – that becomes an effectively unattainable goal when there is no guarantee that reason can consistently rise above divergent opinions and conceptions of life and the good. As has been aptly noted in the literature: “The attempt by Rawls and others is to give institutional form to the ideal procedures of public reason. They have sought to *translate or reproduce, by analogy*, the ideal model of reason within the framework of institutions, without accounting for the fact that in this specific context not only do the natural limits of the imperfect human condition apply, but also the political forces and strategic interests of citizens. The risk inherent in this attempt is the failure to grasp the inevitable gap between the *normativity* of the procedures of public reason and the *positivity* of constitutional rules. If rules exist and are not superfluous, it is precisely because the deliberative ideal cannot *always* be realized”³⁴⁵.

On the other hand, the entire operation essentially depoliticizes what cannot be depoliticized, precisely because universally valid and univocal solutions are a mirage. It is highly unlikely that the conflictual dimension

³⁴⁵ A. GREPPI, *Pluralismo e democrazia deliberativa*, in *Teoria politica*, Vol. XIX, 2-3, 2003, pp. 309-328, p. 324.

of democracy – or rather, of democratic society, which democracy reflects – can be neutralized or extinguished. The philosopher, in other words, ends up eliminating the agonistic perspective that is constitutive of democratic societies, as well as the conception of “the political” as both *system* and *process*. This reading becomes particularly evident when one considers concepts such as public reason. As has been remarked: “for Rawls, in a democracy, the point is *not to govern, nor to govern oneself, but to reason*. And on what is common to all, the difference of opinions is not permitted”³⁴⁶.

4. “*Rational consensus*” and “*uniform democracy*”

Although this has been emphasized on multiple occasions, it is worth insisting once more on a crucial point: deliberative democracy finds its *raison d’être* in the attempt to offer a remedy to the democratic crisis. It thus takes shape as an alternative to the aggregative perspective, which is not, as is well known, the only approach within the landscape of political thought. Nonetheless, it remains both interesting and, in many respects, intellectually stimulating, chiefly because it is not defined by a sharp or definitive opposition to liberal theory. On the contrary, many deliberative theorists do not wish to abandon liberalism.

Here lies the second distinctive feature: in order to preserve liberalism, deliberative theorists seek to reestablish a more effective and coherent re-

³⁴⁶ *Ivi*, p. 323.

conciliation between liberal values and democratic legitimacy. The approach, therefore, promotes a form of normative rationality – that is, it aims at reaching agreements which uphold rationality (understood as the defense of liberal rights) as well as democratic legitimacy. In doing so, it attempts to rebuild the trust and civic attachment that have progressively eroded under the aggregative-representative model.

The ultimate objective, in other words, is to overcome the paradox of democracy: the limitation of popular sovereignty in the name of protecting rights and liberties. Deliberative democrats believe they can address this issue without reproducing its risks. The concerns that led many past thinkers to advocate for a precise limitation and containment of popular participation would, they argue, be resolved through deliberative procedures. These procedures would not rely on the concept of popular sovereignty but instead on what has been called “communicatively generated power”³⁴⁷.

In short, the aim is to resolve, once and for all, the long-standing tension between liberalism and democracy, between liberty and equality, not as opposing constraints on democracy, but as constitutive elements of it³⁴⁸. In

³⁴⁷ J. HABERMAS, *Three Normative Models of Democracy*, in S. BENHABIB (ed.), *Democracy and Difference*, Princeton University Press, Princeton, 1996, p. 29

³⁴⁸ J. COHEN, *Democracy and Liberty*, in J. ELSTER (ed.), *Deliberative Democracy*, Cambridge University Press, Cambridge, 1998, p. 187.

other terms, deliberative democracy seeks to reconcile the liberty of the ancients with the liberty of the moderns³⁴⁹.

Jürgen Habermas and John Rawls represent the two principal intellectual cornerstones of deliberative theory, each embodying one of its major variants. There are many differences between them, but also key areas of convergence that are essential for the theoretical framework. Within the interstices of Rawls's thought – as has been briefly noted – one may already discern the subtle emergence of a certain ambiguity, embedded within the very structure of deliberative democracy. This latent ambiguity serves as the common thread uniting the reflections presented throughout this work.

As suggested in the Introduction, there is a growing impression that these theoretical currents, while claiming to offer genuine alternatives to traditional liberal democratic thought, paradoxically end up distancing themselves from the very aims they profess to pursue. Indeed, they risk suppressing genuine pluralism and the type of political structure that truly values dissent and contestation – thus pursuing the illusion of untangling a knot that may well be impossible to unravel.

Habermas's orientation toward mutual understanding, grounded in communicative rationality, allows for the construction of a discourse ethics, which leads not to compromise, but to consensus. This is a form of

³⁴⁹The solution to the dilemma is explicitly evoked and advocated by Rawls, cf. *Id.*, *Political Liberalism*, cit., p. 6, while Habermas achieves reconciliation through the concept of the co-originality of rights and self-government, whereby self-government is aimed at protecting rights, and rights enable the exercise of self-government, see J. HABERMAS, *Fatti e norme. Contributi a una teoria discorsiva del diritto e della democrazia*, Laterza, Roma-Bari, p. 146.

agreement rooted in internal conviction – arrived at through rational argumentation aimed at the common good – rather than through mutual concessions between private and particular interests that, in reality, continue to exist and seek to prevail.

The distinction is both fundamental and ontological: compromise emerges from conflict, whereas consensus stems from the uniformity of opinion generated through the dialogical process that deliberative democracy seeks to promote.

This, indeed, is the essential core of deliberative theory: for both philosophers, the idea of rational consensus is central – conceived as the product of a political process understood as an exchange of arguments among free, equal, and impartial individuals. This model of normative rationality, however, is articulated differently by each thinker.

For Habermas, the key lies in a procedural approach: it is the *procedure* – characterized by specific constraints and stages – that guarantees both rational consensus and its legitimacy. The ideal discourse situation arises when maximum freedom of participation and expression is ensured, without limiting the scope of discussion. Such conditions foster the development of moral impartiality, which in turn yields a freely given, unanimous consensus, what Habermas calls “communicative power.” The freer the participants, the fairer the process, and the less constrained they are by external pressures, the more likely it is that they will be guided not by particular interests, but by the force of the better argument. From this process emerges a rational will aligned with the general interest. Only under these

circumstances can deliberative procedures produce an ideal discourse situation, rational outcomes, and thus *consensus*, not merely *agreement*.

In Rawls, a similar result is reached through the device of the “original position,” which enables individuals to set aside their private interests. It is specifically in the realm of philosophical, religious, or moral questions that Rawls sees the need to step back and acknowledge the impossibility of consensus, what he refers to as “comprehensive doctrines.” Rawls thereby draws a strict boundary between the private and the public domains.

Habermas, by contrast, adopts a broader scope, allowing for the exclusion of only certain topics – namely, existential issues, which he classifies as belonging to the domain of ethics, rather than morality. According to him, fundamental political questions fall within the moral domain and are, therefore, subject to rational deliberation, since they do not depend on particular contexts but rather possess universal scope, and their validity can be derived from an independent, external source. For Habermas, the moral dimension is thus amenable to a rigorous, impartial rational procedure aimed at formulating universal principles.

Both thinkers, in this way, construct a model of democracy that is, fundamentally, “uniform” – that is, one which deviates from the pluralistic essence of democracy, which they effectively sidestep. In differing ways, both end up relegating pluralism to the private sphere. And to some extent, they are compelled to do so: for it would be impossible to build a liberal democracy on the foundation of the fabled rational agreement without, from the outset, excluding or foreclosing the very possibility of conflict.

But can politics truly be a neutral terrain? Do rational and, above all, universal solutions really exist?

CHAPTER IV

THE DRAWING OF LOTS: A COESSENTIAL AND IRREPLACEABLE ELEMENT OF DELIBERATIVE PRACTICES

Sortition is, by its very nature, proper to democracy; election, by contrast, is proper to aristocracy

CHARLES-LOUIS DE SECONDAT, BARONE DI LA BRÈDE E DI MONTESQUIEU, *The Spirit of Law*

SUMMARY: 1. Sortition: A Universal Remedy (?) – 2. Sortition in Public Law – 3. A New Rationality to Support Representation – 4. Sortition and Deliberation – 5. The Problem of the Nature and Legitimacy of Allotted Assemblies

1. *Sortition: A Universal Remedy (?)*

The 2020 OSCE Report on “Innovative Forms of Participation and New Democratic Institutions” based on sortition identifies this mechanism as a model to aspire to in the effort to reverse a dangerous decline into which representative democracies have slipped.

Through sortition, it would in fact be possible to reconcile deliberation, representativeness, and decision-making impact – thus reviving a tool roo-

ted in ancient Athenian democracy³⁵⁰, now being reimagined as a beacon and a guide, in the hope that active and participating citizens might help restore the health of a representative system long structurally weakened by a clear disconnection from the electorate, by inefficiency, and by self-referentiality; a system in which political forces appear entrenched in the fortresses of power, primarily concerned with chasing the shifting moods of a Western society that no longer resembles that of the twentieth century. A society that governing elites seem increasingly unable either to represent or, still less, to lead.

Subsequently, the Conference on the Future of Europe – itself an experiment in citizen participation at the European level³⁵¹ – also expressed strong support and enthusiasm for the goal of “increasing citizen participa-

³⁵⁰ OECD, *Innovative Citizen Participation and New Democratic Institutions. Catching the Deliberative Wave*, Paris, OECD Publishing, 2020, p. 3.

³⁵¹ A joint initiative of the European Parliament, the Council and the European Commission, it was launched in May 2021 and concluded in spring 2022 with the publication of a final report containing 49 detailed proposals addressed to the EU institutions, consisting of 325 concrete measures formulated by citizens. It was a “[...] unique and unprecedented democratic exercise, in which citizens had the opportunity to discuss key priorities and challenges and make recommendations on the kind of Europe they want to live in. It lasted one year, from April 2021 to May 2022, and concluded with the presentation of a final report containing 49 proposals and 326 measures addressed to the Presidents of the European Parliament, the Council and the European Commission”, *Conference on the Future of Europe*,

. On the Conference, see also A. ALEMANNI, *Unboxing the Conference on the Future of Europe and its democratic raison d'être*, in *European Law Journal*, vol. 26, 5-6, 2020, pp. 484 ff.; L. EYMARD, *From the French Citizens' Convention on Climate to the Conference on the Future of Europe: A Participatory Science and Democracy Perspective*, in *European Law Journal*, vol. 26, 1-2, 2020, pp. 136 ff.; A. VON BOGDANDY, *La nostra società europea e la sua Conferenza sul futuro dell'Europa*, in *Quaderni Costituzionali*, 3, 2021, pp. 699 ff.; G. ROMEO, *La Conferenza sul futuro dell'Europa e la comunità politica dell'Unione che (ancora) non c'è*, in *Quaderni costituzionali*, 3, 2021, pp. 701 ff.; P. SEVERINO, *La Conferenza sul futuro dell'Europa. Prospettive di un modello di partecipazione da valorizzare (e perfezionare)*, in *Quaderni costituzionali*, 1, 2022, pp. 167 ff.

tion and youth engagement in democracy at the level of the European Union, to develop a ‘full civic experience’ for European citizens, ensure that their voices are heard between elections, and that participation is effective.” Among the tools identified to achieve this aim, the Conference gave special prominence to the idea of “periodically organising citizens’ assemblies, based on legally binding EU law. Participants must be selected randomly, according to representativeness criteria, and participation should be incentivised. Where necessary, expert support should be provided to ensure that members of the assembly have sufficient information to deliberate. If the results are not taken into account by the institutions, this decision should be duly justified. The prior participation and involvement of citizens and civil society constitute an important foundation for political decisions that must ultimately be taken by elected representatives. The EU is founded on representative democracy: through European elections, citizens give a clear mandate to their representatives and indirectly express their views on EU policies”³⁵².

³⁵² *Conference on the Future of Europe*, Report on the final outcome. Proposals from the plenary session, 2022, p. 79. The text of the Final Report, reproduced here, essentially accepts the Assembly’s recommendations; for example, the one dedicated to the establishment of permanent citizens’ assemblies: “We recommend that the European Union hold citizens’ assemblies. We strongly recommend that they be developed through a legally binding and mandatory law or regulation. Citizens’ assemblies should be held every 12-18 months. Citizen participation should not be compulsory but encouraged, while being organised on the basis of limited mandates. Participants must be chosen at random, using representativeness criteria, even if they do not represent any organisation of any kind, nor are they called upon to participate because of their professional role as members of the assembly. If necessary, experts will be available to support the assembly members so that they have sufficient information to deliberate. The decision-making process will be in the hands of citizens. The EU must ensure that politicians are committed to the decisions taken by citizens in citizens’ assemblies. If citizens’ proposals are ignored or explicitly rejected, the EU institutions must respond by justifying the reasons for their decision”, Recommendation No 39, Panel No 2.

Leaving aside any observations concerning the political and historical archaeology of this experiment – perhaps already overtaken and abruptly set aside due to the geopolitical upheavals that unfolded in 2022 – the challenge and ambition of participatory democracy remain alive. The formulation of the Conference’s Final Report is particularly noteworthy in its emphasis on enhancing citizen participation in the inter-electoral period. It is therefore a point worth revisiting in due course.

For now, it is both sufficient and essential to focus on the importance accorded to sortition in emerging forms of citizen participation, of which, as is well known, deliberative democracy constitutes a key expression.

However, sortition is not the exclusive domain of participatory-deliberative democracy. That is to say, deliberative democracy is not the first – either in modern or contemporary times – to reclaim this fundamental mechanism that, as noted, underpinned the political system of fifth-century BCE Athens.

Indeed, the discourse and reflection surrounding sortition occupy a far broader space, both in the history of human kind and in the history of public law, and thus must be considered from both synchronic and diachronic perspectives.

It is therefore appropriate to begin from here, while keeping in mind what was already noted in the first chapter, in order to construct a more complete picture – one that allows for a more accurate understanding of the *ratio* and underlying logic behind the importation of the lottery into the deliberative domain.

Indeed, sortition has been examined from multiple perspectives: from a historiographical angle, retracing its ancient roots; synchronously, in terms of how it is employed today in the composition of collective bodies within contemporary democracies³⁵³; but above all from a comparative point of view, in relation to the experiences of deliberative bodies that adopt sortition as a conceptual complement to the deliberative method. These various perspectives are deeply interwoven, insofar as the current revival of sortition, and the reasons behind it, make it necessary to understand how sortition has changed over time – or rather, how and why, at a certain point in history, Power came to rest upon a different foundation of legitimacy.

In fact, the use of randomness is closely linked to the channel of legitimation of those who wield power – a channel that underwent a radical transformation at the dawn of modernity. As is well known, this issue was first thoroughly explored by Bernard Manin, who, in his seminal essay *Principles of Representative Government*, attempted to retrace and historically comprehend the reasons why sortition disappeared from the political stage in the aftermath of the late eighteenth-century Revolutions.

As has been aptly noted:

his answer rested fundamentally on two main arguments: on the one hand, the founding fathers of modern republics aspired to a form of elective aristocracy, and it therefore seemed logical that they would reject sortition, which had been associated with democracy ever since Plato and Aristotle. On the other hand, the theory of consent, deeply rooted in natural law doctrines, had become so widespread

³⁵³ See M. MANDATO, *Il sorteggio come metodo di precisione. Principi e fattispecie*, in *Nomos. Le attualità nel diritto*, 2, 2016.

that it was increasingly difficult to legitimate any political authority that had not been formally approved by the citizens³⁵⁴.

The option of selection (i.e., election) evolved alongside a cultural shift rooted in Cartesian *cogito* and in the valorisation of the individual as a rational and willing subject – a shift that deeply permeated all of Western thought, ultimately giving rise, in the realm of political and philosophical reflection, to the various forms of contractarianism articulated by thinkers such as Johannes Althusius, Hugo Grotius, Samuel von Pufendorf, and Thomas Hobbes. In this framework, it was the will of the governed that was meant to “clothe” the governors – who, otherwise, would remain as naked as the king in the famous children’s tale, to borrow a striking image from Paolo Costa³⁵⁵.

Moreover, another explanation has been advanced in the literature for the disappearance of sortition in the modern era – one closely linked to the well-known problem of scale in nation-states: namely, the inability to realise, in mathematical terms, the principle of descriptive representation, which *today* emerges as one of the normative justifications for sortition. As has been observed: “[...] there could be no connection between sortition and sociological representativeness (what Anglo-American political theory calls 'descriptive representation'), because the idea that a random selection would statistically yield a sample sharing the same characteristics as the

³⁵⁴ Y. SINTOMER, *Sorteggio e democrazia deliberativa. Una proposta per rinnovare la politica del XXI secolo*, in *Nomos. Le attualità nel diritto*, 2, 2016, p. 3.

³⁵⁵ P. COSTA, *Gemina persona. Un'ipotesi giuspubblicistica intorno alla crisi del soggetto politico*, Giuffrè, Milano, 2015.

original population was not yet scientifically available”³⁵⁶. Indeed, the very notion of a representative sample is of a much later date, only entering political discourse in the 1930s with the advent of opinion polling, and later in the 1960s for the selection of juries³⁵⁷: “*Il ne pouvait y avoir aucune relation entre tirage au sort et représentation descriptive à Athènes, car l’idée qu’une sélection aléatoire reflète statistiquement la composition de la population n’était pas scientifiquement concevable à l’époque. Le hasard n’avait pas encore été ‘domestiqué’ par la science*”³⁵⁸. Thus,

the inability to apply the statistical concept of a representative sample – even though the calculus of probabilities was already well developed by the time of the French and American Revolutions – is a crucial factor for understanding why political sortition was excluded from modern democracies. The geographic and demographic scale of those democracies – widely acknowledged by nearly all thinkers of the time – made any form of self-government resembling that of ancient democracies effectively impossible. In such a conceptual context, selecting rulers by lot appeared tantamount to arbitrarily conferring power on certain individuals³⁵⁹.

³⁵⁶ Y. SINTOMER, *Sorteggio e democrazia deliberativa. Una proposta per rinnovare la politica del XXI secolo*, cit., pp. 3-4.

³⁵⁷ J.B. ABRAMSON, *We The Jury. The Jury System and The Ideal of Democracy*, Harvard University Press, Cambridge/Londra, 2003.

³⁵⁸ Y. SINTOMER, *De la démocratie délibérative à la démocratie radicale? Tirage au sort et politique au XXIe siècle*, cit., p. 41; I. HACKING, *The Taming of Chance*, Cambridge, Cambridge University Press, 1990.

³⁵⁹ Y. SINTOMER, *Sorteggio e democrazia deliberativa. Una proposta per rinnovare la politica del XXI secolo*, cit., pp. 3-4.

Such a conception was viewed at the time as both utopian and, above all, deeply antithetical to the principles of liberalism and the Enlightenment, as well as a relic of a past that modern political actors were eager to leave behind once and for all.

So, if Bernard Manin, in his aforementioned essay, asked why we call ourselves democrats even though no form of selection by lot has been preserved in contemporary systems of government³⁶⁰, today the trend seems to be toward posing a new question: why not use sortition *to democratize (representative) democracy*?

2. *Sortition in Public Law*

“Sortition is a proceduralised method of selection that signifies a renunciation of discernment”: this is how Astrid Zei defines the appeal to chance

³⁶⁰ B. MANIN, *Principi del governo rappresentativo*, il Mulino, Bologna, 2010, p. 12.

in her most recent and most comprehensive work within the Italian public law scholarship on the subject³⁶¹.

Indeed, sortition is a theme that has been relatively underexplored by constitutional and public law scholars, having been of far greater interest, both in Italy and abroad, to the fields of philosophy and political science³⁶². A curious fate, one that sortition shares with deliberative democracy, which until recently had also been largely overlooked by constitutional studies.

It is only in the very recent past – spurred by the acceleration of deliberative practices within the European context – that constitutional theory, and in particular Italian scholarship, has begun to engage seriously with such experiences, compelled by the urgency of their contemporary relevance. This is not only due to the gradual diffusion of these practices and their potential pervasiveness within the representative circuit, but also be-

³⁶¹ A. ZEI, *Il diritto e il caso. Una riflessione sull'uso del sorteggio nel diritto pubblico*, Jovene, Napoli, 2023, p. 1. On sortition, see also the articles published in the *Journal Nomos-Le attualità nel diritto*: F. LANCHESTER, *Il sorteggio in campo politico come strumento integrativo dell'attività delle assemblee parlamentari*, in *Nomos. Le attualità nel diritto*, 2, 2016; G. SCACCIA, *Democrazia a sorte: problemi e opportunità*, in *Nomos. Le attualità nel diritto*, 2, 2016; Y. SINTOMER, *Sorteggio e democrazia deliberativa. Una proposta per rinnovare la politica del XXI secolo*, cit; A. ZEI, *L'arbitrato del caso: applicazioni del metodo del sorteggio nel diritto pubblico*, in *Nomos. Le attualità nel diritto*, 1, 2017.

In foreign literature, please refer to B. MANIN, *Principi del governo rappresentativo*, il Mulino, Bologna, 2010, as well as the two most comprehensive works on the subject, H. BUCHSTEIN, *Demokratie und Lotterie*, Frankfurt-New York, Campus Verlag, 2009; Y. SINTOMER, *The Government of Chance Sortition and Democracy from Athens to the Present*, Cambridge, Cambridge University Press, 2023.

We would also like to mention the research carried out by three Italian scholars, A. PLUCHINO, A. RAPISARDA, C. GAROFALO, *Peter Principle Revisited: A Computational Study*, in *Physica A*, 389, 2010, pp. 467 ff., <http://arxiv.org/abs/0907.0455>, have scientifically demonstrated that hierarchical organisations would become more efficient if promotions were random, receiving the 2010 Ig Nobel Prize in Management. However, this is a completely different field from that of public power management.

³⁶² A. LE PILLOUER, *L'introduction du tirage au sort dans les démocraties représentatives*, in *Giornale di storia costituzionale*, 2019, pp. 103-120, p. 103.

cause they represent significant epiphenomena of the ongoing crisis of representation and of participatory disaffection in representative government.

Thus, the long-standing indifference shown by legal scholars had to be set aside – a neglect perhaps justified by the (undeniable) strangeness with which lottery-based democracy positions itself in relation to three centuries of political tradition founded on electoral procedures.

As a result, it became possible to contribute new insights and reflections through the analytical lens typical of jurists dealing with political systems – thereby enriching the broader discourse on deliberation and standing alongside the contributions made by philosophy and political theory.

Where there had previously been little opportunity to encounter sortition and its associated challenges, it was in fact the rising interest in deliberative democracy that brought with it a renewed focus on the random selection of individuals – a principle that, as already noted, has a much wider field of application.

In this respect, I believe it is essential to begin with the distinction highlighted by Astrid Zei concerning the use of sortition in public law. According to Zei, its application in the public domain stems from two fundamentally different sources.

The first is based on a “conscientious renunciation of discernment”, where the deliberate refusal to exercise discretion is justified in order to resolve situations of deadlock or equivalence. This applies to the realm of so-called “tragic choices”³⁶³, or to those circumstances in which the choice

³⁶³ G. CALABRESI, P. BOBBIT, *Scelte tragiche*, Milano, Giuffrè, 2006.

is intentionally not made due to specific needs or constraints³⁶⁴. Examples include the drawing of lots for exam topics in public administration competitions³⁶⁵, or for determining the order of candidates on electoral ballots³⁶⁶.

The second area of application – of particular relevance here – is that which concerns representation, where sortition is employed from a polemical perspective, as a challenge to conventional aggregative methods and criteria³⁶⁷. It is in this sense that we should interpret the use of random selection for competition commissions, lay juries, and other adjudicative bodies, as well as for members of parliament in the so-called “system of Offices” in the liberal State, where randomisation was embedded within the revolutionary French tradition³⁶⁸. In such cases, sortition was not merely an expression of *randomness*, but rather a *rational instrument* of selection: a rationality opposed to the tyranny of numerical majorities, aiming to prevent the capture of offices by pre-constituted majorities, and rejecting criteria based primarily on the aggregation of preferences³⁶⁹. Instead, it privileged tools oriented toward equality, in line with the lesson taught by Aristo-

³⁶⁴ A. ZEI, *Il diritto e il caso...*, cit., p. 2.

³⁶⁵ Art. 11, comma 2 del D.P.R. n. 487 del 1994, *Regolamento recante norme sull'accesso agli impieghi nelle pubbliche amministrazioni e le modalità di svolgimento dei concorsi, dei concorsi unici e delle altre forme di assunzione nei pubblici impieghi*.

³⁶⁶ Art. 24 del *Testo Unico delle Leggi elettorali. Norme per l'elezione della Camera dei Deputati*, D.P.R. 30 marzo 1957, n. 361 and subsequent amendments.

³⁶⁷ A. ZEI, *Il diritto e il caso...*, cit., p. 3.

³⁶⁸ *Ivi*, p. 4.

³⁶⁹ *Ivi*, pp. 3-4.

tle over two thousand years ago, and revived by the Enlightenment, wherein democracy was associated with lot, and aristocracy with choice³⁷⁰.

This preference stemmed from a profound *mistrust* of the traditional partisan method, especially as a consequence of the revolutionary heritage, which was deeply wary of anything that could fuel factionalism or serve particular interests. After all, sortition had already served such a function in the communal and republican governments of late-medieval Italy: from Venice to Genoa, from Florence to other cities on the peninsula, complex governmental systems were developed, based on mixed procedures of elec-

³⁷⁰ MONTESQUIEU, *Lo spirito delle leggi*, II, 2: “The drawing of lots is characteristic of democracy; selection is characteristic of aristocracy. The drawing of lots is a method of election that offends no one; it leaves every citizen with a reasonable hope of serving their country”.

tion and lottery, some of which were even adopted in certain Iberian cities³⁷¹.

It is nonetheless important to underscore that this second domain of application – aimed at ensuring impartiality and freedom in decision-making – should indeed be interpreted from a polemical standpoint vis-à-vis the absolutist past, since the functions of sortition vary significantly depending on the specific context in which it is applied.

In judicial bodies, for example, it aims to guarantee impartiality and independence; in the communal systems of the Middle Ages, it ensured peaceful governance free from factional conflict; and in the liberal-era system of Offices, sortition served primarily to embody a particular conception of representation and the political system – one that, in the final analysis, marked a radical break from previous regimes.

³⁷¹ In Venice, drawing lots was used for centuries to appoint the Doge. When a Doge died, and in order to elect his successor, an extremely complex procedure was used to avoid disputes and disagreements between the aristocratic families involved, combining drawing lots with election.

In Florence, on the other hand, the draw took place with “imborsazione”, meaning “putting in a bag” or “putting in an urn”. Here too, the aim was to avoid internal conflicts between rival interest groups. The Florentines, however, attributed not only the office of head of state to chance, but almost all administrative and public management positions. Thus, the main institutions – the Signoria, the Legislative Council and the Commissioners – were occupied by citizens chosen by lot.

The Venetian model was replicated in cities such as Parma, Ivrea, Brescia and Bologna, while the Florentine system was applied in Orvieto, Siena, Pistoia, Perugia and Lucca, but numerous and lucrative commercial contacts led to its export to Germany and Spain. On the Iberian Peninsula, many cities in the Kingdom of Aragon adopted the lottery procedure: Lerida (1386), Zaragoza (1443), Girona (1457) and Barcelona (1498). The draw was given the name *insaculación*, “to put in a bag”. Here too, this practice aimed to promote stability by ensuring impartiality in the distribution of public power. For an analytical examination of these procedures, please refer to A. ZEI, *Il diritto e il caso.., cit.*, pp. 76-84 and 189-190; Y. SINTOMER, *The Government of Chance*, *cit.*, pp. 66 ff.; L. TANZINI, *Il fantasma della rappresentanza: sorteggio e rotazione delle cariche nelle città comunali (secco. XIII-XIV)*, in S. MENZINGER (ed.), *Cittadinanze medievali. Dinamiche di appartenenza a un corpo unitario*, Roma, Viella, 2017, pp. 145-174.

The use of sortition, applied to the composition of Committees and Commissions involved in the legislative process³⁷², was strongly advocated as a countermeasure to the logics of the Ancien Régime and, as such, had already been implemented since the time of the French Revolution. Rejecting the formation of factions, the Revolution drew upon both ancient and more recent traditions to recover the method of randomly selecting members. This very element allows us to affirm without doubt the “polemical” intent behind such an operation, particularly in the French system, the cradle of the Revolution.

However, it seems essential to make explicit the dual connection between sortition and the rejection of any a priori political affiliation. Thus, it is necessary to consider how the primary rationale that led other systems as well – such as those of Italy, Germany, and Belgium³⁷³ – to adopt sortition and the method of legislative offices lay in the definitive closure of a particular historical-political arc: that of the Absolute State. The Absolute State had fulfilled its historical role, namely, the creation of national states on the European continent, bringing an end to the fragmentation and patrimonial conception of territories that had characterized medieval Europe. Consequently, this system stood in contrast, and not coincidentally, to the one already adopted for some time by the United Kingdom³⁷⁴. That British mo-

³⁷² For a reconstruction of their structure, see *Ivi*, pp. 84-88.

³⁷³ For a reconstruction of the systems and procedures in these legal systems, see *Ivi*, pp. 89 ff.

³⁷⁴ *Ivi*, pp. 86-87; C. COURTOY, *Joseph Barthélémy et les Commissions permanentes de la Chambre des Représentants de Belgique*, in *Res Publica*, 4, 1980, pp. 588-590.

del was experimentally introduced in Italy in 1868 with the establishment of the Private Committee of the Chamber, yet it proved entirely disappointing: regarded as inefficient and a redundant duplication of parliamentary work³⁷⁵, the liberal Parliament returned to the system of Offices in 1873³⁷⁶. Indeed, liberal Italy was not yet ready to adopt an already advanced legislative model such as the British one, which had developed coherently and peacefully in light of the UK's constitutional evolution – a trajectory both much earlier and substantially different from the constitutional developments on the Continent.

This historical rupture was embodied also, and above all, in a particular idea of representation, one as distanced as possible from logics of partisan alignment, out of fear of reviving patterns typical of absolutist regimes. Thus, while undoubtedly polemical in nature, this choice reflected a crucial historical shift, rooted in the recognition that the principles and structures of political power had profoundly changed.

Curiously, then, the end of an era was marked by the reintroduction of an ancient method, which became relevant once again in order to serve a critical moment in institutional history. In particular, the sortition of members of legislative Offices served a purpose grounded in a mode of representation more closely tied to territory, in a context where members of Parliament constituted aggregations and groupings rather than pre-formed fac-

³⁷⁵ P. MANFRIN, *La durata delle sessioni parlamentari*, in *Nuova Antologia*, 1875, pp. 409-442.

³⁷⁶ For an analysis of the system, see U. MANCINI, S. GALEOTTI, *Norme ed usi del Parlamento italiano. Trattato pratico di diritto e procedura parlamentare*, Roma, Tipografia della Camera dei Deputati, 1887.

tions. In Italy, the first two decades of constitutional life marked this transitional phase between the paradigms of the liberal century and the stylistic features of the twentieth century, specifically its second half.

This intermediate phase, still bearing the remnants of revolutionary ideology, would gradually evolve in response to the transformations of the late nineteenth century, when the prospect of stable and pervasive political organizations – rooted in grand ideologies and representative of the masses – began to take shape. In other words, the political forces of the twentieth century: political parties. These developments coincided with the progressive, though inexorable, extension of suffrage.

Indeed, the liberal state did not recognize political parties, as it excluded mass representation. As is well known, it rested upon a constitutional field where the rules of the game were under the control of the bourgeois class, and the transition to a democratic state was still premature. The liberal state thus represented a necessary transitional phase. Its Parliament did not operate – nor could it be structured – around parties that had not yet emerged. In other words, the logic of power and representation was fundamentally different: although each deputy formally represented the nation, electoral representation was lacking. Ideological and political homogeneity among the ruling class served as the unifying thread of the constitutional machinery.

This meant that there was no need for widespread territorial structures, as was already the case in the United Kingdom. There, the process had begun earlier, due to distinct historical and constitutional dynamics. It is no

coincidence that sortition was implemented on continental Europe: it reflected one of the many constitutional-historical divergences between the two sides of the English Channel. In Europe, it was necessary to adopt channels different from those already tested in the United Kingdom.

Representation centered on the elected official in the constituency and, coherently, on the single-member majoritarian electoral system. This favored the formation of aggregations of local notables – prominent individuals who, in Parliament, shaped the nation’s political direction. Thus, the deputy elected in a peripheral district would naturally refer to one of these personalities – either from the historical right or the historical left, the two main groupings characterizing the Statutory Parliament. These groupings, more akin to clubs, formed not so much along ideological lines, given the absence of strong cleavages, but rather along territorial interests.

This created a scenario rich in structural differences compared to what would emerge in the following century. Such differences inevitably had profound consequences for parliamentary dynamics and procedural norms: even the legislative process was essentially left to spontaneity and custom. This is a far cry from contemporary parliaments, in which the central actor is the parliamentary group, and parliamentary dynamics are determined primarily by the balance of power between these groups.

Today, in the law-making process, Committees play a crucial political-legislative role, albeit subordinate to the plenary. Their composition must reflect the balance of power in the Assembly, lest the parliamentary equilibrium be disrupted. This requirement stems from the fact that, since the

twentieth century, the central actor in parliamentary activity has been the group. In the Statutory Parliament, by contrast, the sole and exclusive protagonist was the individual member of Parliament.

Therefore, in that context, a system based on pre-constituted Committees could not find justification. The bodies tasked with examining legislative proposals were temporary colleges whose members were selected by lot. The purpose of these Offices was to discuss in the freest, broadest, and most preparatory way possible, serving as a prelude to the plenary's subsequent work.

The system was based, in other words, on an entirely different logic: if no prior political affiliation existed, why should members of these bodies not be selected at random?

In the end, the final outcome was not significantly different from that of a standing Committee in a referral setting, but the method by which the final report was reached was markedly different. This method was necessarily more burdensome and therefore slower³⁷⁷, as each legislative proposal underwent three general discussions (Office, Commission, Plenary). Accordingly, it was not without criticism – particularly due to its failure to reflect the political inclinations of the Assembly³⁷⁸. Yet this was precisely its point: a method fully embedded in a structure whose core was not constituted by organized partisanship. The Office functioned as a sort of sub-club for discussion: the exchange of ideas occurred among members who

³⁷⁷ Ivi, p. 434.

³⁷⁸ A. ZEI, *Il diritto e il caso...*, cit., pp. 100-101.

had been selected by lot, not as representatives of a predetermined political orientation. The resulting discussion was thus highly open and free, fostering the rhetorical and persuasive capacities of the individual.

In such a system, the figure of the most competent or most interested member naturally emerged. Appointed as rapporteur, this individual would lead the discussion with the College at the conclusion of a highly fluid process, uncharacterized by the presence of full-fledged political factions with predetermined positions. This was because the constitutional pact underlying the Statuto Albertino was itself ideologically homogeneous: one and only one social class – the entrepreneurial bourgeoisie – was the driving force of government, having been the true engine of the epochal transformation in the form of the state.

Thus, whereas in Ancient Greece sortition was intimately tied to democracy and its unique, unrepeatable culture, the modern age reintroduced it into certain mechanisms of governance in the aftermath of the revolutionary turning point. Despite the Revolution marking a decisive break in every respect, it remained heavily indebted to the ancient world and its modes of governance, which were still viewed as ideal models. Randomness thus found a place within the representative system as the most suitable principle of selection at a time when party affiliation had not yet become the driving force and unifying thread of parliamentary structure.

3. A New Rationality to Support Representation

The Middle Ages first and modernity later, then, have repeatedly turned to the system of drawing lots: what has been mentioned so far in the previous paragraph points, in fact, to a long history and tradition of the use of sortition in public law – conceived and imagined, according to various models, as an alternative or supplementary tool aimed at avoiding certain partisan dynamics, and/or as the inevitable outcome of a broader apparatus in which the method of chance was seen as the most suitable, given its logic of operation.

In all these experiences, one can discern once again the imprint and legacy of the ancient world; which, despite the changing times, has ended up becoming once again an ideal model to look to, particularly in relation to certain specific mechanisms that characterized its method of governance.

It is indeed antiquity that has inspired, since the last century, the currents of participation and deliberative democracy. In their critique of representative government and aggregative logics, the introduction of sortition represents a pivotal point and conceptual foundation when it is specifically combined with the deliberative logic.

In this sense, foreign scholarship has spoken loudly, emphasizing the possibility and the desire to create a renewed model inspired by Periclean Athens.

From political scientists to sociologists, many scholars focus on the development – whether more theoretical or practical, more moderate or more radical – of deliberative archetypes based on sortition³⁷⁹.

³⁷⁹ Among the vast literature on the subject, the following are particularly noteworthy: B. MANIN, *Principi del governo rappresentativo*, cit.; Y. SINTOMER, *Petite histoire de l'expérimentation démocratique. Tirage au sort et politique d'Athènes à nos jours*, La Découverte, Parigi, 2011; Y. SINTOMER, *Sorteggio e democrazia deliberativa. Una proposta per rinnovare la politica del XXI secolo*, in *Nomos. Le attualità del diritto*, 2, 2016; J. GASTIL, E. O. WRIGHT (eds.), *Legislature by lot: transformative designs for deliberative governance*, in *Politics & Society*, 46, 2018; T. MALLESON, *Should democracy work through elections or sortition?*, in *Politics & Society*, 46, 2018; S. PEK, J. KENNEDY, A. CRONKRIGHT, *Democracy Transformed: Perceived Legitimacy of the Institutional Shift from Election to Random Selection of Representatives*, in *Journal of Public Deliberation*, Vol. 14, 1, 2018. In fact, there is no shortage of authors who propose and theorise the total abolition of representative methods in favour of mechanisms based exclusively on random selection, see T.G. BOURICIOUS, *Democracy through multi-body sortition: Athenian lessons for the modern day*, in *Journal of Public Deliberation*, Vol. 9, 1, 2013; D. VAN REYBROUCK, *Contro le elezioni. Perché votare non è più democratico*, Feltrinelli, Milano, 2015; B. HENNING, *The End of Politicians: Time for a Real Democracy*, London, 2017; A. LE PILLOUER, *L'introduction du tirage au sort dans les démocraties représentatives*, cit.. The lottery as a means of selection is also used today in some indigenous communities in India, see A. SHAH, *What if we selected our leaders by lottery? Democracy by sortition, liberal elections and communist revolutionaries*, in *Development and Change*, Vol. 52, 4, 2021, pp. 687–728. It should be noted that proposals have been put forward in some countries to reform the Parliament by means of random selection, in particular: the *Senat Citoyen* in France, the Citizens' Assembly for the Scottish Parliament in Scotland and the Citizens' House in Parliament in the United Kingdom. In Italy, too, during the 16th legislature, a constitutional revision bill was tabled, which was rejected by the chamber, aimed at transforming the Senate into a chamber composed of members selected by lot: proposed amendment no. 1.202 to bill no. 24 containing "Amendments to Articles 55 and 57 and repeal of Article 58 of the Constitution concerning the composition of the Senate of the Republic and the active and passive electorate". For some reflections on random selection and bicameralism, see T. BOURICIOUS, *Why hybrid bicameralism is not right for sortition* and P. E. VANDAMME, V. JACQUET, C. NIESSEN, J. PITSEYS, M. REUCHAMPS, *Intercameral relations in a bicameral elected and sortition legislature*, both in *Politics & Society*, 46, 2018; M. CASERTA, C. GAROFALO, A. PLUCHINO, A. RAPISARDA, S. PAGANO, *Democrazia a sorte. Ovvero la sorte della democrazia*, Malcor D', Catania, 2012.

Only those (few) scholars coming from legal science have instead highlighted and continue to highlight its critical aspects, which become quite evident when examined through the lens of legal-constitutional scrutiny³⁸⁰.

Historically, then, the issue of using random selection proves to be the object of a debate that has never truly subsided; and in our time, it returns again and resurfaces ever more frequently, in light of its introduction even into the dynamics of the form of State and government—tightly interwoven with what Van Reybrouck calls the “democratic fatigue syndrome”³⁸¹. Thus, in the face of democracy’s exhaustion, an old and new path at the same time is being identified precisely in sortition – understood, as mentioned at the beginning of the chapter, not so much as an expression of irrationality, but rather as a new form of rationality contrasted with will and choice, to support representation in very different ways. To such an extent that one can identify the emergence of a genuine school of political philosophy that addresses and advocates for the use of random selection in politics³⁸².

The question posed by these scholars is, then: what place should it be given in contemporary democracies? In other words, having already an-

³⁸⁰ In this way, P. COSTA, *La democrazia e la sorte. Appunti giuridici intorno a un dibattito in corso*, cit.; G. SCACCIA, *Democrazia a sorte: problemi e opportunità*, cit.; F. LANCHESTER, *Il sorteggio in campo politico come strumento integrativo dell’attività delle Assemblee parlamentari*, cit.; A. ZEI, *L’arbitrato del caso: applicazioni del metodo del sorteggio nel diritto pubblico*, cit.; ID., *Il diritto e il caso..*, cit.

³⁸¹ D. VAN REYBROUCK, *Contro le elezioni. Perché votare non è più democratico*, cit., p. 21.

³⁸² A. VERGNE, *A Brief Survey of the Literature of Sortition: Is the Age of Sortition upon us?*, in G. DELANNOI, O. DOWLEN (eds.), *Sortition. Theory and Practice*, Exeter, Imprint Academy, 2010, pp. 69-87, pp. 84-85.

swered in the affirmative as to *whether* it should be used, the remaining issue is *how*. This task, however, is far from trivial, because breaching the “citadel of representative government”³⁸³ is not nearly as simple as it may seem.

Precisely in light of the considerations made by the authors on this point – as well as the arguments in favor – there remains a need to reflect on the actual innovativeness, effectiveness, and consistency of sortition compared to the representative method of voting, in light of the reflections already raised by part of constitutional scholarship.

First of all, what are the premises on which an affirmative answer to the use of such a method is based, according to the doctrine of sortition-based democracy?

Well, from this point of view, the starting point remains, as is well known, the decades-long observation of the pathologies of representative government. To this is added the idea that its use within representative democracy would be justified in light of the reflections carried out on the performance of democratic processes, precisely to overcome the aforementioned pathology, based on the two intrinsic virtues of random selection, deeply rooted in the democratic principle: equality and impartiality.

The first, understood as equal opportunity to access public office; the second, in terms of independence from any interest ties on the part of the person selected by lot. These two qualities become the decisive hinges in

³⁸³ L. BOBBIO, *Dilemmi della democrazia partecipativa*, in *Democrazia e diritto*, 4, 2006.

the comparison between voting and sortition in terms of genuine key democratic values³⁸⁴.

With regard to the first “virtue”, sortition would appear as a more democratic tool than voting, since it is unbound from the logic of political and party affiliation, thereby escaping the dynamics of the electoral circuit, well described by elitist theory, which is based on competition and the struggle among candidates for the votes of the governed. In fact, “no initiative based on will can stand before the pure chance consummated in the instantaneous act of sortition: not the will of the parties, not the will to power”³⁸⁵.

As a result, this would guarantee the same and equal chances of participation in public affairs to all citizens, thus maximizing the participatory share.

The second virtue concerns the requirement of impartiality. That is, sortition would itself guarantee an independent position of the selected individual with respect to partisan interests, as demonstrated by its broad historical application and experience³⁸⁶.

Often, however, things are much more complex than they appear. Going deeper, and analyzing these “virtues” through the magnifying glass of pu-

³⁸⁴ T. MALLESON, *Should democracy work through elections or sortition?*, cit.

³⁸⁵ P. COSTA, *La democrazia e la sorte. Appunti giuridici intorno a un dibattito in corso*, cit., p. 202.

³⁸⁶ Y. SINTOMER, *Sorteggio e democrazia deliberativa. Una proposta per rinnovare la politica del XXI secolo*, cit., p. 7; H. BUCHSTEIN, *Reviving randomness for political rationality: Elements of a theory of aleatory democracy*, in *Constellations*, Vol. 17, 3, pp. 435-545; R. G. MULGAN, *Lot as a democratic device of selection*, in *Review of Politics*, Vol. 46, 4, pp. 539-560.

blic law – which must take into account the context in which each norm and each dynamic is situated – multiple doubts arise regarding the structural qualities of these so-called “virtues,” allowing for a dismantling of them one by one.

First of all, the question of equality.

Equal opportunity for access and participation is only illusory and partial: how is it truly possible to guarantee all citizens of quantitatively vast democracies even the slightest chance of being selected? In other words, the ancient dilemma of scale re-emerges, whereby sortition only makes sense in contexts of limited size.

Moreover, as the most careful scholarship has pointed out, given the small number of citizens who benefit from such a method, those who are excluded would have no way of participating in the determination of political direction³⁸⁷.

– thereby generating a paradox of participation. Even if a filter were introduced at the entry level – such as allowing sortition only from among voluntary participants to statistically increase the pool – the participatory rate would nonetheless decrease³⁸⁸. This latter objection is particularly relevant, as it is on a voluntary basis that most widely used deliberative practices, namely, Citizens’ Assemblies, operate. Conversely, if one were to imagine the maximum possible extension of the pool of those eligible for selection, the probability of being chosen becomes vanishingly small. In

³⁸⁷ Y. SINTOMER, *Sorteggio e democrazia deliberativa. Una proposta per rinnovare la politica del XXI secolo*, cit., p. 7.

³⁸⁸ *Ibidem*.

essence, then, “equality of opportunity deriving from sortition would realistically exist only under the condition of low participation”³⁸⁹. Thus, the dimension factor and the “chance” factor are inevitably and intimately linked. Unsurprisingly, one of the *raison d’être* of ancient Greek sortition was to leave the selection of certain offices to chance precisely because, sooner or later, every citizen would find themselves holding it, due to the small size of the polis and the limited number of those holding political rights.

As a final objection to the “virtue of equality,” there remains perhaps the most obvious yet also the most provocative: why deem the competition among elites, and their selection by the electorate, inappropriate? The question merely aims to highlight the core issue: perhaps the problem lies not in the system itself, as it has developed through the history of representative constitutionalism, but in the dynamics that have gradually taken root within it. In other words, the problem is not the method of voting, but the manner in which it is implemented. This leads us to the selection of candidates and, more generally, the realization that it is people, political actors, who breathe life into norms and animate constitutional-political dynamics.

Now we return to the issue of impartiality, framed in terms of trust in a pragmatization of the “veil of ignorance” that John Rawls discusses in *A Theory of Justice*. Indeed, only people selected randomly – and thus detached from parties or from the race for consensus – could truly act free from selfish interests, under a sort of veil of ignorance; and therefore, would na-

³⁸⁹ P. COSTA, *La democrazia e la sorte. Appunti giuridici intorno a un dibattito in corso*, cit., p. 203.

turally be inclined to pursue the common good, or at least more predisposed to deliberative logic, in which revising one's opinions is not only encouraged, but sometimes a genuine indicator of successful deliberation.

But can sortition itself guarantee the impartiality of those selected? Can one reasonably assume the absence of all partisan inclinations or external influences?

This is, as noted, a rather dogmatic argument: even if freed from party influence, sortition cannot *ipso facto* ensure the impartiality of the individuals drawn. It thus risks being more of an evasion of the problem than a real solution. Even in this case, one could not avoid creating a regulatory framework to “trap” those selected in obligations of impartiality and commitment to the general interest: in other words, a system of checks and limitations in the exercise of power. If we return to what was said at the beginning of the chapter, we might say that the solution advocated through sortition – radical in both its diagnosis and its proposed cure – ends up dismantling three centuries of constitutional history without, in truth, resolving anything.

Moreover, some argue that it would deprive selected citizens of the ability to hold rulers accountable, losing one of the main tools of political pressure by no longer being voters: namely, the power of non-reelection, which only voting makes possible and concrete. “As a matter of fact, the governed would be stripped of the only political leverage available to them *uti singuli*, and which thus gives them the power to influence politics inde-

pendently of organized special interests”³⁹⁰. This critical point, however, appears of limited practical relevance, and its true nature emerges when the proper distinctions are made. Indeed, this issue would not arise if sortition were introduced through deliberative practices, or otherwise through mechanisms parallel to the representative circuit. In such cases, the selected citizen, being (also) a voter, does not cease to be an elector, thus exercising two distinct and separate functions. By contrast, in the radical scenario of a democracy entirely based on sortition, the issue would not arise due to the absence of any party system.

More realistically, under the heading of accountability, it is worth asking *what kind of accountability* could be attributed to randomly selected individuals. That is: if they are not elected but chosen by lot, what political responsibility do they bear for their actions? Clearly, this is a problem deeply linked to the type of representation these citizens would express, as well as to the nature of the randomly selected bodies. And it is certainly not a sufficient – nor satisfying – answer to claim that “studies show that randomly selected citizens feel responsible in various ways: a mini-public member who does not behave constructively is marginalized in the discussion by other members. The group feels responsible to the authority that convened the mini-public and to the public opinion before which the mini-public must explain its proposals. So far, no serious study has recorded ‘irrespon-

³⁹⁰ Ivi, p. 204; T. MALLESON, *Should democracy work through elections or sortition?*, cit., pp. 406 ff.

sible' behavior in these experiments"³⁹¹. This is, in fact, a sociological rather than legal-constitutional perspective, which takes no account of the political system into which such mechanisms are introduced, nor of the relationship between the political community and those who act within authoritative structures. Furthermore, one must not overlook the fact that deliberative experiences are not subject to any kind of regulation, not even that concerning oversight and accountability of members – norms which, by contrast, were well-established and particularly stringent in the Athenian system, involving acts such as oaths and strict duties of reporting. Thus, "to accept being included in the lists of those eligible for selection and then to assume office meant, for the citizen of democratic Athens, accepting the principle of responsibility, which exposed him to significant risks"³⁹². Can we today rely on a mere sociological trust, based simply on "being a citizen", and therefore on the automatic assumption that being a citizen always and necessarily means being impartial and responsible? The principle of reality demands not to harbor too many illusions: the government of human beings always and necessarily requires constraints.

In ancient Athens, control was also exercised through another channel: the temporal limitation of mandates and the fragmentation of magistracies and the tasks assigned to them. In short, mechanisms designed to limit power, especially when an individual held an office assigned by lot. In this

³⁹¹ Y. SINTOMER, *Sorteggio e democrazia deliberativa. Una proposta per rinnovare la politica del XXI secolo*, cit., p. 8. Those who disagree are L. CARSON, B. MARTIN, *Random selection in politics*, Westport, CT: Praeger Publishers, 2009.

³⁹² C. BEARZOT, *Processo decisionale e assunzione di responsabilità*, p. 263, cited by A. ZEI, *Il diritto e il caso...*, cit., p. 173.

way, each magistrate became a cog in a much larger machine, and the Athenian government, thus organized and composed even of “ordinary people”, consistently ensured effective administration.

Of course, it was not admired by everyone: many contemporary intellectuals saw more flaws than advantages. Herodotus and Plato are just some of those who mocked Athenian democracy, and particularly the random selection method, as the highest form of incompetence, since “no one would choose a ship’s captain or a musician by lot”. However, perhaps the Athenians selected their magistrates by lot precisely to ensure that they would not become captains of the state³⁹³. In short, a very original conception of power distribution and limitation, in many ways quite distant from our own – but, after all, highly functional. Functional, however, because it was perfectly suited *to that specific context*.

It becomes clear, then, that to reflect on sortition today is to open a genuine Pandora’s box. In the absence of the conditions that existed in Periclean Athens, the issue of the *status* of the randomly selected citizen becomes central, especially now that, in response to the crisis of the political party as a collective subject, we increasingly rely on bodies composed of individuals selected by lot and *ad hoc*, within a system of government that does not share the same conception of power management, particularly its rotational basis. Indeed, this raises significant doubts for those accustomed to the logics of constitutional democracy. The issue, then, can be framed as follows: who does such a citizen represent, and how? And above all – do

³⁹³ M. HANSEN, *The Athenian democracy*, cit., p. 236.

they represent at all? Indeed, what we are talking about here is not electoral representation – the classic and historically rooted model of representation within constitutionalism. Rather, this is a form of *descriptive* representation, based on the corrective measures developed by the doctrine of sortition to enable a balanced and sample-based lottery. The aim is not only to give proper space to all social components, through what is essentially true direct participation, but above all to give voice to those who are underrepresented, mitigating the oligarchic dynamics that tend to emerge in traditional representative systems³⁹⁴.

Among the advantages attributed to random selection in the literature, we must also mention the faster selection process and the reduction of social divisions and polarization³⁹⁵. Although it has rightly been pointed out that, “the sample tends to reflect the distribution of preferences in the population, but it cannot reflect their intensity, with the result that it reproduces an ‘average’ range of opinions and excludes the extremes. And it is no coincidence that these experiments often conclude with reasonable and balanced recommendations”. And while this is arguably better than letting decisions depend on whoever shouts the loudest³⁹⁶, the risk would be a cer-

³⁹⁴ B. R. BARBER, *Strong democracy: Participatory politics for a new age*, Berkeley, CA: University of California Press, 1984, p. 291.

³⁹⁵ F. ENGELSTAD, *The assignment of political office by lot*, in *Social Science Information*, Vol. 28, 1, pp. 23-50.

³⁹⁶ J. PARKINSON, *Legitimacy Problems in Deliberative Democracy*, in *Political Studies*, vol. 51, 1, 2003, pp. 180-196, p. 192.

tain flattening of views, as well as producing outcomes that may appear scarcely legitimate to those actors with more intense preferences³⁹⁷.

Secondly, we must remember that it is still a *sample*: the issue of scale arises, because in order to ensure effective interaction, the number of participants must be kept low. But such a small sample can hardly be statistically representative³⁹⁸, especially considering that sortition did not originate in a political-social context where statistical representation of those holding political rights was necessary. Not only because, dimensionally speaking, the original context was much smaller, but also because the logic of representation was absent altogether. Once again, everything relied on a system of rotational government – of everyone, for everyone.

In conclusion, this was, structurally, a completely different world

4. *Sortition and deliberation*

Navigating the multiple critical issues that these new methods pose and trying to untangle them is indeed very arduous, and the specific profile of the *status* of the randomly selected member is among the most discussed and contested in the literature on sortition and, mutually, in practices of deliberative democracy, which more than anything have reintroduced the problem wherever they have recently found greater diffusion.

³⁹⁷ L. BOBBIO, *La democrazia deliberativa nella pratica*, in *Stato e mercato*, 1, 2005, pp. 67-88, p. 73.

³⁹⁸ J. S. FISHKIN, R. C. LUSKIN, *The Quest for Deliberative Democracy*, in M. SAWARD (ed.), *Democratic Innovation. Deliberation, Representation and Association*, London & New York: Routledge, 2000, pp. 17-28.

Today it is these latter practices that give concreteness to the use of sortition within, so to speak, the form of government, at the national or local level. Of course, there are other domains in which it is used, but none have to do with the *wielding of power and politics*.

In general, regarding sortition-based democracy, there are many reasons – both in favor and against – many doubts, perplexities, and enthusiasms with which scholars have approached it. The variety of different perspectives, all justifiable and all abstractly shareable, that scholars have developed over time, make it a field at once interesting and extremely delicate, because it essentially means abandoning the schemes practiced for about eighty years or so, performing in fact a true leap into the unknown. The crucial point lies in the impossibility, as with all constitutional mechanisms, of calculating exactly the potentialities – harmful and otherwise – of the instrument; and so the answers rely upon the horizon and the conception that each one may have of the essence of a political system and its mechanisms of functioning. In other words, it is the richness of a debate that is not purely technical, but philosophical and legal, and that involves fundamental principles and values of contemporary political communities. The hope of this work is to also provide some compasses to be able to orient oneself in this vast sea, without excessive pretensions but with the intent systematically to suggest some absolutely indispensable guideposts.

Before venturing into the terrain of deliberative practices, it seems appropriate to insist on one aspect only hinted at at the beginning of this chapter. Namely, the fact that sortition, or rather sortition-based democracy,

was born only after and alongside the early deliberative theories of democracy: in fact, it is not at all contemplated in the thought systems of Habermas and Rawls.

The political rediscovery of sortition does not therefore occur simultaneously with the theoretical elaboration of deliberative democracy, but only in parallel: it is with James Fishkin that, between the 1980s and '90s, sortition found its most important field of application within deliberative democracy, and more particularly in its practical precipitates³⁹⁹. Even though Fishkin was not the one to first elaborate a deliberative procedure based on sortition. Indeed, following the revival of drawing lots from the 1960s onward, when liberal democracies experienced the first shock provoked by civil rights movements and the principle of random selection was introduced in United States juries, authors such as Robert Dahl⁴⁰⁰, Ted Becker⁴⁰¹, Peter Dienel⁴⁰², Richard Mulgan⁴⁰³ began to consider sortition from the viewpoint of political theory, yet with a rather limited reception. It

³⁹⁹ J. TALPIN, *Le tirage au sort démocratise-t-il la démocratie ? Ou comment la démocratie délibérative a dépolitisé une proposition radicale*, in *Participations*, special issue *Tirage au sort et démocratie. Histoire, instruments, théories*, edited by L. LOPEZ-RABATEL AND Y. SINTOMER, 2019, pp. 453-473.

⁴⁰⁰ R. DAHL, *After the Revolution? Authority in a Good Society*, New Haven: Yale University Press, 1970. This was one of the first books to propose the widespread use of drawing lots in politics.

⁴⁰¹ T. BECKER ET AL., *Un-vote for New America: A Guide to Constitutional Revolution*, New York: Pearson College Division, 1976.

⁴⁰² P. DIENEL, *Techniken bürgerschaftlicher Beteiligung an Planungsprozessen*, *Offene Welt*, n. 101, Opladen, 1970; ID., *Die Planungszelle. Eine Alternative zur Establishment-Demokratie*, Opladen, 1978.

⁴⁰³ R. MULGAN, *Lot as democratic device of selection*, in *The Review of Politics*, 46, 1984, pp. 539-560.

is only subsequently, and very gradually, starting from the 1980s, when reflections in the area of deliberative democracy theory⁴⁰⁴ began to be refined and circulate, that a process of cross-fertilization between practice and theory, and between deliberative theory and sortition theory, came to maturity—thanks to which the principle of sortition begins to structure itself in the academic and collective imagination; this, also and especially by virtue of the emergence of practical experiences such as, first and foremost, Peter Dienel's *Planungszelle*⁴⁰⁵, Ned Crosby's citizens' juries⁴⁰⁶, James Fishkin's deliberative polls⁴⁰⁷, Bruce Ackerman's *Deliberation Day*⁴⁰⁸, as well as the consensus conferences organized in 1987 by the Danish Board of Technology⁴⁰⁹.

⁴⁰⁴ As is well known, and in light of the considerations made in Chapter III, from the studies of Jürgen Habermas: ID., *Fatti e norme. Contributi a una teoria discorsiva del diritto e della democrazia*, Guerini Associati, Milano, 1996. For an overview of the broad spectrum of theories and practices of deliberative democracy, see J. ELSTER (ed.), *Deliberative Democracy*, Cambridge University Press, Cambridge, 1988. For a theoretical reflection, with a comparison between Habermas's theory and that of Norberto Bobbio in order to identify the conceptual foundation of deliberative democracy, see also F. CATTANEO, *Democrazia deliberativa. L'idea (nuova?) e i modelli di realizzazione*, in *Teoria politica*, Vol. XXV, 3, 2009, pp. 107-135.

⁴⁰⁵ G. TONELLA, *Die Planungszelle. Processi di coinvolgimento deliberativo e forme di amministrazione partecipativa*, il Poligrafo, Padova, 2012.

⁴⁰⁶ N. CROSBY ET AL., *Citizens' panels: A new approach to citizen participation*, in *Public Administration Review*, Vol. 46, 2, 1986, pp. 170-178.

⁴⁰⁷ J. FISHKIN, *Deliberative Polling: Executive Summary*, in Center for Deliberative Democracy at Stanford University, 1988; S. ELKIN, *Deliberative Democracy and Deliberative Polling*, in *The Good Society*, Vol. 9, 1, 1999, pp. 14-16. An overview of this practice can be found at the link [http://www.stanford.edu/group/center_for_deliberative_democracy/](#), which describes James Fishkin's activities at Stanford University's Centre for Deliberative Democracy.

⁴⁰⁸ B. ACKERMAN, J. FISHKIN, *Deliberation day*, New Haven: Yale University Press, 2004.

⁴⁰⁹ I. ANDERSEN, B. JÆGER, *Scenario workshops and consensus conferences: towards more democratic decision-making*, in *Science and Public Policy*, Vol. 26, 5, 1999, pp. 331-340.

Thus then deliberative theory of democracy and sortition-based democracy end up constituting the pillars for a practice of deliberation that has come to be realized since the end of the last century, and the interplay has become so strong that the inclusivity of deliberation necessarily passes through sortition, regarded as the only method to guarantee it; and inclusivity is *conditio sine qua non* of deliberative processes, from the moment that “a deliberative procedure is legitimate only if all the interests, opinions and positions present in society are included in the deliberative process”⁴¹⁰. However, descriptive representation, within large democracies, is necessarily an approximation of the principle of inclusion: hence, therefore, the logic of the mini-public, that is to say that microcosm of society which sample-based deliberative bodies via sortition would bring into being.

In light of the stylistic features and logics on which deliberative theories had been built, it was almost natural that sortition would become a conceptual and methodological foundation, thus giving birth to deliberative democracy by sortition. Indeed, on one hand sortition and deliberation both insist on the criterion of inclusivity; on the other hand, the deliberative method ends up fitting perfectly within a body of “ordinary citizens”, roughly and tendentially devoid of specific training or opinion⁴¹¹. Although it is true, however, that the members selected by lot remain nevertheless *individuals*, bearers of their own personal and social cultural background, and

⁴¹⁰ I.M. YOUNG, *Justice, Inclusion, and Deliberative Democracy*, in S. MACEDO (ed.), *Deliberative Politics...*, cit., pp. 151-158, p. 155.

⁴¹¹ L. BOBBIO, *Le arene deliberative*, in *Rivista italiana di politiche pubbliche*, 2, 2002, pp. 5-29; ID. ET ALII, *A più voci. Amministrazioni pubbliche, imprese, associazioni e cittadini nei processi decisionali inclusivi*, ESI, Napoli, 2004.

therefore by no means characterized by neutrality: or, at least, there is no guarantee in this regard; and moreover, they are subjects who certainly do not intend to find coherent solutions within the large conceptual dilemmas of institutions and of the dominant theoretical paradigms. On the contrary, in light of the degeneration in the relationship between representatives and those represented, they would for the most part be subjects inclined to express their opposition violently toward institutions, toward their inefficiency, and toward their lack of knowledge and presence in social fabric⁴¹². An inclination entirely justified and legitimate, which has its roots in the inability of political classes to manage changing times and to act within the scope of democracy. And yet, is it wise that institutions thus composed carry out a public and institutional role, even if only consultative?

Here then the question of representation of the randomly selected members re-emerges.

On the one hand, descriptive representation proves to be a sort of necessary requirement, from the polemical perspective toward representative government: that is, implementing the dialogical method becomes more efficient if it is not carried out by those elites now deemed self-referential and distant from those they should represent, but rather by other and diffe-

⁴¹² He insists on these aspects J. DRYZEK, *Deliberative Democracy and Beyond*, Oxford, Oxford University Press, 2003, within the framework of an approach to deliberation linked to what the author calls Critical Theory, which draws mainly on the Frankfurt School: there is no reconciliation between deliberation and liberalism, and the only way forward would be to reject the idea of a moderate and reasonable public reason, welcoming instead varied and open forms of public discussion and, above all, bargaining. In fact, “[...] Dryzek, accepting the need to investigate existing and possible forms of oppression in political interaction, believes that it is neither possible nor desirable to predefine the content of communication, let alone set limits on it in advance”, M. BONINU, *Modelli di democrazia deliberativa*, in *Ragion pratica*, 1, 2017, pp. 285-296, p. 295.

rent subjects. Secondly, it constitutes a potential tool for participation where the latter is not understood only as electoral participation, but also as participation aimed at expressing one's opinion and ensuring that such opinion is taken into consideration by power – a dimension in which traditional participation instruments have certainly miserably failed. Moreover, it is a difficult operation to carry out, as Hannah Arendt demonstrates in *One Revolution* when describing, on this point, the American experience. Therefore, deliberative participation emerges as a new workaround to compensate for the erosion of inter-electoral participation.

However, it carries significant systemic criticalities, both with respect to the form of government and the form of the state.

Deliberative democracy is indeed based on another logic⁴¹³. It is founded on the use of the mini-public, which makes possible the formation of a counterfactual public opinion: this differs both from elected representatives and from the broader public opinion. John Adams hoped that representatives randomly selected from citizens would “think, feel, reason, and act” like the people⁴¹⁴. However, it is not just this, because for deliberativists the statistical similarity between randomly chosen representatives and the people is only a starting point. The dialogical process is in fact decisive.

Thus, on the one hand, there is a pool of “descriptive” representatives. Such representation “would mirror society more faithfully than traditional

⁴¹³ Y. SINTOMER, *Random Selection, Republican Self-Government, and Deliberative Democracy*, in *Constellations*, Vol. 17, 3, 2010, pp.472-487.

⁴¹⁴ J. ADAMS, *Letter to John Penn*, in *Thoughts on Gouvernement [1776]*, cited by B. MAININ, *Principi del governo rappresentativo*, cit., p. 146.

representative assemblies which instead offer an exaggerated and distorted image due to the electoral sieve,” although, in any case, such a pool could only *approximately* reflect the spectrum of a people or community and its variables⁴¹⁵, exactly as traditional representation, which only approximately determines the composition of party formations reflecting social fabric.

Nevertheless, the literature insists on the democratic primacy of sortition: a random but balanced composition. Thus, “the (presumed) similarity justifies the idea that opinions expressed by a randomly selected body should be considered as a democratic manifestation insofar as they correspond to the orientations of the citizenry as a whole”. Another doctrine bases the legitimation of sortition instead on “the primacy of reason, both for the variety of points of view represented and discussed, which also give voice to the lived experience of ordinary people [...] and for the adoption of a working method inspired by the ideals of deliberative democracy, demanding epistemic legitimation of the judgments formulated. From this perspective, recommendations should be considered better [...]”⁴¹⁶. These are two alternative approaches reflecting two different spheres of thought: indeed, one grounds legitimation and decision quality on the identity between people and representatives, and is more typical of sortition democracy, in which, for example, some advocate reform of bicameralism toward the formation of randomly selected chambers, thus a much wider use of the random method within liberal democracies; the other is based instead on

⁴¹⁵ P. PETTIT, *Varieties of Public Representation*, in I. SHAPIRO, S. C. STOKES, E. J. WOOD, A. S. KIRSCHNER (eds.), *Political Representation*, Cambridge, 2010, pp. 61-89

⁴¹⁶ A. ZEI, *Il diritto e il caso...*, pp. 249-250.

the contribution of ordinary people to a deliberative discussion, and is typically linked to the perspective of deliberative democracy by sortition, where the latter becomes the conceptual and methodological foundation for applying the deliberative ideal at the highest levels. According to various authors, this model offers a richer and more appealing image of the democratic method and reconnects the legitimacy of political institutions with the effective unfolding of the democratic process⁴¹⁷.

Indeed, the attractiveness of the deliberative process is beyond doubt. First, however, it remains to be verified whether the deliberative method is the democratic method: is the essence of democracy consensus or conflict?

Secondly, one must reckon with the principle of reality: is it really conceivable that, in the reality of today's democracies, the opinions of representatives, whether elected or randomly selected, can change as a result of discussion?⁴¹⁸ That the principle of discussion is applicable in the reality of large democracies?⁴¹⁹ It is probable, but not entirely possible: this is a strong point of criticism against deliberation theory. Because, on the contrary, deliberative democracy deterministically points to this as a sure by-product of the dialogical method, always and inevitably achievable. But, as history shows, in constitutional engineering and political affairs there is nothing fixed, predetermined, or deterministic.

⁴¹⁷ Così A. PINTORE, *I diritti della democrazia*, Laterza, Roma-Bari, 2003, pp. 42-43.

⁴¹⁸ F. SCHAUER, *Talking as a Decision Procedure*, pp. 20-22 e M. WALZER, *Deliberation, and What Else?*, pp. 59-66, entrambi in S. MACEDO (ed.), *Deliberative Politics...*, cit.

⁴¹⁹ C. R. SUNSTEIN, *A cosa servono le costituzioni. Dissenso politico e democrazia deliberativa*, Bologna, il Mulino, 2009.

Moreover, a perhaps banal but significant consideration should be added, strongly inherent in the impossibility of the predictable nature of the political: the goal of reaching the best decision clashes with the temporality intrinsic to decisions within democracies. In other words, all goals are temporary and no citizen can claim to have persuaded their peers once and for all⁴²⁰. Yet, there is a vast literature favorable to the introduction of random selection into the power and decision-making circuit: the advantages outweigh the disadvantages that the lottery would entail. Indeed, often those disadvantages are precisely the reason for preference, starting primarily with the non-professionalism of the subjects and the sure “natural” virtues that would be inherent in being a citizen.

Finally, one last reflection arises on the matter. If today the trend is to give renewed space to randomness, perhaps there is something deeper than a simple and harmless attempt to support representation: more than restoring the lost connection between institutions and the efficiency of the democratic process, what is glimpsed is distrust toward choice and will, and thus the overcoming of the “permanent anthropologism of Western thought” of Foucauldian memory⁴²¹; but, above all, the return of non-will in the absence of a political and existential scenario that makes it Schmit-

⁴²⁰ M. WALZER, *Spheres of Justice: A Defense of Pluralism and Equality*, Basic Books, New York, 1983, p. 310.

⁴²¹ M. FOUCALT, *Sull'origine dell'ermeneutica del sé. Due conferenze al Dartmouth College*, Cronopio, Napoli, 2012, p. 91.

tianly sensible, coherent, and acceptable⁴²², and which, indeed, ends up compromising the heart and essence of modern constitutionalism.

⁴²² C. SCHMITT, *Le categorie del "politico"*, cit., p. 69; see Chapter I, note 35.

CHAPTER V

DELIBERATIVE DEMOCRACIES IN PRACTICE

The dilemma of democracy: one can have political inequality with a relatively competent and deliberative elite, or political equality with a relatively uninformed and largely uninterested mass.

Citizen assemblies are the third way.

JAMES FISHKIN

SUMMARY: 1. From theory to practice, for a democratization of democracy – 2. Deliberative practices in the historical-comparative panorama – 3. Citizens' Assemblies – 3.1. Origins and definition – 3.2. Paradigmatic experiences – 3.2.1. The leading case of British Columbia – 3.2.2. The pioneering experience of Belgium – 3.2.3. Ireland: when society mobilizes – 3.2.4. Constitutional revision and deliberative democracy by sortition – 3.2.5. The French experience: deliberative democracy for the environment and end of life.

1. From theory to practice, for a democratization of democracy

“In contemporary democracies, a limited but growing number of public decisions are made through processes that bear significant similarities to the ideal situation described by theorists of deliberative democracy”⁴²³.

With these words, Luigi Bobbio opened an essay some years ago dedicated

⁴²³ L. BOBBIO, *La democrazia deliberativa nella pratica*, in *Stato e mercato*, 1, 2005, pp. 67-88.

to deliberative practices and their characteristics, highlighting how, over time, practices have gradually developed that translate into reality the principles of deliberative democratic theories combined with the methodology of sortition; thus inaugurating what has been termed “deliberative democracy by sortition,” although the Author, in the essay, more generally addresses practices that would be better classified within the realm of participatory democracy⁴²⁴.

More significantly, Luigi Bobbio continues by noting that “[...] a part (certainly small, but not insignificant) of our democracies seems to be evolving in a deliberative direction”⁴²⁵, thereby capturing the momentum that was gradually spreading and which, in fact, remains in an ongoing phase of implementation, albeit a rather slow and disordered one.

Indeed, there are currently 159 documented cases of deliberative democracy by sortition in Europe since 2000, celebrated at national or local levels⁴²⁶; worldwide, 2,322 cases have been recorded, at national and local levels: 160 countries and 863 organizations involved⁴²⁷.

⁴²⁴ For further information on this distinction, please refer to Chapter I.

⁴²⁵ *Ibid.*

⁴²⁶ The data refers to the inventory of mini-publics as recorded on 21 July 2025 by Politicize.eu, a platform created as part of a research project funded by the European Research Council on these very issues, available at the link It is also possible to track all recorded cases based on geographical data collection at the following link: <http://politicize.eu/inventory-dmps/>.

⁴²⁷ As of 25 July 2025: <https://participedia.net/>. It is also possible to track all recorded cases based on geographical data collection at the following link: <https://participedia.net/search?layout=maps>.

As repeatedly pointed out throughout this work, these experiences are the result of a long and varied process, originating primarily from studies in the philosophical-political literature, whose essential coordinates have been attempted to be restored here. Within this body of work, the development and reflection on normative models combining deliberation and inclusion have asserted themselves⁴²⁸, and over time have found practical application both at national and local levels.

Moreover, their diffusion has been directly proportional to the progressive crisis of democratic governance based on the representative model, alongside the trust political classes have placed in these practices.

The reasons why public authorities might be inclined to invoke such experiences are manifold. First and foremost, to prevent potential social conflicts; but also to involve social groups considered potentially harmed by a given decision, with respect to which it is decided to include them; and finally, the need for ideas or suggestions in the decision-making process from actors who prove to be more directly affected.

These reasons, although diverse, are all connected by a single underlying thread essentially identifiable as a renunciation, on the part of political power, to decide. This aspect is structurally linked to the lack, on the part of political forces, of the strength and legitimacy necessary to carry out policy-making activities. Such deficiencies may also be founded on the

⁴²⁸ J. BOHMAN, *Public Deliberation. Pluralism, Complexity, and Democracy*, Cambridge, Mass.: MIT Press., 1996; C.S. NINO, *The Constitution of Deliberative Democracy*, New Haven & London: Yale University Press. 1996; A. GUTMANN, D. THOMPSON, *Democracy and Disagreement*, Cambridge, Mass.: Harvard University Press, 1996; J. ELSTER, J. (ed.), *Deliberative Democracy*, Cambridge: Cambridge University Press, 1998.

awareness of an increasingly solidified gap between the governed and the governors, which proves even more problematic where delicate and particularly divisive choices and decisions are at stake, where the activity of weighing and balancing is more complex, and even before that, when reflecting the tendencies of the governed becomes virtually impossible (and a cause of disinterest?) because the connection with the territory is almost entirely fractured.

It is within this context that deliberative practices position themselves, from the perspective of their promoters, as tools aimed at “democratizing democracies.” To bring back onto the right track systems of governance in which the core circuit based on representation struggles significantly to function and where, as a consequence, parliamentary assemblies no longer constitute the playing field in which the representatives of the governed discuss, vote, and decide.

All this is based on the conviction that deliberation and sortition possess such a democratic character as to be able to democratize systems that, essentially, are no longer considered sufficiently democratic. Hence the centrality of understanding how they have been and are being implemented.

2. Deliberative practices in the historical-comparative panorama

The experiences of deliberative democracy experimented with in the Western world, significantly and effectively referred to as deliberative mini-publics, are characterised, above all, by their variability under multi-

ple perspectives⁴²⁹. This is their common denominator, alongside, of course, the combination of sortition and deliberation: these two elements remain the essential cornerstones, without which one cannot speak of deliberative democracy. Just as there is no single theory of deliberative democracy, there is likewise no single model of mini-publics.

The diversity of these experiments is expressed through additional features – mainly, the ways in which the agenda is set, the participants are selected, and the discussion is structured, as well as the subject of deliberation and its outcomes (or, to use Anglo-Saxon terminology, the outputs) – all of which vary from one experience to another.

Among these, so-called Citizens' Assemblies currently represent the most prominent example. This is both due to their wider dissemination compared to other deliberative practices, still active and growing, and their scale, which is often national, thus offering particularly valuable insights into the relationship between representative and deliberative democracy.

However, before delving into a more in-depth analysis of these assemblies through emblematic case studies, it is appropriate, albeit briefly, to address the deliberative practices that preceded and profoundly influenced them.

Given the vast array of mini-publics, it is both impractical and unproductive to attempt a full classification or exhaustive review of all experien-

⁴²⁹ The Participedia database, mentioned above, has recorded 377 methods used around the world: <https://participedia.net/>, including the method of the so-called Transnational Citizens' Assemblies, bodies comprising citizens from different countries. There are 16 recorded cases, including the Conference on the Future of Europe. The complete list is available at the link: <https://participedia.net/collection/8376>.

ces falling under this umbrella. Instead, what seems more useful is to focus on certain normative models and subsequent real-world implementations, which together provide a useful framework for understanding the key traits of deliberative democracy as already discussed in earlier chapters.

This, in the author's view, is a necessary step in a line of reasoning that is admittedly complex and, at times, seemingly convoluted. Yet all loose ends will be tied by the end of this path, provided all the necessary elements are properly laid out and understood. Always keeping in mind the aim of the present work: not – or at least not only – a study of deliberative democracy in itself, but rather a study of deliberative democracy in relation to representative democracy. The goal is to draw historical and conceptual distinctions, and to attempt to dismantle certain myths and rhetorical constructs that deliberative discourse, unfortunately, often carries with it.

To provide an overview of comparative experiences, it seems appropriate to begin with the historical succession proposed by Yves Sintomer, particularly his distinction between what he calls the “first wave” and the “second wave” of deliberative mini-publics, as set out in a 2019 article⁴³⁰.

According to Sintomer, the first wave includes all those mini-publics developed in the second half of the 20th century, such as James Fishkin's

⁴³⁰ Y. SINTOMER, *De la démocratie délibérative à la démocratie radicale? Tirage au sort et politique au XXI siècle*, in *Dans Participations*, 2019, 23, pp. 33-59.

deliberative polls⁴³¹, Peter Dienel's Planungszellen, and Ned Crosby's citizens' juries.

Despite their diversity, these models shared key defining characteristics⁴³²: they involved representative samples selected through sortition based on broad sociological categories, and they had consultative functions. They were top-down procedures – initiated not by citizens but by institutions or research centres, for example – sporadic in nature, where sortition served the purpose of ensuring high-quality deliberation. All of them reflected the idea of civic participation as an essential element for the health of political systems, with deliberative democracy understood as integrative and additive with respect to representative democracy. Lastly, these were experiments carefully developed and monitored by their creators – sometimes even patented⁴³³.

Within this first generation of mini-publics, the models were fairly identifiable, homogeneous, and systematically organised in relation to one another. Cross-pollination occurred due to their shared deliberative logic; yet each experience was the pragmatic embodiment of a specific normative model.

⁴³¹ J. FISHKIN, *Deliberative Polling: Executive Summary*, in Center for Deliberative Democracy at Stanford University, 1988; S. ELKIN, *Deliberative Democracy and Deliberative Polling*, in *The Good Society*, Vol. 9, 1, 1999, pp. 14-16. An overview of this practice can be found at the link <https://participedia.net/organization/deliberative-democracy-lab-at-cddrl-formerly-the-center-for-deliberative-democracy> describing James Fishkin's activities at Stanford University's Centre for Deliberative Democracy.

⁴³² Sul punto, cfr. Y. SINTOMER, *De la démocratie délibérative à la démocratie radicale? Tirage au sort et politique au XXI siècle*, cit.

⁴³³ Per esempio, il *deliberative polling* di James Fishkin è soggetto a *copyright*.

The “second wave”, or second generation, of mini-publics, by contrast, constitutes a much more fragmented and heterogeneous universe. In fact, as Sintomer himself states:

“dans la deuxième partie, je présenterai la seconde vague d’expériences, beaucoup plus diversifiée que la première. Des assemblées citoyennes aux initiatives citoyennes de l’Oregon, de l’Association des étudiants de l’Université de Lausanne, du Conseil supérieur de la fonction militaire français au Parti de gauche Morena au Mexique, de l’usage du tirage au sort entre 2011 et 2016 par des mouvements sociaux de type Occupy jusqu’aux mouvements politiques d’Emmanuel Macron et Jean-Luc Mélenchon, il s’agit de dispositifs hybrides et inventifs offrant un espace à l’imagination créative tant des praticiens que des théoriciens. La plupart de ces dispositifs sont directement liés à des prises de décision réelles et peuvent donc être analysés comme des processus dotés d’un pouvoir significatif. Ils sont parfois appariés aux institutions représentatives, mais aussi, dans d’autres cas, à la démocratie directe et à la démocratie participative. Ils articulent souvent démocratie délibérative et démocratie radicale”⁴³⁴,

where the author understands radical democracy as the form practised in ancient Athens. In short, a second generation in which deliberative creativity has most fully expressed itself, and at the same time has become increasingly fragmented, giving rise to a set of pulverised practices, each markedly different from the next.

⁴³⁴ Y. SINTOMER, *De la démocratie délibérative à la démocratie radicale? Tirage au sort et politique au XXI siècle*, cit., p. 35.

The distinction Sintomer draws between the two generations of mini-publics finds its foundation in a different conception of sortition, which, according to him, plays a distinctive role in each wave.

As for the first generation, it emerged at a time when a structural critique of the prevailing democratic system was maturing, but when faith in parliamentary institutions still remained strong. In other words, deliberative and participatory instruments were still operating within the representative framework, and the role of political parties was not yet under radical or wholesale questioning. It was a period when, even in countries like Italy, the assembly-based model functioned as a cornerstone of the political-constitutional system—particularly in parliamentary practice.

Given this context, these mini-publics embodied a genuine “deliberative turn” that emphasized the use of random selection, promoting instruments that were more attentive to citizen participation, expression, and the quality of public debate⁴³⁵. What most defined them – besides trust in deliberative *lógos* – was precisely their reliance on the method of sortition, an element that had not yet influenced theorists of participatory democracy⁴³⁶.

Thus, in 1969, in Germany, at the Research Center for Citizen Participation of the University of Wuppertal, Peter Dienel developed the *Planungszellen*, or “planning cells”. The first experiments were conducted in the winter of 1972–1973, later becoming more refined during the 1980s,

⁴³⁵ *Ivi*, p. 36.

⁴³⁶ B. DE S. SANTOS (ed.), *Democratizing Democracy. Beyond the Liberal Democratic Canon*, Londra/New York, Verso, 2005.

particularly at the municipal level in German-speaking countries – Germany and Austria – thanks to the establishment by Professor Dienel of the Nexus Institute. This institute was created to organize and provide consulting services for participatory experiences based on the planning cell model and is still active today⁴³⁷.

At the same time, in the United States, Citizens' Juries were being developed, conceived by Ned Crosby in his doctoral thesis in social ethics and later refined at the Jefferson Center in Minneapolis, which he founded in 1971⁴³⁸. They were first tested in 1974, focusing on the issue of healthcare⁴³⁹.

The Citizens' Jury method was also used for a brief period to evaluate candidates for elections at both the federal and national levels:

“The CJ model was used to evaluate Presidential candidates in the 1976 U.S. election for the first time. The Jefferson Center pursued this theme into the 1990s,

⁴³⁷ Today, the Centre, run by Prof. Dienel's children, welcomes professors and researchers committed to implementing citizen participation. The website also provides a database on the *Planungszellen* organised from 1976 to 2022, link: <https://nexusinstitut.de/ueber-uns/>. The topics covered are typically related to the local area, such as local transport or the use of urban spaces. In this regard, see P. DIENEL, *Techniken bürgerschaftlicher Beteiligung an Planungsprozessen*, Offene Welt, 101, Opladen, 1970; ID., *Die Planungszelle*, Wiesbaden, Westdeutscher Verlag, 1997; G. TONELLA, *Die Planungszelle. Processi di coinvolgimento deliberativo e forme di amministrazione partecipativa*, il Poligrafo, Padova, 2012.

⁴³⁸ N. CROSBY, *Healthy Democracy: Empowering a Clear and Informed Voice of the People*, Saint Paul, Minnesota, Beaver's Pond Press, 2003; ID. ET AL., *Citizens' panels: A new approach to citizen participation*, in *Public Administration Review*, Vol. 46, 2, 1986, pp. 170-178; N. CROSBY, D. NETHERCUT, *Citizen Juries: Creating A Trustworthy Voice of the People*, in J. GASTIL, P. LEVINE, *The Deliberative Democracy Handbook*, Jossey-Bass, San Francisco, 2005, pp. 111-119.

⁴³⁹ A. POTTORFF, *The Jefferson Center's Journey*, Jefferson Center, 1 July 2013.

experimenting with use of the Citizens' Jury method for evaluating candidates in upcoming elections including examining the major candidates in the gubernatorial race in Minnesota in 1990 and a U.S. Senate race in Pennsylvania in 1992. This application of the method did not involve an evaluation of the candidates per se, but asked jurors to evaluate their stances on various issues. In doing so, this application received a positive response in the media, with the juries stimulating public debate⁴⁴⁰.

However, the use of such tools – where a small group of citizens would assess candidates' policy positions – was ultimately considered inappropriate for a nonprofit think tank. Indeed, “[...] in 1993 the Internal Revenue Service ruled that this activity was inappropriate for a nonprofit organization, and threatened to remove the Center’s tax-deductible status”, as it essentially engaged in activities more typical of political organizations. As a result, the Jefferson Center decided to discontinue the use of Citizens’ Juries in relation to electoral campaigns and candidacies⁴⁴¹.

From a structural standpoint, both forms of mini-publics present substantially similar procedures, although their creators were unaware of each other’s models and experiments until 1985⁴⁴². Both rely on a random, representative sampling of a relatively small number of participants, with the aim of producing recommendations on a given issue as the result of an informed discussion.

⁴⁴⁰ See the page dedicated to Participedia CJs, available at the link <https://participedia.net/method/155>.

⁴⁴¹ *Ibidem*.

⁴⁴² A. ZEI, *Il diritto e il caso...*, cit., p. 198.

Closely related to Citizens' Juries and planning cells are consensus conferences, conceived and first organized by the Danish Board of Technology in the second half of the 1980s⁴⁴³.

Towards the end of that same decade, deliberative polling was added to the family of mini-publics. It was developed by the American political scientist and sociologist James Fishkin – later assisted by Bob Luskin – and introduced in an article and a monograph published in 1988 and 1991⁴⁴⁴, respectively. It was described as “a unique form of political consultation which combines public opinion research and deliberation to identify how public opinion on an issue might appear if citizens were better informed.”

Its objective was to create a space for rational and reasoned information, in light of what Fishkin termed “rational ignorance,” a condition that, in his view, characterized the general public's approach to political issues and was evident in the results of traditional polls. In other words, citizens are not incentivized to become informed for various reasons, such as lack of time or the high cognitive effort that acquiring information demands. As a result, the opinions formed are mostly “phantom opinions,” and polls me-

⁴⁴³ In this regard, see I. ANDERSEN, B. JÆGER, *Scenario workshops and consensus conferences: towards more democratic decision-making*, in *Science and Public Policy*, Vol. 26, 5, 1999, pp. 331-340; A.P. NIELSEN, J. HANSEN, B. SKORUPINSKI, H. W. INGENSEP, H. BARANZKE, J. LASSEN, P. SANDOE, *Consensus Conference Manual*, The Hague, LEI, 2006; For general information on this type of mini-public, see S. JOSS, J. DURANT, *Consensus Conferences*, London: National Museum of Science and Industry with the support of the European Commission Directorate General XII, 1994.

⁴⁴⁴ J.S. FISHKIN, *The Case for a National Caucus: Taking Democracy Seriously*, in *Atlantic Monthly* (August), 1988, pp. 16-18; ID., *Democracy and Deliberation: New Directions for Democratic Reform*, New York: Yale University Press, 1991.

rely offer a snapshot of public opinion under conditions where the public has little information, attention, and/or interest regarding a given issue. Therefore, deliberative polling sought to offer an alternative – a representation of what public opinion would be under ideal conditions: namely, conditions in which citizens had access to accurate and balanced information⁴⁴⁵.

It nevertheless differed from other experiments not only in this fundamental matrix – which, moreover, represents a further and different rationale for the use of sortition – but also in having a higher level of participants and a more rigid procedure, which requires participants to complete two anonymous questionnaires so that their opinions may be traced both before and after the process.

Still, like the other practices, it did not present itself as an alternative to representation but rather as a cognitive and communicative practice.

The deliberative polling was first trialed in Great Britain in 1994, specifically in Manchester:

“The first ever Deliberative Polling experiment was held on April 15, 1994 in Manchester, England. A randomly selected sample of 301 British citizens participated in the event, and over the next two days considered and discussed a range of policy proposals to deal with crime. During the event, participants met, deliberated in small group-sessions and then put

⁴⁴⁵ J.S. FISHKIN, C. FARRAR, *Deliberative Polling: From Experiment to Community Resource*, in J. GASTIL, P. LEVINE (ed.), *The Deliberative Democracy Handbook*, San Francisco, Jossey-Bass, 2005, p. 68-79, p. 73.

questions to and heard answers from a panel of experts and representatives of the Conservative, Labour, and Liberal Democratic parties. At the end of deliberation day, participants were then asked to once more provide their opinions, which were recorded and later broadcast in a two-hour television special shown on Britain's 'Channel 4'. The Poll was viewed as largely successful, with before and after opinion poll results showing that almost half of participants change their initial positions: nearly 40 percent adopted a more moderate position, and some 10 to 15 percent switched sides completely⁴⁴⁶.

In short, the Manchester event was a true forum for engagement among citizens, experts, and political actors on the subject of criminal policy, but whose goal was essentially to inform citizens rather than to formulate recommendations – consistent with the premises upon which Fishkin began his studies, and thereby demonstrating the intuition that led him to develop his model.

Afterwards, it was adopted by local and regional governments around the world. At the national level, five deliberative polls have been experimented with in Great Britain, two in Australia, two in the United States, one in Bulgaria, one in Denmark, and many others at regional and local levels⁴⁴⁷. In Italy too, in 2006 and 2007 there were two examples of delibe-

⁴⁴⁶ *Deliberative polling*, in *Participedia.com*, <https://participedia.net/method/deliberative-polling>.

⁴⁴⁷ For a complete list, with related press coverage, please refer to the website of the Centre for Deliberative Democracy at Stanford University, today Deliberative Democracy Lab – Center on Democracy, Development and the Rule of Law: <https://deliberation.stanford.edu/projects/location>.

rative polling at the local level: the first in Lazio (on public health); the second in Turin, on voting and immigration, and on infrastructure for the high-speed line between Turin and Lyon⁴⁴⁸.

In all these cases constituting the first generation of mini-publics, the promoters/inventors were, according to Sintomer, animated by a desire to relocate in contemporary settings the direct democracy of ancient Athens.

However, in these experiments one cannot properly observe the logic of Athenian self-government – according to arguments substantially overlapping with those advanced in earlier chapters concerning the difference in the use of sortition, then and now – and, in particular, with regard to the shift between self-government and descriptive or sample-based representation. If the government of Athens essentially embodied the former, the first-generation mini-publics were based on the statistical and sample logic produced by random selection, entirely unknown to the ancients.

The connection to ancient Athens was particularly tangible in Fishkin's reflections: he was deeply inspired and influenced by studies of Athenian democracy by one of the foremost scholars of ancient Greece, the Dane Morgan Hansen⁴⁴⁹. In short, Fishkin's curiosity to re-propose in modernity the ancient scheme of the democratic *pòlis* acted as the spark for the construction of his deliberative model, with a continuity with the past that, however, is only ideal in light of the systemic differences between the forms of antiquity and those of modernity: both in the general form of go-

⁴⁴⁸ See <https://deliberation.stanford.edu/projects/location/europe/italy>.

⁴⁴⁹ M.H. HANSEN, *La democrazia ateniese nel IV secolo a.C.*, LED, Milano, 2003.

vernment; in inclusion and participation and the selection of participants; and more broadly in what might be called the cultural context.

Indeed, it is worth recalling that Hansen cites the five pillars upon which any deliberation should be built: ordinary citizens have the capacity to decide; ordinary citizens must set aside their private interests if they conflict with the general good; ordinary citizens can be sufficiently informed; ordinary citizens are interested in participating in political decision-making; and a rational process of decision-making is not necessarily dependent on professionals⁴⁵⁰. These were the guiding compasses for each citizen of the *pòlis*. The question, however, is this: according to a perhaps banal principle of reality, is it possible today to imagine citizens interested in political decision-making and setting aside their private interests? Perhaps yes – but only for a portion of the whole, namely those disposed and predisposed to participate in deliberative democracy. And then, might not the latter lose its reason for being, wherever it is founded on the cult of caring for the ills of democracy?

Turning, instead, to the second generation of mini-publics, Sintomer first observes that in reality – and despite the hopes of their inventors – the models of the first wave did not achieve significant diffusion; whereas those of the second generation have. They started strong from the earlier experiences, opening up to greater flexibility in application, thereby giving rise to a vast richness of models.

⁴⁵⁰ M.H. HANSEN, *Democrazia diretta, antica e moderna*, in G. BOSETTI, S. MAFFETTONE (eds.), *Democrazia deliberativa: cosa è*, Luiss University Press, Roma, 2004, pp. 115-132, pp. 117-118.

The French political scientist identifies, within the second family of mini-publics, four main currents of innovation in sortition. First, mini-publics combined with direct democracy; second, those connected with participatory democracy; third, permanent assemblies within institutions or associations; and finally, methods of random selection within political parties.

Before proceeding, however, a methodological caveat is appropriate. In order to unpick the knots of his argument and the doubts raised by the classification he proposes, it is first necessary to summarise the fundamental steps as operated by the author; subsequently, to understand how and why this provokes some doubts, it will be useful further to extend the line of reasoning – which will occupy, therefore, also the next paragraph – that addresses two categories of mini-publics: Citizens’ Assemblies and the Oregon model.

Indeed, with respect to the first category, Sintomer includes within it the experiences of Citizens’ Assemblies, which often have been and are followed by referendums; and mentions exemplary cases such as those of Ireland, Iceland and Canada (in particular, British Columbia). Also belonging to this family is the Citizens’ Initiative Review, a specific and special variant of Citizens’ Juries⁴⁵¹. In all of these cases, deliberative democracy would have been fruitfully “paired” with direct democracy within a representative logic.

⁴⁵¹ Y. SINTOMER, *De la démocratie délibérative à la démocratie radicale? Tirage au sort et politique au XXI siècle*, cit., pp. 43 ff.

Secondly, there are those hybrid forms between deliberative democracy and participatory democracy, which in Germany involved Dienel's planning cells combined with broader mechanisms of participation, in particular participatory budgeting⁴⁵²; the same can be said of some French and Dutch experiences, also akin to participatory budgeting⁴⁵³.

Thirdly, Sintomer considers it appropriate to include in the second generation a third current of innovation, consisting in the use of random selection for the composition of permanent councils within institutions or associations: he refers here to the case of Mongolia, to the Federation of Student Associations of the University of Lausanne, and to the *Conseil Supérieur de la Fonction Militaire* (the Superior Council of the Military Function) in France.

Finally, the last current concerns not so much the formation of deliberative mini-publics drawn by lot for advisory or consultative functions, but rather their use in selecting candidates for internal elections in political parties. In this respect, the author recalls the case of the Greek city of Marousi, where in 2006 a body of 131 citizens drawn by lot voted to choose the

⁴⁵² *Ivi*, p. 45.

⁴⁵³ This is the Standing Committee established in Rhones Alpes, France, between 2006 and 2009, and tasked, as a 'technical committee', with administering the budget to finance projects implementing participation in local government: <https://participedia.net/case/7324>; and in 2017, a citizens' forum in Zaanstad, the Netherlands, randomly selected with the task of allocating a budget of €75,000 to improve residents' living conditions, https://zaanstad.raadsinformatie.nl/document/5540079/2/De_wijk; A similar experience was then recorded in Groningen, also in the Netherlands. The affinity with participatory democracy in participatory budgeting plays out both in decision-making functions relating to resource allocation and in the local dimension, which is small and highly participatory.

PASOK candidate (the socialist party) for mayor of the city⁴⁵⁴. Subsequently, there is the significant Mexican case: long discussed in academic circles, proposed by Movimiento Regeneración Nacional (Morena), which decided to select two thirds of its candidates for the legislative elections of June 2015 using a mixed system of election and sortition. In each constituency, party members met in assembly to elect 10 people, and from these elected lists the candidates were then selected by lot. The same procedure was repeated in 2018, when Morena triumphed in the legislative, state and local elections, and in the presidential election with Manuel López Obrador: thus sortition had a very significant impact in one of the largest Latin American countries.

However, even in Europe such procedures are more widespread than might be thought: in Spain, the regional sections of parties like Podemos and Izquierda Unida have introduced sortition in internal procedures, and have done so in Andalucía, Valencia and Murcia. The same in France, where in 2017 La République en marche used sortition to select 25% of the members of its central committee; La France Insoumise, instead, to choose 1,200 delegates to its national assembly of the movement, also in 2017.

In the models experimented in the second generation the logic of the lottery would change, according to Sintomer, in the sense that the latter would embody a true, “neo-Athenian” and contemporary replica, by virtue of their capacity to reproduce the spirit of ancient radical democracy:

⁴⁵⁴ See also M. BUONOCORE, *Un weekend deliberativa all'ombra del Partenone*, in *Reset*, 96, 2006, pp. 6-8.

“Dans une large mesure, la logique du tirage au sort politique a changé entre la première vague et la seconde. Mon deuxième argument historique est que la logique de la première vague d’innovations démocratiques reposant sur des mini-publics choisis au hasard diffère notablement de la dynamique du tirage au sort politique à Athènes, dans la mesure où elle incarne une dynamique de démocratie délibérative plutôt qu’une dynamique d’autogouvernement et de démocratie radicale. En revanche, la deuxième vague est beaucoup plus différenciée et plus compatible avec une perspective néo-athénienne. Les processus de tirage au sort d’instances dotées d’un pouvoir réel qui ont émergé lors de la seconde vague reflètent mieux l’esprit des traditions démocratiques radicales athéniennes que les mini-publics consultatifs”⁴⁵⁵.

This is especially true in so far as the sortition ends up being used for the selection of bodies with “real power”. Thus the second generation, compared to the first, allows one to imagine a greater social influence, because wider and more diffuse, whereas the rigid and closed models of the first family instead entailed the risk of a more palpable split with public opinion (uninformed). In other words, the models of the first generation ended up delineating a “deliberative elite,” where the outputs were completely unknown outside.

It is interesting to note how, in this regard, Sintomer suitably recalls that participation and deliberation can then correspond to two different models, where the dividing line is whether or not there is a deliberative, dialogic model that always presupposes information. One thing is to participate, another thing is to participate deliberatively.

⁴⁵⁵ Y. SINTOMER, *De la démocratie délibérative à la démocratie radicale? Tirage au sort et politique au XXI siècle*, cit., pp. 34-35.

However, I fear that the distinction the Author draws on this point, between the first and second generation, lacks an essential element. Namely, the observation that, although it is true that the models of the second family have had wider application, even taken singly, they have not had it in such a manner as to be able to eliminate entirely that shift which occurs between counterfactual opinion, which matures thanks to deliberative democracy, and public opinion. Each experience always remains, in the end, elitist. Not only in light of the fact that the discussion takes place in an assembly, but by reason, upstream, of the method of selection: not only sample sortition, but sample sortition on a voluntary basis, which substantially has the effect of activating citizens already predisposed to be so.

Perhaps one formula is an exception to all this: namely, the Citizens' Initiative Review, or Oregon model, for a number of reasons related to this model's structure and aims. All this will become particularly evident once one addresses more specifically the Citizens' Assemblies first and then the Oregon model, as already indicated earlier. It suffices, for now, to keep this aspect in mind.

Secondly, a further concern – more methodological but ultimately also conceptual – arises from having included in the classification all those formulas in which there are indeed mini-publics, but not mini-publics organized as such, rather as part of selection procedures for bodies already existing: from institutions, to associations, to political parties.

So much so that, in reality, perhaps it would not be correct to speak of mini-publics. Because the term is meant to refer to the deliberative micro-

cosm: that is, a body which representatively mirrors society, and does so to deliberate in an informed manner.

The Author's intention was, very probably, to show the potentials of a "neo-Athenian turn" today, showing how the use of one of antiquity's most peculiar methods, sortition, can be significant and influential even in the organs of contemporary political power. And yet, partly, this is something else.

In cases such as those concerning assembly bodies of institutions, associations, or parties, we are talking, in point of fact, about the use in itself of sortition, but not about "deliberative sortition," that is, random selection aimed at composing bodies charged with discussing a specific issue. The two themes seem overlapped, but there is a clear difference. And I think it is important to point it out: one thing is deliberative democracy, another is the extension of the use of sortition to certain domains of the existing representative circuit.

Proof of this is its field of application, which, as noted in chapter four, is much broader than deliberative democracy alone; which has then adopted sortition because the latter aligns well with the foundations and *raison d'être* of deliberative theory, and which in practice becomes, precisely, *deliberative democracy by sortition*.

What can be usefully derived from Sintomer's classification is, certainly, the observation that the Author has been able to grasp and reduce to a systematisation the chronological succession in the development of deliberative practices.

The first generation is configured as more sectoral and limited: in short, the first steps of deliberative practices. The second generation—apart from which, thus, I would therefore exclude sortition inside political parties and in institutional bodies—shows, instead, a greater maturity in the constitution of deliberative mini-publics: which, however, it is by no means guaranteed, connect with instruments of direct democracy through referendums. Certainly, often so, but it is necessary to further distinguish between Citizens' Assemblies with or without direct democracy outputs. And it is necessary to make a clearer distinction between Citizens' Assemblies and the Oregon model: in terms of how they are respectively structured, they are, in my view, two undoubtedly different deliberative practices: while in the second (Oregon model) *there is*, in the first (CAs) *there may be* a connection with referendum instruments.

All this rather shows a crucial aspect: the difficulties of operating homogeneous classifications are yet another proof of the extreme variety of recipes that characterize deliberative democracy practices. Which today are promoted and organised by research centres and institutes, often independent, that provide consultancy to third parties, among which institutions in the first place, in order to stage such practices through the promotion of different procedures, also in light of specificities and needs.

In doctrine, some have in fact spoken of a true “market of participation”⁴⁵⁶.

⁴⁵⁶ J. TALPIN, *¿Democratiza el sorteo la democracia? Cómo la democracia deliberativa ha despolitizado una propuesta radical*, in *Daimon. Revista Internacional de Filosofía*, 2017, pp. 187-209, p. 193.

3. Citizens' Assemblies

Within the practices of deliberative democracy, a central role is undoubtedly played by Citizens' Assemblies, which have seen a gradual process of expansion since the early 2000s. These are therefore forms of participation that belong to the literature and tradition of deliberative democracy, and they differ from other deliberative practices by involving a greater number of participants, by the more extensive and intensive duration of the process, and by the production of detailed recommendations regarding the issue for which the Assembly has been convened⁴⁵⁷.

Citizens' Assemblies are a phenomenon within which certain recurring trends can be identified, precisely because there is no single model of Citizens' Assembly – just as there is no single model of deliberative democracy. The common thread linking all these practices lies, first and foremost, in their mutual diversity and the notable lack of systematisation: indeed, there are numerous archetypes of CAs, which differ in their methods of implementation and formation, the number and selection methods of participants, as well as in their goals and content. Within this diverse landscape, another common denominator is the fact that these processes, as previously mentioned, have often been initiated – or today find renewed relevance – in response to periods of political tension.

⁴⁵⁷ O. ESCOBAR, S. ELSTUB, *Forms of mini-publics. Research and development*, in *new-Democracy*, note 4, 2017, available at the link https://newdemocracy.com.au/wp-content/uploads/2017/05/docs_researchnotes_2017_May_nDF_RN_20170508_FormsOfMiniPublics.pdf; Organisation for Economic Cooperation and Development, *Innovative citizen participation and new democratic institutions: Catching the deliberative wave*, OECD Publishing, Paris, 2020.

As with earlier deliberative experiences, the range of issues addressed is very broad: environmental, ethical, and social topics are the most common, especially at the national level, while issues concerning urban planning, land use, and transportation tend to appear more frequently at the local level. More rarely, but still significantly, Citizens' Assemblies have dealt with constitutional and electoral issues, which were the focus of what are perhaps the two most paradigmatic cases of such Assemblies, held in Iceland and Canada, respectively.

With regard to procedural aspects, various models have been used at different times. Firstly, in terms of how they are initiated, many Assemblies are organised from the top down, particularly at the formal initiative of parliamentary and/or governmental institutions; there are also bottom-up Assemblies, conceived "from below" by citizen and civil society mobilisations, with Ireland and Belgium being notable pioneers in this regard.

Some theorists of deliberative democracy are reluctant to endorse the top-down approach, considering it essential that participatory and deliberative initiatives always originate from below, both to ensure greater freedom in setting the agenda and to preserve their counter-hegemonic nature in contrast to elitist democracy⁴⁵⁸. However, even in top-down procedures, it is often the pressure or influence of civil society that drives parliaments and governments to experiment with deliberative participation.

Secondly, the methods of composing the mini-publics also vary. Although random and stratified selection is considered essential, the specific

⁴⁵⁸ M. BÖKER, *Justification, critique and deliberative legitimacy: The limits of mini-publics*, in *Contemporary Political Theory*, 1, 2017, pp. 19-40.

criteria and variables used for stratification differ from case to case. In some instances, government and/or political representatives were included in the deliberation process, while in others only the lay component of citizens was present.

Thirdly, there are differences in the rules governing the publicity of participants and proceedings. The names of randomly selected citizens may be kept anonymous, partially anonymous⁴⁵⁹, or fully public; in the latter case, proceedings may even be streamed online, with an additional layer of openness that allows the broader public to propose or raise issues⁴⁶⁰.

Moreover, compensation and/or incentives may be offered to participants in order to ensure their sustained engagement in the process, especially since the duration of Assemblies tends to be medium to long-term, often requiring meetings to be held over weekends.

Another interesting procedural variable concerns the rules around *quorum*, which is particularly relevant in practices that are supposed to be based on consensus. In reality, however, almost all cases require some form of “emergency route” in case the desired consensus cannot be reached. Provisions are therefore made for voting mechanisms (by simple, absolute, or qualified majority) and for the recording of dissenting opinions⁴⁶¹. This is a curious characteristic – one that will be taken up again later – because

⁴⁵⁹ In the Irish experiments, for example, only the first names of the participants and their place of residence were disclosed.

⁴⁶⁰ This occurred, for example, in the G1000 procedures in Belgium, during which an online forum allowed all citizens to participate in various stages of the process.

⁴⁶¹ A. ZEI, *Il diritto e il caso...*, cit., p. 204.

it raises two questions. First: if an emergency mechanism must always be foreseen, does this not undermine one of the essential elements of deliberative democracy? Second: if a qualified majority is required instead of an absolute one, what is the *ratio*? Why choose one over the other? In parliamentary procedures, the distinction between these forms of voting is based on specific justifications, both case-related and systemic, related to the nature of the functions the assembly is meant to carry out. In the case of Citizens' Assemblies, what guiding principle informs this choice?

Finally, one last procedural variable concerns the outputs of the Assemblies. While in all cases they perform a consultative function, in some cases the recommendations result in an obligation of consideration by public authorities, whereas in others they do not. In Belgium, this obligation has been established by law, thanks to the institutionalisation of Citizens' Assemblies at the local level in the German-speaking Community. In other cases, such as in Ireland or France, the decision to follow up on the outcomes of the CA – either through parliamentary action or by holding a referendum – is entirely at the discretion of the political authorities.

Nevertheless, all Citizens' Assemblies share two common elements. First, apart from a few countries where they have been institutionalised—Belgium being the most paradigmatic case, albeit only at the regional level – Citizens' Assemblies, like other deliberative practices, are organised on an ad hoc basis: for a limited period of time and focused on a specific issue. Second, the structure of their proceedings is, more or less, always divided into three phases: the selection phase, in which participants are chosen; the

information phase, or “Learning Phase,” during which participants attend targeted lectures on the assigned topic, delivered by professionals and/or academics; and the discussion phase, which is the core of the entire process, in which citizens debate and deliberate, usually divided into small groups to encourage openness and active listening.

3.1. *Origins and definition*

At this point, it becomes clear how difficult it is to precisely identify the origins of such disparate and fragmented phenomena. However, it is widely agreed that the models falling under the category of Citizens’ Assemblies originated from the experiment conducted in the Canadian province of British Columbia in 2000, which will be discussed shortly.

Before that, one last consideration is necessary regarding their definition. The term in English is, as is well known, Citizens’ Assemblies. However, in the Italian legal literature, one encounters the terms “*Assemblee di cittadini*,” or often “*Assemblee cittadine*” or “*Assemblee civiche*,” all used as synonyms. Now, while the legal scholar’s task is to make distinctions, here too a distinction – one that is not merely formalistic – seems appropriate.

The different denominations – that is, the choice between *Assemblee di cittadini*, *Assemblee cittadine*, or *Assemblee civiche* – carry with them a conceptual differentiation regarding the nature of Citizens’ Assemblies as components of deliberative democracy. It is only the first term, “Assem-

blee di cittadini,” that allows for a correct definition and emphasis on their most important characteristic: namely, that they are deliberative bodies *composed of citizens* who engage in dialogue and discussion on multiple levels – national, regional, or local; thus, not only or primarily at the “city” level – on a specific topic about which they are informed. They are not assemblies of cities, but assemblies that have, as an essential element, a particular composition because they are an expression of deliberative democracy – i.e., citizens randomly selected who meet to debate a matter of public significance and therefore “participate” not only through the exercise of the right to vote. They are, as some associations put it differently, “politicians by chance”⁴⁶².

Therefore, these are not interchangeable or overlapping definitions: Citizens’ Assemblies are one thing; generic “assemblee cittadine” are quite another – a definition that would suggest, rather ambiguously, bodies whose nature is tied to the institutions of a city.

3.2. *Paradigmatic experiences*

The next step will be to examine the most exemplary and paradigmatic cases of Citizens’ Assemblies. The choice has fallen on the Canadian experience, which gave rise to the model; on the Belgian case, which, besides being among the first in Europe, has become emblematic due to its peculiarities and the regional institutionalization of CA bodies; on the Irish case, also among the first in Europe, which brought about major changes within

⁴⁶² It is the Luca Coscioni Association that uses this expression as a kind of manifesto.

the island's legal system and was the first to address divisive and polarizing ethical issues; on the French cases, which, following the Irish model, have dealt with climate and end-of-life issues, and are now counted among the most important examples of Citizens' Assemblies on environmental and ethical matters; finally, on the Icelandic case, where deliberative democracy by sortition played a distinctive, though ultimately unsuccessful, role in the constitutional revision process.

3.2.1. *The leading case of British Columbia*

The first experiment took place in the Canadian province of British Columbia, now twenty years ago. After a decade of political instability⁴⁶³, during which a widespread demand for electoral reform emerged, Premier Gordon Campbell entrusted Gordon Gibson – a Canadian scholar and politician – with the task of formulating a recommendation⁴⁶⁴ on a potential

⁴⁶³ On the political background that led to the development of this experience, see A. LANG, *But is it for real? The British Columbia Citizens' Assembly as Model of State-Sponsored Citizen Empowerment*, in *Politics & Society*, Vol. 35, 1, Marzo 2007, pp. 35-69, and in M. E. WARREN AND H. PEARSE, *Introduction: democratic renewal and deliberative democracy*, in ID. (Ed.), *Designing deliberative democracy: the British Columbia Citizens' Assembly*, Cambridge University Press, Cambridge, 2008, pp. 8 ff.

⁴⁶⁴ G. GIBSON, *Report on the constitution of the Citizens' Assembly on Electoral Reform. Submitted to Hon. P. Geoffrey Plant, Attorney General of British Columbia*, 23 December 2002, "[...] to approximate a descriptive representation of the people of BC, to insulate the process from organized political interests, and to maximize the quality of deliberation and decision-making", see M.E. WARREN, H. PEARSE (ed.), *Designing deliberative democracy: the British Columbia Citizens' Assembly*, cit., p. 10.

reform process⁴⁶⁵. This recommendation was subsequently submitted by the government to the provincial Legislative Assembly, which responded favorably. Thus, the process leading to the establishment of a Citizens' Assembly was initiated for the first time.

Letters of invitation were sent to two hundred citizens in each electoral district, outlining the project and inviting recipients to attend selection meetings, should they be interested. During these meetings, 158 members were randomly selected from among the volunteers: one woman and one man from each of the seventy-nine electoral districts, along with two additional members drawn from the Indigenous community, making a total of 160 members. The literature consistently highlights how the self-selection mechanism generated distinctly positive dynamics within the Assembly, particularly in terms of its functioning. This is largely attributed to the participants' willingness to become informed and their interest in participating – elements that can only be assured through a lottery based on a pool of willing volunteers.

The mandate entrusted to the body thus composed was clear and narrowly defined: to study, discuss, and deliberate on the existing electoral system and, if deemed appropriate, propose an alternative – either in the form of a recommendation or as a question to be put to a possible referendum. An academic team composed of professors and researchers in political

⁴⁶⁵Along with the United States, Canada is one of the few stable democracies that has never undergone significant changes to its electoral law since the Second World War. For one of the most classic and comprehensive examinations of this topic in legal doctrine, reference must be made to A. LIJPHART, *A Study of Twenty-Seven Democracies 1945-1990*, Oxford University Press, New York, 1994.

science and communication was charged with overseeing the Assembly's activities, supported by an administrative staff responsible for logistics and service management⁴⁶⁶. The work of the Citizens' Assembly on Electoral Reform lasted for nearly a year⁴⁶⁷, taking place on weekends, and was structured into three distinct phases.

The first phase was dedicated to a series of lectures by experts and academics on electoral laws, the parliamentary form of government, and representation. This initial learning phase aimed to provide the Assembly members with a solid foundation of knowledge on the subject matter of the forthcoming deliberations, ensuring a sound understanding and manageable grasp of concepts that are generally unfamiliar to the broader public. At the conclusion of this Learning Phase, a preliminary report was published and disseminated to the population of British Columbia in preparation for the second phase of the process: the Public Hearing Phase.

Indeed, between May and June 2004, fifty public meetings were organized across the province to allow the general public to submit questions and comments to the Assembly. Each meeting was attended by members of the CA who were residents of the area in which the hearing took place, and structured to include both a presentation of input from the public and a subsequent discussion phase⁴⁶⁸.

⁴⁶⁶ Each member was entitled to full financial coverage for travel and accommodation provided by the State, as well as an honorarium of 150 Canadian dollars for each day of service at the Assembly.

⁴⁶⁷ More precisely, between January and November 2004.

⁴⁶⁸ Throughout the summer, a dedicated portal was opened on the CA website for further requests and comments from the public: a total of 1,604 submissions were received.

The third and final phase, the Deliberation Phase, took place over six weekends between September and November 2004. At its conclusion, 97% of the Assembly members voted in favor of submitting a referendum on the Single Transferable Vote system, which the Assembly had identified as the most suitable alternative for reforming the electoral legislation⁴⁶⁹.

The final two weekends were dedicated to drafting the referendum question and preparing the final report⁴⁷⁰ detailing the Assembly's recommendation, which was then made available to the public.

On May 17, 2005, 57% of voters supported the system recommended by the BC Citizens' Assembly; however, the result fell short of the 60% threshold set by the Liberal government during the 2001 campaign as the requirement to change the electoral law.

Despite the outcome, the Canadian experience was widely regarded as a success, including in academic discourse. It has been identified as a significant step forward for deliberative democracy, demonstrating the real possibility of democratizing democracy at the very heart of political institutions. While more extensive and in-depth reflections on the matter will be reserved for the final chapter, it is nonetheless appropriate to highlight some specific features of this initial experiment—an experience that was undoubtedly intriguing, though not without its challenges in at least three respects.

⁴⁶⁹ Which, we recall, had until then used the First-Past-The-Post system.

⁴⁷⁰ Available at the link https://citizensassembly.arts.ubc.ca/resources/final_report.pdf.

First, the decisive importance of the role played by political institutions as the driving force behind the process⁴⁷¹; second, the complete exclusion, as evident from the selection process, of government representatives and, more broadly, political actors; and finally, the task assigned to the Citizens' Assembly – namely, deciding whether and how to change the electoral system.

Regarding the first of these aspects, scholars have repeatedly emphasized its essential role in the success of the BC Citizens' Assembly (BC CA), identifying it as a general and equally essential requirement to be considered in the implementation of such processes. The reason is clearly linked to the pressing need for the highest possible degree of independence of the body – its relevance hardly needs to be stressed. The BC CA is widely regarded by most scholars as an excellent model, in which the political leadership succeeded in interpreting the concerns raised by the electorate in the wake of the two elections held at the end of the century, by implementing a process of dialogue and deliberation whose outcome would ultimately be decided by the citizens themselves.

Another merit attributed to the process was the government's decision to step back from the management and direction of the CA, thereby ensuring the complete autonomy of the body from political and governmental forces. However, one aspect, already pointed out by the more attentive scholarship, proved to be a failure: the lack of participation, as members of the

⁴⁷¹ “The CA represents the first time a government has responded to citizen discontents by empowering a citizen body to redesign political institutions so as to address democratic deficits”, cfr. M.E. WARREN, H. PEARSE (eds.), *Designing deliberative democracy: the British Columbia Citizens' Assembly*, cit., p. 7.

CA, of government and party representatives. As a result, the process was not fully inclusive of all relevant interests, positioning the citizens' body on a separate and parallel track, with no real continuity or connection to institutions and political actors.

Finally, "the case has captured the attention of those interested in innovations in democratic institutions and governance: the CA represented the first time in history that ordinary citizens have been empowered to propose fundamental changes to political institutions to their fellow citizens"⁴⁷². This observation reflects a common thread running through the implementation of Citizens' Assemblies as instruments of democratic participation, aimed at promoting significant turning points on specific issues as well as on the very institutional foundations of modern democracies.

The case of the BC CA fits squarely into this latter category, regardless of the specific topic under discussion – namely, British Columbia's electoral system. It also offered scholars an opportunity to reflect further on the question of whether it should be citizens, rather than political elites, who decide on electoral legislation⁴⁷³.

On this point, however, it is necessary to draw some distinctions. The issue is not whether citizens should be entrusted with the decision over the electoral system. Without presuming to resolve this long-standing debate, the central point lies elsewhere. The Citizens' Assembly on Electoral Re-

⁴⁷² Ivi, p. 1.

⁴⁷³ For example, the essay, D. THOMPSON, *Who should govern who governs? The role of citizens in reforming the electoral system*, in M. WARREN, H. PEARSE, *Designing Deliberative democracy. The British Columbia Citizens' Assembly*, cit., pp. 20 - 49.

form had been tasked with developing a recommendation on a potential reform of the province's electoral system. However, what should not be overlooked is the fact that this recommendation would then be submitted to the electorate by means of a referendum. In this way, one of the most problematic aspects of Citizens' Assemblies – the issue of representation – appears to have been addressed.

As previously noted, representation in such bodies is inevitably of a purely descriptive nature: individual members cannot act on behalf of, or in the interest of, any specific group. Even though efforts were made to emphasize a kind of collective representativeness – namely, that the CA as a whole would reflect the community of British Columbia⁴⁷⁴ – the question remains: can such a body legitimately assume responsibility for making a decision so central to the democratic life of a country or province? This runs counter to the logic of representative democracy: the necessarily sample-based nature of a Citizens' Assembly means it cannot and should not be assigned the same decision-making authority as a representative body. At the very least, certain limits must be established. In the case of the CA on Electoral Reform, the outcome, or, from the perspective just outlined, the pressure-release valve, was precisely the submission of the final decision to the electorate, which was called upon to vote on the Assembly's recommendation. After all, it would not have been the first time in Western con-

⁴⁷⁴ “The majority of Assembly members I interviewed said they were there representing their own life experiences, and if pressed, the people of their riding. Together, they believed, they could come up with a decision that met the interests and needs of population as a whole”, cf. A. LANG, *But Is It for Real? The British Columbia Citizens' Assembly as a Model of State-Sponsored Citizen Empowerment*, in *Politics & Society*, Vol. 35, 1, Marzo 2007, p. 54.

stitutional history that citizens were asked, through a referendum, to decide on the electoral system⁴⁷⁵. Nor would it be the last for British Columbia, as two more referenda on the same issue would follow in 2009 and 2018⁴⁷⁶,

⁴⁷⁵ Remaining within the domestic sphere, one cannot help but think back to the referendum season of the 1990s; for another, more recent example in Europe, the referendum held in the UK in 2011 is emblematic. In this context, another and different consideration is that of the reasons why such a choice became necessary, reasons that vary according to the historical, political and constitutional context of each individual legal system. For a comparison between electoral referendums in Italy and the UK, please refer to G. MANARINI, *L'utilizzo del referendum in materia elettorale in una prospettiva comparata: Italia e Regno Unito*, in *Nomos-Le attualità nel diritto*, 2, 2023, also in R. TARCHI, G. D'IGNAZIO, V. PEPE, D. AMIRANTE (ed.), *Dinamiche delle forme di governo e sistemi elettorali. Atti delle giornate di studio della Scuola DPCE e della Fondazione Giambattista Vico a Vatolla (SA), 29-30 aprile 2023*, Editoriale Scientifica, Napoli, 2025, pp. 397-413. For an analysis of the use of CAs concerning electoral reforms to prevent manipulation by political classes, see M. PAL, *The Promises and Limits of Citizens' Assemblies: Deliberation, Institutions and the Law of Democracy*, in *Queen's Law Journal*, Vol. 38, 1, 2012, pp. 259-294.

⁴⁷⁶ However, without the establishment of a CA for the drafting of a recommendation. In this regard, see *Report of the Chief Electoral Officer 2018 Referendum on electoral reform*, 22 October-20 December 2020, available at the link <https://elections.bc.ca/docs/rpt/2018-CEO-2018-Referendum-Report.pdf> where it is specified how "On November 30, 2017, the Electoral Reform Referendum 2018 Act received Royal Assent and came into force. The Act established that the Chief Electoral Officer conduct a referendum to decide whether B.C. should keep its current First Past the Post voting system or move to a system of proportional representation. The Act also established that the question or questions posed to voters on the ballot would be determined by Cabinet regulation. The Act included the framework for conducting the referendum, which set out who could vote and that the referendum be conducted by mail. The Act also established that the results of the referendum would be binding on government"; see also the *Report of the Chief Electoral Officer on the 39th Provincial General Election and Referendum on Electoral Reform*, 12 May 2009, available at the link <https://elections.bc.ca/docs/rpt/2009-GE-Ref-Report.pdf>. It is worth noting that the BC CA served as the model for a subsequent CA on Electoral Reform in the Canadian province of Ontario, an experience that was largely comparable to that of British Columbia in terms of organisation, selection and decision-making procedures (and referendum outcome). See, *ex multis*, A. PERRELLA, S. BROWN, B. KAY, AND D. DOCHERTY, *The 2007 Provincial Election and Electoral System Referendum in Ontario*, in *Canadian Political Science Review*, Vol. 2, 1, 2007, pp.78-87; J. ROSE, *The Ontario Citizens' Assembly on Electoral Reform*, 2007, available at CanadianParliamentaryAffairs.it; P. FOURNIER, H. VAN DER KOLK, R. KENNETH CARTY, A. BLAIS, J. ROSE, *When Citizens Decide: Lessons from Citizens' Assemblies on Electoral Reform*, New York: Oxford University Press, 2011.

making Canada a pioneering country in the field of Citizens' Assemblies on Electoral Reform⁴⁷⁷.

3.2.2. *The pioneering experience of Belgium*

The deliberative process that took place in Belgium between 2011 and 2012 represented a unique deliberative experiment, which matured in the aftermath of a severe political crisis that occurred between 2010 and 2011 – though its roots date back to 2007⁴⁷⁸ – during which the inability of political parties to reach an agreement on forming a government left the country without leadership for a total of 541 days. The initiative that led to the convening of the Citizens' Summit, known as the “G1000”, emerged precisely as a response to this period of political instability, following the efforts of a group of citizens.

⁴⁷⁷ The BC CA inspired the Bürgerforum in the Netherlands, with the difference that on that occasion no referendum was held, see P. FOURNIER, H. VAN DER KOLK, R. KENNETH CARTY, A. BLAIS, J. ROSE, *When Citizens Decide: Lessons from Citizens' Assemblies on Electoral Reform*, cit., pp. 25-26. Australia also experimented with a CA process on electoral reform, this time on a national basis. The Australian Citizens' Parliament took place in February 2009, consisting of one citizen from each federal electoral district. After a phase of proposal submission by all citizens and regional meetings, the issue revolved around the question: “How can Australia's political system be strengthened to serve us better?”. “Our citizens' parliament is a world pioneer: first because it is national and based on one person from each electorate; second because of the “Online Parliament” component; and third – and most important – because we put agenda creation in the hands of the citizens themselves”, J. DRYZEK, *The Australian Citizens' Parliament: A World First*, in *Journal of Public Deliberation*, Vol. 5, 1, Article 9, 2009, p. 5.

⁴⁷⁸ M. HOOGHE, *The Political Crisis in Belgium (2007–2011): A Federal System Without Federal Loyalty*, in *Journal of Representative Democracy*, Vol. 48, 1, 2012; G. CONTI, *Il processo di federalizzazione e la crisi politica del 2011 in Belgio*, in *Nomos*, 2, 2012; G. DE FRANCESCHI, *Così il Belgio ha frantumato ogni record, un anno e dieci giorni senza governo*, in *IlSole24Ore Online*, 19 June 2011; L.T. FUENTES, V. PAGET, *The Belgian initiative G1000. A feasible model of deliberative cyber democracy*, in *doxa.comunicación*, 23, 2016.

The G1000 thus stands as one of the most distinctive examples of bottom-up deliberative procedures, in which the driving force, both financial and intellectual, originated from below, from the citizens themselves⁴⁷⁹. In short, it was a large-scale mobilization of civil society that culminated in the organization of a body created “by the citizens, for the citizens,” funded exclusively through crowdfunding and donations – so as to ensure the greatest possible openness, flexibility, and independence in the definition of the agenda – and organized by citizen volunteers⁴⁸⁰.

It is also important to highlight another feature that makes the Belgian experience particularly relevant within the landscape of new forms of democratic participation in deliberative contexts. It was, in fact, a heterogeneous and hybrid process, combining characteristics and practices typically associated with consensus conferences⁴⁸¹.

The procedure unfolded in three distinct phases.

First, an online public consultation was organized with the aim of defining the agenda of the Assembly. From this initial stage of agenda-setting, the G1000 already distinguished itself from previous deliberative experien-

⁴⁷⁹Moreover, in that context, numerous protests had taken place in the aftermath of the 2010 elections, in the face of the continued failure of political forces to form a government, see K. DIAB, *Belgians are brought together by the fries revolution*, in *The Guardian*, 18 febbraio 2011.

⁴⁸⁰D. CALUWAERTS, M. REUCHAMPS, *The G1000. Facts, figures and some lessons from an experience of deliberative democracy in Belgium*, in Re-Bel (ed.), *Rethinking Belgium*, Brussels, 2013, available at the link <https://www.rethinkingbelgium.eu/wp-content/uploads/2019/08/G1000-Background-Paper.pdf>.

⁴⁸¹*Ivi*, p. 1. The entire process was also supported by G'Home, an online deliberative tool that allowed citizens to hold discussions in a dedicated forum, and G'Offs, discussion sessions that replicated the G1000 at the local level. All this was done with the aim of creating a parallel link between the mini-public and the rest of the citizens.

ces, in which it is usually the organizers – whether citizens or institutions – who determine the topics and objectives. Around six thousand people took part in this first phase, and in October 2011, twenty-five issues were submitted to a final vote. Again through an online procedure, citizens were invited to express their preference for three of them. The outcome identified three main topics: social security, immigration, and the redistribution of wealth in times of crisis⁴⁸².

Subsequently, through a random selection process⁴⁸³ conducted by telephone⁴⁸⁴, 1,000 citizens who had expressed their willingness to participate were selected for the second phase of the process – the Citizens’ Summit held in Brussels in November 2011. Of these, 704 citizens actually took part in the event⁴⁸⁵, during which they were divided into language-based

⁴⁸² C. BELL ET ALII, *G1000 Final Report*, 2012, available at the link <https://www.future-generations.be/en/portal/publication/g1000-final-report>.

⁴⁸³ Unlike the experience of BC CA, therefore, Belgium opted for a broader random selection, with the aim of avoiding, in the opinion of most of the doctrine that has dealt with deliberative democracy, an “informational inbreeding among likeminded citizens”, R. HUCKFELDT, *Vital Democracy*, Oxford University Press, Oxford, 2001, p. 426; see also, *ex multis*, J.S. FISHKIN ET ALII, *Deliberative polling and public consultation*, in *Parliamentary Affairs*, Vol. 53, 4, 2000, p. 660; J. BOHMAN, *Political communication and the epistemic value of diversity: Deliberation and legitimation in media societies*, in *Communication Theory*, Vol. 17, 4, 2007, pp. 348-355; D. CALUWAERTS, J.E. UGARRIZA, *Favorable conditions to epistemic validity in deliberative experiments: A methodological assessment*, in *Journal of Public Deliberation*, Vol. 8, 1, 2012, pp. 1-20. The selection was then reviewed *ex post* to ensure that there was at least an equal distribution of members in terms of gender, age and origin.

⁴⁸⁴ Through Random Digit Dialing, a technique that allows completely random telephone calls to be made to landlines and mobile numbers and has a coverage capacity of 99% across Belgium.

⁴⁸⁵ The lack of compensation probably influenced the lower participation rate compared to the citizens who were actually selected.

groups (bilingual, Dutch-speaking, French-speaking, and German-speaking) and assigned to 81 working tables⁴⁸⁶.

The objective was to reflect, deliberate, and make proposals on the three topics chosen by the Assembly, with the support of a group of moderators and international experts specifically invited by the organizers. The deliberative procedure was designed so that the ideas developed at each working table would be presented in a coherent manner to the central desk⁴⁸⁷. This central body was composed of six experts in deliberative practices, tasked with collecting the proposals from each working group and submitting them to a general vote by all Summit participants – this, of course, following a further phase of discussion. This alternation between deliberation and aggregation phases enhanced the responsiveness of the process, in

⁴⁸⁶ The decision was made to use round tables: this is a detail that should not be overlooked. The arrangement of round tables – rather than rectangular or square ones – suggests equality among the participants, encouraging discussion and debate in an atmosphere free of hostility.

⁴⁸⁷ This is a very common method in deliberative practices. In general, for guidance on deliberative procedures, see J. ELLIOTT, S. HEESTERBEEK, C.J. LUKENSMEYER, N. SLOCUM (ed.), *Participatory Methods Toolkit: A Practitioners Manual*, King Baudouin Foundation, Brussels, 2005.

terms of legitimizing the decision-making phase of the Citizens' Assembly⁴⁸⁸.

Finally, a panel of 32 citizens was selected⁴⁸⁹ to conclude the entire process with a third and final phase of discussion and deliberation on one of the three topics previously addressed, with the aim of drafting a policy report⁴⁹⁰. Subsequently, the panel initiated a phase of dialogue with institutional representatives, and one year after the Summit, on 11 November 2012, a final report was presented to the presidents of the regional parliaments. This report contained opinions and feedback that had emerged over the course and development of the entire process.

From the perspective of the political impact of the G1000's outcomes, the proposals put forward at the conclusion of the deliberative process did

⁴⁸⁸ In literature, there has been talk of throughput legitimacy, which pertains precisely to the central phase of deliberative practice, i.e. the deliberative phase itself; input legitimacy, on the other hand, pertains to the phase of selecting participants and defining issues; Finally, output legitimacy refers to a verification of the subsequent phase, and therefore the need for the outcomes to be reflected in the public sphere, to have some effect on political institutions, and for the citizens who are members of the CA to be accountable for the decisions taken. Together, these characteristics generate an intimate legitimisation of deliberative procedures, an essential precondition for their ability to contribute to greater legitimisation of political systems: "in other words, deliberative processes have to reflect the principles of legitimacy in their own functioning", D. CALUWAERTS, M. REUCHAMPS, *Strengthening democracy through bottom-up deliberation: An assessment of the internal legitimacy of the G1000 project*, in *Acta Politica*, Vol. 50, 2, 2015, pp. 151-170, who also highlights (p. 161) how many minority proposals and ideas were not taken into consideration or put to the vote due to the central desk mechanism.

⁴⁸⁹ In fact, as already mentioned, it has been pointed out in doctrine that the G1000 was a hybrid deliberative experience: the G1000 phase took the form of Town Hall Meetings, while the G32 phase took the form of consensus conferences, see D. CALUWAERTS, M. REUCHAMPS, *Strengthening democracy through bottom-up deliberation: An assessment of the internal legitimacy of the G1000 project*, cit., p. 165.

⁴⁹⁰ "How to dress labour issues and unemployment in our society?", see BELL ET ALII, *G1000 Final Report*, cit., p. 49.

not lead to any formal follow-up or implementation. However, the experiment itself enjoyed success among the public and was subsequently replicated through numerous participatory and deliberative initiatives⁴⁹¹ that followed over the last decade – among them, at the local level, the G100 and the C5000: “hence, while the weight of the results in terms of outputs is low, the weight of the process is quite high”⁴⁹², to the extent that some regions of the country moved toward the institutionalization of Citizens’ Assembly procedures.

Thus, the Belgian case emerges as a pioneering example in the implementation of deliberative practices, being the first in Europe⁴⁹³ to establish an institutional link between Citizens’ Assemblies and Parliament, known as the *Permanenter Bürgerdialog*.

Indeed, in February 2019, the legislative assembly of the German-speaking Community of *Ostbelgien* adopted a law establishing a *Bürgerrat* (Citizens’ Council) – a body composed of randomly selected citizens, renewed by one-third every six months, with the authority to initiate *Bürgerversammlungen* (Citizens’ Assemblies). Between one and three Assemblies may be convened each year on topics chosen by the Council itself. The

⁴⁹¹ See J. VAN DAMME, V. JACQUET, N. SCHIFFINO, M. REUCHAMPS, *Public Consultation and Participation in Belgium: Directly Engaging Citizens beyond the Ballot Box?*, in M. BRANS, D. AUBIN (eds.), *Policy Analysis in Belgium*, Policy Press, Bristol, 2017, pp. 215-234.

⁴⁹² D. CALUWAERTS, M. REUCHAMPS, *Strengthening democracy through bottom-up deliberation: An assessment of the internal legitimacy of the G1000 project*, cit., p. 166.

⁴⁹³ At the international level, between 2008 and 2009, the US state of Oregon institutionalised the deliberative procedure of Citizens’ Initiative Review, a particular model of application of the principle of sortition, as discussed in *Infra*, Chapter VI.

outcomes of the Assembly, in the form of non-binding recommendations, are subsequently discussed in a dedicated committee composed of members of the Citizens' Assembly, members of Parliament, and one minister. These institutional representatives are required to report on the timeline and manner in which the recommendations will be followed up, and must provide detailed justifications in cases where no action is taken. The permanent and fully institutionalized nature⁴⁹⁴ of this procedural chain makes the *Ostbelgien* model an unprecedented prototype of deliberative democracy in both Europe and the world⁴⁹⁵.

In parallel, the Parliament of the Brussels-Capital Region has also established so-called deliberative committees – bodies of and within Parliament – each composed of 45 randomly selected citizens and 15 parliamentarians, following the mixed composition model first used in Ireland during the 2013-2014 Convention on the Constitution⁴⁹⁶.

Once per year, for each standing parliamentary committee, a corresponding deliberative committee is created. One thousand citizens have the opportunity to propose the topics that should be addressed by a deliberative

⁴⁹⁴ Although it is defined in doctrine as quasi-institutional, both the manner of interaction between the CA and the government and the very stringent requirements under which the government is required to justify its failure to follow the recommendations make it seem more appropriate to classify it as a genuine institutionalisation of the process.

⁴⁹⁵ For a detailed description of the organisation of the Council and the CAs, as well as their respective powers and functions, which in many respects reflect the experiences of previous CAs, and the phase of interaction and liaison with the institutional chain, see C. NIESSEN, M. REUCHAMPS, *Institutionalising Citizen Deliberation in Parliament: The Permanent Citizens' Dialogue in the German-speaking Community of Belgium*, in *Parliamentary Affairs*, 75, 2022, pp. 135-153, in particolare pp. 142 ff.

⁴⁹⁶ See *Infra*, par. 3.2.3.

committee, by submitting proposals via the Parliament's web platform. Each deliberative committee convenes for a maximum of four days, during which citizens, parliamentarians, experts, and stakeholders engage in discussions, followed by final deliberations and votes on the proposals developed.

Parliamentarians who abstain from or vote against proposals that receive an absolute majority among the 45 randomly selected citizens are required to justify their decision. Proposals that receive majority approval from both the 45 citizens and the 15 parliamentarians are incorporated into a report, which is then submitted to the corresponding standing parliamentary committee. Within six months, the committee is required to issue a report outlining how and when it intends to act on the proposals contained in the deliberative committee's report.

3.2.3. Ireland: when society mobilizes

The severe backlash Ireland experienced in the aftermath of the 2008 economic crisis triggered considerable political turmoil, against which public dissatisfaction within Irish civil society steadily increased. In this context, between 2010 and 2011, academics and students began to mobilize, publishing articles and giving interviews in which they advocated for the implementation of deliberative practices known as Citizens' Assemblies, modeled on those previously held in Canada and on the emerging G1000 initiative in neighboring Belgium. Shortly thereafter, they founded an organization called We the Citizens, through which they organized a pilot

Citizens' Assembly aimed at demonstrating to political actors the success and usefulness of deliberative approaches⁴⁹⁷.

Not long after, between 2012 and 2013, following up on an electoral promise, the two governing coalition parties initiated the process for the approval of a resolution—voted by both Houses of the *Oireachtas* – that established a Convention on the Constitution. The Convention was tasked with discussing and proposing recommendations on potential constitutional reforms⁴⁹⁸, and reporting them to Parliament. The Convention included an independent chairperson, 29 members of the *Oireachtas*, 4 representatives from Northern Irish political parties, and 66 randomly selected citizens chosen to reflect the Irish electorate in terms of age, gender, and region of residence.

Following the 2016 general elections, a second deliberative body was established: a Citizens' Assembly composed of 99 randomly selected eligible voters, with no participation from political representatives. The CA was given the mandate to discuss both constitutional reforms and a set of important social issues, including the decriminalization of abortion⁴⁹⁹.

⁴⁹⁷ *We the Citizens final report. Participatory democracy in action – a pilot*, dicembre 2011, available at the link <https://www.wethecitizens.ie/wp-content/uploads/2015/05/We-the-Citizens-2011-FINAL.pdf>; *Ireland Participatory Democracy Pilot 'We the Citizens'*, in *partipedia.net*.

⁴⁹⁸ “Reducing the Voting Age and the Presidential Term; the Role of Women and Women in Politics; Same Sex Marriage; Electoral Reform; Blasphemy; amending the Constitution to give citizens resident outside the State the right to vote in Presidential elections; Dáil Reform; Economic, Social and Cultural Rights”.

⁴⁹⁹ “The Eighth Amendment of the Constitution; How best to respond to the challenges and opportunities of an aging population; fixed-term parliaments; the manner in which referenda are held; how the state can make Ireland a leader in tackling climate change”.

In both processes, meetings were held on weekends and featured the participation of experts who provided informational and deliberative support to the members. In both cases, opportunities for the public to submit proposals were also ensured.

The topics of same-sex marriage in the 2013 Convention and abortion decriminalization in the 2016 CA constituted the major issues of the two deliberative processes, in light of the successful referenda outcomes⁵⁰⁰ following the recommendations made by each body. In both instances, the decisions were strictly advisory in nature, leaving the government and parliament entirely free to disregard the outcomes of the Citizens' Assembly.

The enthusiasm and public support that the Convention and the CA generated regarding same-sex marriage and abortion encouraged political authorities to move forward with referenda, as the reforms appeared likely to gain substantial support from the electorate. Thus, in this case, "the real value of the Citizens' Assembly model may lie in how it impacts on the political issues". Indeed, "the primary success of both exercises, however, was that they paved the way for the government to run referendums on what otherwise would have been regarded as risky or controversial topics," thereby encouraging the government to take action.

⁵⁰⁰ The referendum on equal marriage was held on 22 May 2015, while the consultation on the decriminalisation of abortion took place on 25 May 2018. On this subject, see *ex multis*, J. ELKINK, D. FARRELL, T. REIDEY, J. SUITER, *Understanding the 2015 marriage referendum in Ireland: context, campaign and conservative Ireland*, in *Irish Political Studies*, Vol. 32, 2015, pp. 361-381; L. FIELD, *The abortion referendum of 2018 and a timeline of abortion politics in Ireland to date*, in *Irish Political Studies*, Vol. 33, 4, 2018, pp. 608-628.

In the first case, the recommendation made by the Constitutional Convention was immediately endorsed by the government, leading to a referendum⁵⁰¹. In the second, the CA's proposal was reviewed by a special *Oireachtas* committee, and the government subsequently accepted the recommendation to hold a referendum⁵⁰².

Subsequently, other Citizens' Assemblies have been established by the Irish Parliament, following selection and deliberation procedures entirely similar to and modeled on previous experiences: in 2019, the Citizens' Assembly on Gender Equality⁵⁰³, and in 2022, the Citizens' Assembly on

⁵⁰¹ In the case of the recommendations concerning the remaining issues addressed by the CC, some were accepted by the executive, others were rejected or taken into consideration by a ministerial task force: see, in this regard, the report by D. Farrell, *What happens after a Citizens' Assembly?*, in Irish Politics Forum, 18 July 2018, available at the link <https://politicalreform.ie/2018/07/18/what-happens-after-a-citizens-assembly/>.

⁵⁰² The other topics received no response from the executive, with the exception of Making Ireland a leader in tackling climate change, which a special parliamentary committee would examine based on the Assembly's final report, see D. FARRELL, *What happens after a Citizens' Assembly?*, cit.

⁵⁰³ The task entrusted to the CA in the resolution was to "consider gender equality and make recommendations to the Oireachtas to advance gender equality by bringing forward proposals to: challenge the remaining barriers and social norms and attitudes that facilitate gender discrimination towards girls and boys, women and men; identify and dismantle economic and salary norms that result in gender inequalities, and reassess the economic value placed on work traditionally held by women; in particular, seek to ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in the workplace, politics and public life; recognise the importance of early years parental care and seek to facilitate greater work-life balance; examine the social responsibility of care and women and men's co-responsibility for care, especially within the family; and scrutinise the structural pay inequalities that result in women being disproportionately represented in low pay sectors".

Biodiversity Loss⁵⁰⁴ and the Dublin Citizens' Assembly. The latter was the first to be organized concurrently with another Assembly and focused on regional policy issues – specifically, the possibility of introducing the direct election of the mayor of the city of Dublin⁵⁰⁵. Finally, in February 2023, an additional national-level Assembly was established, the Citizens' Assembly on Drug Use, which included citizen members randomly selected from all residents in Ireland, thus extending participation beyond those with voting rights, as had already been introduced in the 2022 Assembly⁵⁰⁶.

⁵⁰⁴ The issues set out in the resolution were: “the international, European, national, regional and local dimensions to the biodiversity emergency; the threats presented by biodiversity loss and the opportunities to reverse this loss; the main drivers of biodiversity loss, their impacts and the opportunity of addressing these drivers; the perspectives of the general public, representative groups, advocacy groups, experts and policy makers on biodiversity loss, and its impact on Ireland; opportunities to develop greater policy coherence and strategic synergies between biodiversity policy and other policy priorities including, but not limited to, economic development, climate action, sustainable development, agriculture and tourism; opportunities to promote greater public understanding of, and support for, urgent action in response to the biodiversity emergency; and opportunities to improve the State's response to the challenge of biodiversity loss, how that response can best be resourced and implemented in a strategic and coordinated manner, and how progress can be measured”.

⁵⁰⁵ The Assembly concluded with 18 formal recommendations, both on the merits of the procedures for directly electing a mayor and on the advisability of holding a referendum. As of May 2025, however, the government has not followed up on the findings of the assembly, essentially for reasons of political expediency, <https://participedia.net/case/the-dublin-citizens-assembly>.

⁵⁰⁶ “For the first time, any adult who is resident in the State was eligible to become a member of the Citizens' Assemblies. This included people who are not Irish citizens and others who are not enrolled on the electoral register. This has helped ensure that the membership is as broadly representative of Irish society as possible”, *2022 Citizens' Assembly on Biodiversity Loss*, in <https://citizensassembly.ie/>, <https://citizensassembly.ie/previous-assemblies/>. The Assembly met between April and October 2023, producing a final report with 36 recommendations, <https://citizensassembly.ie/launch-of-the-report-of-the-citizens-assembly-on-drugs-use/>.

3.2.4. *Constitutional revision and deliberative democracy by sortition*

Within the diverse realm of deliberative democracy by sortition and Citizens' Assemblies, a particularly emblematic strand is represented by their use in constitutional revision processes, deviating from the traditional norms and model of constituent processes. This is, indeed, a veritable Pandora's box, deserving a treatment of its own⁵⁰⁷; nevertheless, in a review of deliberative participation forms, it seemed appropriate to highlight it, along with some critical remarks.

In itself, the birth of a liberal-democratic constitution – excluding, however, models of authoritarian or illiberal constitutions – is always the result of a strongly “participatory” process, either *ex ante* or *ex post*, in which social components intervene – albeit indirectly through representative and referenda mechanisms – to crystallize that set of common values upon which the entire legal system, and thus the civil and political life of a community, is regulated and constructed. European experiences of the twentieth century clearly demonstrate this.

⁵⁰⁷ In doctrine, where the expression “participatory constitutionalism” was specifically coined, there is certainly no shortage of comprehensive works on the subject. For example, see S. BAGNI, *Procesos constituyentes participados y forma del estado*, in *Revista general de derecho público comparado*, 13, 2013; T. GINSBURG, Z. ELKINS, J. BLOUNT, *Does the Process of Constitution-making matters?*, in *Annual Review of Law and Social Science*, 5, 2009, pp. 201-223, *passim*; V. HART, *Democratic constitution making*, in *Special Report*, 107, 2003, pp. 1-12; Y. GAHI, G. GALLI, *Constitution-building Processes and Democratization: Lessons Learned*, in AA. VV., *Democracy, Conflict and Human Security: Further Readings*, vol. 2, Stochkolm, 2006; J. ELSTER, *Lo studio dei processi costituenti: uno schema generale*, in G. ZAGREBELSKY, P.P. PORTINARO, J. LUTHER (eds.), *Il Futuro della Costituzione*, Einaudi, Torino, 1996.

Here, however, we are dealing with constituent processes in which citizens intervene directly, in a consultative and preparatory capacity. In other words, this deviates from the doctrine of constituent power, according to which “the people” is a *conditio sine qua non*, but not the sole source of constituent power because it is not the citizens who write the constitution, but rather the elected representatives, who exercise that power.

Participatory constitutional revision processes imply that the electorate materially contributes to drafting constitutional provisions.

Such processes have emerged, in partially different forms, in Iceland⁵⁰⁸, Romania⁵⁰⁹, in Ecuador, Bolivia⁵¹⁰ and Chile⁵¹¹, as well as in North Afri-

⁵⁰⁸ U. ALLEGRETTI, *Recenti costituzioni “partecipate”. Islanda, Ecuador, Bolivia*, in *Quaderni costituzionali*, 3, 2013, pp. 689 ff. About Iceland, L. G. SCIANNELLA, *Il processo costituente islandese e la democrazia 2.0*, in C. DI MARCO, F. RICCI, L. G. SCIANNELLA (eds.), *La democrazia partecipativa nell’esperienza della Repubblica. Nuovi segnali dalla società civile*, Editoriale Scientifica, Napoli, 2012, pp. 53 ff.; A. MEUWESE, *Popular Constitution-Making: The Case of Iceland*, in D.J. CALLIGAN, M. VERSTEEG (eds.), *Social and Political Foundations of the Constitutions*, Cambridge, Cambridge University Press, 2013, pp. 469-496; H. LANDEMORE, *When public participation matters: The 2010-2013 Icelandic constitutional process*, in *International Journal of Constitutional Law*, 18, 2020; A. HUDSON, *When Does Public Participation Make a Difference? Evidence From Iceland’s Crowdsourced Constitution*, in *Policy & Internet*, 2, 2018; P. PASQUINO, *Constituent power and authorization. Anatomy and failure of a constitution-making process*, in V. INGIMUNDARSON, P. URFALINO, I. ERLINGSDÓTTIR, *Iceland’s Financial Crisis. The Politics of Blame, Protest, and Reconstruction*, Routledge, 2016, pp. 294 ff.

⁵⁰⁹ B. IANCU, *Constitutional Revision in Romania: Post-Accession Pluralism in Action*, in P. BLOKKER (ed.), *Constitutional Acceleration within the European Union and Beyond*, Routledge, London-New York, 2018, pp. 177-196; P. BLOKKER, *The Romanian Constitution and Civic Engagement*, in *Vienna Journal on International Constitutional Law*, 2017, pp. 437-455.

⁵¹⁰ U. ALLEGRETTI, *Recenti costituzioni “partecipate”: Islanda, Ecuador e Bolivia*, in *Quaderni costituzionali*, cit.

⁵¹¹ T. GROPPi, *Il Cile da un plebiscito all’altro. Il rechazo del nuovo testo costituzionale nel referendum del 4 settembre 2022, visto dall’Italia*, in *Federalismi.it*, 23, 2022, pp. 1-11; R. IANNACONE, *Cronache di una morte annunciata? L’eredità del processo costituente cileno*, in *Nomos-Le attualità nel diritto*, 2, 2022, pp. 1-20; G. NAGLIERI, *Il mito e la tecnica della partecipazione nei processi di constitution-making dell’area andina: il costituzionalismo partecipativo nell’esperienza cilena e dintorni*, in *DPCE Online*, 2, 2023, pp. 1855-1875.

ca⁵¹²; some precursor cases occurred in the twentieth century in Poland and Mali⁵¹³.

In Mongolia, on February 9, 2017, an amendment to constitutional revision rules introduced heightened requirements for modifying constitutional norms related to the prerogatives of the Head of State, the Prime Minister, and Parliament: in these cases, the convocation of a panel of randomly selected citizens is required, tasked with expressing opinions on issues identified by Parliament as potential subjects of revision. This model, based on deliberative polling and developed with the consultancy of James Fishkin's Center for Deliberative Polling⁵¹⁴, has already been applied twice: 2017-2019 and 2023⁵¹⁵.

Besides the Mongolian case, the Icelandic example occupies a paradigmatic place within the literature. It was, in fact, the very first case of a participatory constitution in a country close to Europe and, although ultimate-

⁵¹² T. GROPPi, *La Costituzione tunisina del 2014 nel quadro del costituzionalismo globale*, in *Diritto Pubblico Comparato ed Europeo*, 1, 2014; E. DALMASSO, F. CAVATORTA, *Democracy, Civil Liberties and the Role of Religion after the Arab Awakening: Constitutional Reforms in Tunisia and Morocco*, in *Mediterranean Politics*, 2, 2013; C. GAZZETTA, *Dopo le Primavere arabe: Parlamentari e parlamentarismo negli ordinamenti giuridici dell'Africa*, in *Archivio giuridico Filippo Serafini*, 3, 2020.

⁵¹³ P. PASQUINO, *Constituent power and authorization. Anatomy and failure of a constitution-making process*, cit., p. 295; A. PRZEWORSKI, *Ruling against Rules*, in T. GINSBURG, A. SIMPSON (eds.), *Constitutions in Authoritarian Regimes*, Cambridge, Cambridge University Press, 2013, pp. 21-35; S. WING, *Constructing Democracy in Transitioning Societies of Africa: Constitution and Deliberation in Mali*, New York: Palgrave Macmillan, 2008.

⁵¹⁴ J.S. FISHKIN, A. SIU, *Mongolia. Piloting Elements of a Deliberative System*, in B. HE, M.G. BREEN, J.S. FISHKIN (eds.), *Deliberative Democracy in Asia*, Abington-Oxon-New York, Routledge, 2022, pp. 191-204.

⁵¹⁵ A. ZEI, *Il diritto e il caso...*, cit., pp. 212-213, note 65.

ly unsuccessful, it showed both the considerable reach of the participatory wave and the increasingly frequent tendency to “turn to the people” in the face of particularly difficult historical junctures.

Although the constitutional text, dated 1944, required revision and updating, the severe economic crisis that struck the country in 2008 – and which resulted in a profound crisis of confidence in the ruling class – was the main driver for such broad social mobilization. Once again, strong and significant historical events triggered sudden accelerations: whereas in the past these turning points were caused by wars or intense political crises, in Iceland it was the economic issue that served as the spark.

Thus, in November 2009, a panel of about 1,500 citizens, both randomly selected and chosen among members of institutions and associations, met to outline the themes for debate regarding a future new Constitution.

This led, in 2010, to a law – the Act on a Constitutional Assembly, Interim Provision 2010 – which: established a National Forum of 950 randomly selected citizens tasked with continuing the work of identifying themes to address; and instituted elections for a Constitutional Assembly of 25 members, half of whom were citizens not affiliated with political parties, representing the country’s social classes and professions.

This Assembly was subsequently replaced by the Constitutional Council, charged with drafting the legislative proposal, whose sessions opened with discussions on suggestions submitted via a dedicated online platform allowing all citizens to participate in the process⁵¹⁶ – making the Icelandic

⁵¹⁶ On the link with digital technology, see T. ABBIADE, *La e-participation e i processi di elaborazione e revisione costituzionale*, in *Ianus*, 11, 2014 .

case a genuine example of “crowdsourcing,” not only participatory but truly *deliberative*.

The nature of this body was characterized by an inherent tension, a

The Constitutional Council, thus, possessed a kind of inherent haziness in terms of its role and function. It was at the same time a consultative body, entrusted with the task of presenting a project of constitutional reform to the Althingi, and a body claiming a special relationship with the people and, hence, embodying and expressing the people’s constituent power, independently and beyond the will of an allegedly disqualified parliamentary elite⁵¹⁷.

The draft was approved in July 2011, and Parliament called for a consultative referendum, held in October 2012, so that the electorate could express their views. The referendum asked voters to endorse a non-binding mandate according to which Parliament would then adopt the constitutional draft. The question received overwhelming support; however, as it was non-mandatory, and the outputs of such an assembly are by nature weak and advisory, participation in the vote was low – approximately 36%. Ultimately, the project stalled due to the Althingi’s refusal to approve it before the end of the legislature, and opposition from some political forces in

⁵¹⁷ P. PASQUINO, *Constituent power and authorization. Anatomy and failure of a constitution-making process*, cit., p. 294.

the new Parliament – particularly the Independence Party – against modifying the constitution in contravention of its own prescribed procedures⁵¹⁸.

While Umberto Allegretti noted the hope for wider diffusion of such models, he also recognized the difficulty of implementing participatory-deliberative models within constitutional revision procedures – which is easier at the administrative level – some decisive aspects cannot be overlooked.

First, as Allegretti himself points out, the Icelandic project did not foresee any further forms of participatory implementation. In other words, unlike what would later occur in Mongolia, participation was limited to this single, specific case, determined by contingent socio-economic and political emergencies, where political forces shared responsibility for the banking collapse. This – undoubtedly due also to being a first attempt – also signals how the rhetoric of participation is mobilized whenever political turmoil challenges the natural and traditional course of a political system, effectively instrumentalized to contain electoral dissatisfaction. In other words, participation is activated so as not to overly displease the electorate.

Evidence of this, according to Pasquale Pasquino, is that, notwithstanding the aforementioned contingencies,

⁵¹⁸ J.M. CALATAYUD, *Post-Crisis Iceland: We have been living a lie, but we were able to break it*, in *Krytyka Polityczna*, 24 January 2019, available at the link <https://political-critique.org/long-read/2019/post-crisis-iceland/>. Icelandic rules are particularly burdensome, with Article 79 requiring a double vote by Parliament and the renewal of the assembly between the two deliberations. In the event of amendments during the second reading, these are permitted if approved by a qualified majority and the text must be submitted to a mandatory referendum, the validity of which is subject to a quorum of 40% of those eligible to vote.

there were no evident signs suggesting that there might be a reason in Iceland for a deep legal break with the existent constitutional order. In that sense, the idea of writing an entirely new constitution was not clearly justified, and the reasons for bypassing the rules of a “rigid” constitution, like the Icelandic one, to introduce constitutional reform were not persuasive⁵¹⁹.

Thus, a sort of emergency brake to be activated when needed, which often, as happened, fails to achieve the objective for which participation was implemented, because it inevitably operates on a different and parallel track with respect to the representative system. But “a stable constitution cannot originate in a ‘constitutional coup,’ in a political order imposed by one section of society over the others”⁵²⁰.

3.2.5. *The French experience: deliberative democracy for the environment and end of life.*

In France, two national Citizens’ Assemblies have been organized quite recently and have become points of reference in the field, emblematic in virtue of their respective topics: the first, climate change; the second, end-of-life issues.

These assemblies have served as classic examples of how deliberative democracy can be applied to sensitive, divisive, and polarizing issues –

⁵¹⁹ P. PASQUINO, *Constituent power and authorization. Anatomy and failure of a constitution-making process*, cit., p. 295. Essentially, these are controversial reflections on the use of participation as a tool for consolidating power, rather than for implementing participation itself, and we will certainly need to return to this topic later.

⁵²⁰ P. PASQUINO, *Constituent power and authorization. Anatomy and failure of a constitution-making process*, cit., p. 300.

those that inevitably require a long-term perspective and a sense of responsibility, which lawmakers themselves seem to have lost.

In April 2019, President Emmanuel Macron, following the success of the participatory model of the *Grand Débat National* he initiated in 2018–2019⁵²¹, announced the establishment of a Citizens' Assembly tasked with identifying measures to accelerate the ecological transition process.

It was the Letter of Mandate issued by Prime Minister Édouard Philippe in July 2019 that defined the structure and mission of the Convention. A total of 150 citizens were to be randomly selected to discuss effective measures for reducing national greenhouse gas emissions by at least 40% by 2030.

The organization and management of the assembly's work were entrusted to the *Conseil économique, social et environnemental* (CESE), which set up a Governance Committee responsible for selecting participants and assisting them in preparing for and carrying out the deliberative process. The selection began in August 2019, based on criteria such as age, gender, level of education, geographic origin, urban or rural residence, and occupation.

⁵²¹ On *Grand Débat National*, which in turn took as its model the *Débat public*, which had already been in existence in France for over twenty years, see *ex multis* P. PICCIACCHIA, *La ricerca dell'incerta sintesi tra democrazia rappresentativa e democrazia partecipativa. Riflessioni a margine del Grand Débat National*, in *DPCE Online*, 3, 2020, pp. 3193 ff.; A. ANGELI, *Conflitto sociale e decisione pubblica nell'era digitale: il Grand Débat National nella Francia di Macron*, in *MediaLaws*, 1, 2020, pp. 37 ff.

The Convention's work took place between October 2019 and June 2020, culminating in 149 proposals⁵²². President Macron instructed the government to take the necessary steps to translate these proposals into legislative acts, which ultimately led to the adoption of *Loi n. 2021-1104 portant lutte contre le dérèglement climatique et renforcement de la résilience face à ses effets*, promulgated in August 2021. However, this law incorporated only a very limited number of the recommendations that emerged from the Assembly, as most of them were fundamentally incompatible with the government's political agenda⁵²³.

The second Citizens' Assembly, known as the *Convention Citoyenne sur la fin de vie* (Citizens' Convention on End-of-Life Issues), was announced in September 2022, again by President Macron⁵²⁴. Its task was to determine whether and how "*le cadre d'accompagnement de la fin de vie est-il adapté aux différentes situations rencontrées ou d'éventuels changements devraient-ils être introduits*". The organizational model was largely the same as that of the previous Climate Convention, with the only difference being that CESE appointed a Governance Committee composed of CESE members, members of the National Consultative Ethics Committee, a heal-

⁵²² The results of the work can be viewed at the link <https://www.lecese.fr/sites/default/files/pdf/Convention/ccc-rapport-final.pdf>.

⁵²³ A. BERTELLO, *Cittadini per il clima*, in *Rivista Il Mulino*, 30 September 2020. Furthermore, one of the recommendations provided for the introduction of environmental protection into Article 1 of the Constitution, an attempt at constitutional reform that ultimately failed due to opposition from the Senate.

⁵²⁴ On the topic, see also G. STEGHER, *La democrazia partecipativa a sostegno della democrazia rappresentativa: quale futuro per la legislazione sul "fine vita" in Francia?*, in *Blog di Diritti comparati*, 1st March 2023.

th ethics expert, a specialist from the National Centre for Palliative and End-of-Life Care, several experts in citizen participation, and finally, some citizens who had participated in the Climate Convention.

A total of 184 citizens were selected according to the same procedures used for the previous assembly.

The final report of the assembly's work was presented to the President of the Republic on April 3, 2023⁵²⁵. Seventy-five percent of its members expressed support for assisted dying, thereby deeming the existing legal framework substantially inadequate. However, a quarter of the participants opposed opening up to assisted dying, emphasizing "*les risques de dérives que l'ouverture de l'aide active à mourir pourrait faire peser sur les personnes vulnérables [...] ainsi que les risques de déstabilisation de notre système de santé, face aux réticences fortes d'une partie des professionnels de santé*".

Subsequently, the French government committed to presenting a draft law on end-of-life care that would incorporate many of the insights emerging from the deliberative process.

This draft law was eventually, though laboriously, presented to the National Assembly in April 2024, a full year after the conclusion of the Convention's work. It regulated the matter in line with the majority position that had emerged within the Citizens' Assembly, defining and regulating *aide à mourir* in Articles 5 and following.

⁵²⁵ The report is available at the following link: https://www.lecese.fr/sites/default/files/documents/CCFV/Conventioncitoyenne_findevie_Rapportfinal.pdf.

However, due to President Macron's political decision to dissolve the National Assembly – following the results of the European elections in June 2024 – the draft law subsequently lapsed. This serves as further evidence that, in one way or another, the fate of such participatory practices remains subject to the contingent political and institutional circumstances of the moment.

The overview just presented, together with the considerations developed in the preceding chapters, provides all the necessary tools to now draw the threads together.

In an ideal closing of the circle, it is time to dedicate a specific chapter to some final reflections, in an attempt to untangle the knot at the heart of the relationship between the essence of democracy and the essence of deliberative democracy.

CHAPTER VI

THE DEMOCRATIC PARADOX

Democracy also means accepting a tolerable amount of injustice in order to avoid greater injustices

UMBERTO ECO

*When you find yourself agreeing with the majority,
it's time to stop and think*

MARK TWAIN

*The future is open to
our freedom, our commitment and our responsibility*

KARL POPPER, KARL LORENZ, *Il futuro è aperto*

SUMMARY: 1. Introduction to a Conclusion – 2. The Problem of the Nature and Legitimacy of Sortition-Based Assemblies – 3. The Representative Method and the Deliberative Method: Conflict vs. “Rational Consensus” – 3.1. Democracy as a Struggle for Representation – 4. The (Not So) Curious Case of Authoritarian Deliberation – 5. The Silver Lining: The “Oregon Model”, a Synapse Between Deliberative Practices and Referendums – 6. False Myths and Warning Bells.

1. *Introduction to a Conclusion*

The title of this chapter may seem, perhaps, somewhat obscure. Yet the explanation is easily given. It is, in my view, a highly effective and emblematic reference to an interesting and dense essay written at the beginning of this century by the well-known French political theorist Chantal Mouffe⁵²⁶, reissued in its Italian edition in 2024. That work, which brings together various articles she wrote and published between 1995 and 2000 – fruit of the research and reflections carried out alongside her husband, Ernesto Laclau⁵²⁷ – revolves entirely around a firm and strongly held conviction of the author regarding the true nature of contemporary democracy: its core is, and always will be, conflict, understood in its agonistic form, that is, as struggle.

An obvious idea, one might say. But I am not entirely convinced of this. Have we truly internalized it as a structural and integral part of our democratic life and practice? Do we, first of all, understand what it means and what it entails? It is this very doubt, perhaps, that prompted Mouffe to publish those essays, in which, not coincidentally, she also addresses deliberative democracy, and the theories of Habermas and Rawls, portraying them as among the most deleterious examples of approaches that essential-

⁵²⁶ C. MOUFFE, *Il paradosso democratico. Pluralismo agonistico e democrazia radicale*, edited by Samuele Mazzolini, Mimesis Edizioni, Milano, 2024.

⁵²⁷ An Argentine professor and philosopher, inspired by post-Marxism, he influenced political thought in the 20th century. His most important work is *Hegemony and Socialist Strategy*, written together with his colleague and wife Chantal Mouffe. For more on Laclau, see the portrait published by Il Manifesto on the occasion of his death in 2014, available at the link, <https://ilmanifesto.it/in-nome-del-popolo>.

ly reject the idea of conflict as a foundational element of society and, subsequently, of the political realm.

Democracy breeds fatigue: if one of its essential pillars is the respect for and valorization of what makes us different, and it could not be otherwise in a regime we define as liberal-democratic, then the composition of plurality inevitably demands effort.

The starting point, therefore, must be a continuous, everyday democratic practice that prevents the eruption of weaknesses inherent in the very dynamics of democracy, first among them, habituation to democracy itself. Living in a democratic regime often means growing accustomed to it, gradually leading to a decline in interest in shaping the political direction of the country through the selection of the political class that will make decisions in Parliament. Thus, the indifference of “zombie” citizens corresponds to the abdication, on the part of the governed, of their role in acting and influencing politics through the electoral process – effectively withdrawing from their place within the functioning of representative democracy.

This inevitably leads to a fragmented and polarized exercise of democratic participation, where the self-referentiality of political forces and the paradox of perpetual reform become even more pronounced⁵²⁸. These forces, lacking any vision beyond their immediate interests, stir public opinion by fueling a destructive and harmful dynamic rooted in the culture of

⁵²⁸ As is well known, he spoke of the paradox of reforms G. ZAGREBELSKY, *Adeguamenti e cambiamenti della Costituzione*, in *Studi in onore di Vezio Crisafulli*, vol. I, Cedam, Padova, 1985.

the enemy, resulting not in widespread, sustained participation integrated into each individual's way of thinking and living, but rather in sporadic, ephemeral, and short-sighted forms of "engagement".

Two remedies are typically proposed by deliberative democracies to address such convulsions. On the one hand, democratic practices aimed at fostering dialogue and consensus; on the other, increased participation. These two dimensions are inherently connected within deliberative practices, yet each deserves separate reflection.

Chantal Mouffe is neither the first nor the only thinker to embrace, with deep conviction, the idea and method of conflict: liberal thought has long recognized its importance, both as a daily practice and as a method of governance. The thinking of great intellectuals within the liberal tradition – Luigi Einaudi among them – remains a vivid testament to this understanding even today.

Setting aside Mouffe's personal political inclinations – which, in that essay, lean predominantly toward a radical-liberal perspective, thereby demonstrating how certain ideas cut across various ideological divides – her emphatic reassertion of the conflictual essence of our democracies seemed to me worth revisiting here. I have done so in an effort to place it alongside the foundational concepts of elitism, discussed in the first chapter, and which, in my view, shares the same systemic "*humus*".

The hope, then, is that the reader may find in this final chapter the closing point of an ideal circle, one that began to take shape at the outset of this work. Indeed, after having progressively laid out everything needed to

understand the origins of democracy and representative democracy on the one hand, and the foundations of deliberative democracies on the other, the aim here is to conclude with some final reflections on these two tracks, demonstrating that they are, in fact, alternative and not complementary systems: two tracks which, ultimately, can never truly meet.

2. The Problem of the Nature and Legitimacy of Sortition-Based Assemblies

Before delving more deeply into the distinction between conflict, compromise, and consensus – and, by extension, into the differences between the deliberative and representative methods – it is necessary to address the very delicate issue of the nature and legitimacy of sortition-based assemblies.

Indeed, there exists a close link between the nature – and therefore the structure – and the functions of any institutional body. From its nature, its functions derive, creating a reciprocal and essentially inseparable relationship: in other words, the nature of a body is functional to its very functions.

Venturing into this terrain with regard to deliberative practices is highly complex, in part due to the various interpretations offered in the deliberative literature. Let us therefore attempt, gradually, to untangle the knot.

Once it is established that these assemblies are, quite obviously, non-elective in nature, the question arises: what exactly are these bodies in which members are selected randomly? Can they be reduced to the spaces they occupy and the individuals who comprise them? Are they institutions in the

formal sense? Are there laws that establish them? The answer to the latter appears to be negative. As previously discussed, in top-down processes, it is true that parliament or government may establish such assemblies through legal instruments – but only on a case-by-case basis. Moreover, in most cases, there is no overarching legal framework that regulates the procedures for convening one-off, *ad hoc* mini-publics. In bottom-up processes, they arise spontaneously through civil associations and grassroots movements, and thus these assemblies exist independently of formal rules or the political will of those in power.

Secondly, having determined that contemporary sortition-based assemblies are not and cannot be expressions of direct democracy, they must instead be understood as manifestations of a representative relationship, following the well-known framework proposed by Domenico Fisichella⁵²⁹. According to this view, representation does not necessarily require the electoral element. These sortition-based bodies, precisely because of their non-elective nature, express representation as representativity – that is, descriptive representation – based on the assumption of sociological resemblance or correspondence between society and the assembly, which thereby functions as a collegial microcosm.

Furthermore, some scholars have proposed the concept of indicative representation⁵³⁰. The issue arises from a fundamental question: whom does

⁵²⁹ D. FISICHELLA, *La rappresentanza politica*, cit., p. 13.

⁵³⁰ P. PETTIT, *Varieties of Public Representation*, in I. SHAPIRO, S.C. STOKES, E. J. WOOD, A.S. KIRSCHNER (eds.), *Political Representation*, Cambridge, Cambridge University Press, 2010, pp. 61-89.

each citizen participating in these bodies actually represent? Themselves, or others as well? In other words, what is the representational “baggage” they carry? The idea of indicative representation would then define the meaning of representativity in such assemblies: each citizen would represent and act as if others like them were acting⁵³¹. Thus, the members selected by lot would embody a sort of prototype of the broader population, making the term “representative microcosm” all the more fitting.

However, two major concerns arise from this theoretical framework.

First, there is no guarantee that indicative representation will actually be realized. It is not an automatic process – just as, in parliamentary systems, it is by no means certain that proportional distribution reflects society accurately. There is no guarantee that a Parliament functioning as a “map” of society will necessarily translate society’s desires into political outcomes⁵³². It may do so, or it may not, or it may do so only to a limited extent. Representation, in fact, is a *fiction*, and it is clear that such fiction is reproduced within representative-deliberative microcosms. In parliaments, accountability becomes central – that is, the responsibility of elected officials to answer for their actions, made possible through *ex post* control by voters. But this is only viable when the representative relationship is founded upon an electoral mandate, something impossible in the case of citizens selected by lot and called upon to participate in deliberative assemblies.

⁵³¹ *Ibidem*.

⁵³² G. SARTORI, *Democrazia e definizioni*, il Mulino, Bologna, 1969, pp. 352-375; A. ZEI, *Il diritto e il caso...*, cit., p. 248.

Secondly, “the historical and cultural assumption of representation that expresses participation presupposes an electoral moment”⁵³³. In other words, it is representation in the name of participation. This is the only way in which large territories and populations can organize themselves: by entrusting government to their representatives through competitive selection.

To this, one might object that deliberative forums in fact presuppose the direct participation of citizens, and that these bodies therefore realize a higher degree of democratic engagement.

However, this is not truly the case. These microcosms are, by definition, *microcosms*, and thus they do not constitute bodies in which society as a whole is directly gathered or involved. As we have already seen, they remain, in the final analysis, another form of representative body. As such, the much-sought-after greater participation is, in reality, only marginally enhanced. Or rather, it would be enhanced – if the scale were different, if the probability of being selected were higher for each citizen. But the problem of scale persists and remains in the background.

So, then, why rely on sortition-based assemblies if we already have parliaments? Objections based on their presumed greater impartiality, lower risk of corruption – which are certainly well-founded and legitimate – and the frustration generated by traditional aggregative mechanisms, are often what drive interest in large-scale implementation of deliberative practices, particularly at the national level.

⁵³³ D. FISICHELLA, *La rappresentanza politica*, cit., p. 14.

However, the deliberative circuit is not capable of forming a true conjunction, as it ultimately stumbles over its most innovative feature: the selection of “accidental politicians,” and the systemic challenges this presents for a political system that was never designed to accommodate lottery-based governance.

Finally, regarding the issue of legitimacy, two interpretations have been advanced concerning the legitimacy of deliberative assemblies.

On the one hand, their legitimacy would be justified by the democratic character of these bodies. That is, the representative sample, which indicatively mirrors the social composition, would in itself be capable of producing outcomes that reflect those of the broader citizenry. Thus, the very mode of composition would confer greater legitimacy on the deliberative outputs of mini-publics.

On the other hand, the emphasis is not placed on democratic primacy *per se* – that is only the starting point. Rather, the legitimacy of deliberative forums would be grounded in their epistemic value. That is to say, priority is given to the *deliberative* nature of these bodies, within which outcomes, being more carefully considered and discussed, are presumed to be of higher quality than those produced within assemblies governed primarily by majority rule.

This latter perspective leads us toward the next major issue surrounding deliberative theory and practice: the rejection of the logic of conflict and of preference aggregation.

3. *The Representative Method and the Deliberative Method: Conflict vs. "Rational Consensus"*

It has been repeatedly emphasized that the progressive rise of deliberative theories of democratic thought, along with the practices that followed, finds its driving force in the growing disaffection toward liberal-democratic institutions. From the standpoint of political theory, this corresponds to a desire to overcome the aggregative model of democratic functioning, which, from the dawn of modernity to the present, has gradually solidified. In its place, a system is proposed in which political decisions are reached through processes of deliberation among free and equal citizens.

As Chantal Mouffe aptly notes⁵³⁴, it is important to emphasize that the shift from the aggregative to the deliberative model is played out not only – and not primarily – at the level of procedures, but rather on the plane of their conceptual underpinnings.

It is essential to understand that these differing procedures stem from two fundamentally opposing conceptions of certain pillars of modernity. In particular, the deliberative model is characterized by the revival of a strong moral vision of the political realm – one that has been essentially abandoned by the aggregative model.

The latter, in fact, is defined by a descriptive, instrumental, and pragmatic view of democratic functioning: it is interests, preferences, and elite competition that move power, not an abstract and generic will to act in the interest of the community, nor the consequent necessity for sacrifice, of

⁵³⁴ C. MOUFFE, *Il paradosso democratico*, cit., pp. 110 ff.

Montesquieuan memory, which is considered entirely chimerical. The common good and the general will are nothing more than ectoplasms: it is the compromise among tangible and diverging interests that produces stability, not popular participation, which would instead generate disorder and uncertainty, as well as an empty pursuit of a non-existent common good.

By contrast, the deliberative model rests on the conviction that there exists a form of consensus that goes far beyond mere procedures – namely, a moral consensus. This is precisely what the aggregative model has lacked, leading to the progressive and widespread disaffection toward it. This form of consensus, provided that it upholds both rationality and legitimacy through the defense of liberal rights and the exercise of popular sovereignty, is attained through appropriate deliberative procedures, such that:

“The political system [should] not merely aggregate or filter preferences, but change them through public debate and confrontation. The input of the social choice mechanism should therefore not be raw preferences—perhaps self-interested or irrational—but informed preferences capable of taking others into account. Or even, there may be no need for an aggregation mechanism at all, as rational discussion would tend to produce unanimous preferences”⁵³⁵.

The essence of the exercise of popular sovereignty, then, is no longer defined in terms of preference aggregation, but rather in terms of what Ha-

⁵³⁵ J. ELSTER, *The Market and the Forum*, in J. ELSTER, A. HYLLEND (eds.), *Foundations of Social Choice Theory*, Cambridge: Cambridge University Press, 1986, p. 112.

bermas calls “communicatively generated power”⁵³⁶. That is, to create the conditions under which communicative and informational, specifically, deliberative, methods produce an informed, rational, and legitimate public opinion.

In other words, this is the strategic response offered by deliberativists to manage and domesticate the great new entrant that, beginning in the twentieth century, has taken the stage in national politics: the people.

To channel their impulses – and, at the same time, to ensure that the people finally exercised influence over the management of politics from which they had been excluded for centuries – the emergence of political parties, party systems, and competitive elections was central.

And yet, this system is beginning to fail, having already produced a gradual but inexorable regression of liberal democracy. Thus, to rebuild the link between democracy and liberalism, the solution demands a radical change of perspective—one that nonetheless rests on a perhaps excessive and misleading trust in the moral dimension of consensus.

The reasons underlying this claim are numerous and complex.

Throughout this work, it has been noted that deliberativists emphasize the rationality pursued in communicative action and in free public reason, seeking to show how the rationality of the aggregative model, instrumental and aimed at advancing self-interest, is inherently limited. However, when deliberativists, particularly Habermas and his followers, argue that the objective is to find a way to ensure that democratic decisions represent an

⁵³⁶ J. HABERMAS, *Three Normative Models of Democracy*, in S. BENHABIB (ed.), *Democracy and Difference*, Princeton University Press, Princeton, 1966, p. 29.

impartial point of view – one that reflects the interests of all – they fall into two traps. First, they reintroduce through the back door what had been expelled through the front: the concept of compromise. Second, they begin from what I believe to be an erroneous conception of rationality within the aggregative model – a misunderstanding that is intimately tied to the very idea of compromise.

The latter is not inherently tied to the promotion of self-interest, or rather, it is, but only when understood in the broader context of what “the people” and their sovereignty mean.

The sovereign people is not a unified, indivisible body. It exists insofar as it is composed of the sum of its parts, namely individual persons. That is what the people are. Thus, the rationality intrinsically linked to and essential for the functioning of representative democracy must be instrumental and self-interested – instrumental for democratic functioning (assuming we still value democracy), and necessarily, even ineluctably, aimed at pursuing the interests of individuals, broadly understood.

Therefore, democracy must be inherently and structurally conflictual, for it is plural, not unitary, and anything but absolute. Within this framework lies the limitation of popular sovereignty in the name of liberty.

This has been, and continues to be, the democratic achievement, but also its price or, if one prefers, its paradox. The complexity, the conflict, and the delicate balance of a divided and ever-evolving entity are difficult and burdensome to manage. This is precisely where compromise originates, along with its constitutive logic: it serves to govern and organize con-

flict. Until we accept this ineluctable and beautiful nature of democracy, it will be difficult for it to advance any further.

Indeed, what has long been underway is becoming evident: a regressive transformation of the very concept and practice of compromise.

No longer the offspring of rationality and democratic-aggregative pluralism aiming for institutional, social, and cultural balance – and no longer the intellectual descendant of Enlightenment thought – compromise is instead becoming a product of populist irrationalism, for no other answers appear to be on offer. And they are not on offer because the culture of conflict has never been truly internalized.

The result is social fragmentation, the self-referential detachment of elites from the real country, widespread social resentment, and fear in the face of ungoverned globalization – all of which fold inward and express themselves paranoically in the form of the internal-external enemy: yesterday it was the Jews, today it is the immigrants.

This fragmentation, both socially and psychologically, paves the way for the rise of populist politics, which serve as the antechamber to illiberal tendencies.

These tendencies, while fanning the flames of problems that either do not exist or are only symptoms of democratic dysfunction and elite irresponsibility, propagate the myth of a unified and absolute sovereign people, a people that, in reality, does not exist. Behind the smokescreen of this mythical people, such movements self-legitimize as the sole bearers of a po-

wer in which no limitation is tolerated, for any limitation is seen as a useless chain imposed by an elite opposing the will and interests of the people.

In this context, the limitations of deliberative philosophy become increasingly apparent. By cultivating the myth of public rationality and rational consensus, deliberative theorists place their bet on what can never be the foundational basis of democracy – for it never has been, and never will be. Thus, instead of countering populism, they inadvertently reinforce it, failing even in their goal to reconcile the dualism between liberalism and democracy – an endeavor ultimately unsolvable within a consensual framework.

Despite their theoretical claims to value diversity and conflict, deliberative theorists, in practice, end up denying them. Ontologically, deliberative democracies paradoxically preach dialogue and confrontation, yet aspire to a form of consensus in the fullest and most absolute sense of the term.

Therefore, the true question is: What do we want to become? We are undoubtedly living in democracies of the dissatisfied. But are we sure we are heading down a path that risks denying plurality, rather than embracing it.

3.1 Democracy as a Struggle for Representation

To better understand the network of critical issues posed by deliberative democracies, it is now appropriate to focus the discussion on the myth of participation, adding the element of elitism – or rather, the contribution that

elitist thought has offered to the interpretation of representative reality. The reflections of elitist thinkers, previously introduced at the beginning of this work, come to our aid here.

Elitists such as Mosca and Pareto, followed by neo-elitists like Schumpeter and Aron, have demonstrated how illusory is the belief that the people truly hold the reins of political power. This is only partially true, insofar as the electorate – which elitists described as the “disorganized majority” – has the power to select a “organized minority.” Consequently, popular will is not the driving force behind the political process but rather its outcome, since this selection always takes place on a playing field where elites provide the range of alternatives. The people, therefore, do not determine decisions but, at most, the decision-makers. It is important to note that this role is by no means marginal and is intimately connected to the characteristics of large and complex mass liberal democracies; however, it certainly overturns the classical conception of participation, general will, and even sovereignty. This naturally means that such selection occurs through peaceful competition among elites and simultaneously guarantees the turnover of government officials.

It is Raymond Aron who insists on this aspect, particularly emphasizing that, for us to say we live in a liberal democracy, this must happen within a playing field where rules are shared and freedom of thought and expression are guaranteed everywhere.

This is the democratic practice handed down by the history of constitutionalism, based on the principles of representation and institutional parti-

cipation that allow the governed to select who will decide for the nation, grounded in a public space open to dialogue and opinion formation, where individuals' convictions are shaped not only by personal beliefs and their educational and cultural background but also, and above all, by engagement with other citizens in day-to-day dialogue and among representatives of various political forces.

Undoubtedly, digitalization and the progressive, especially physical, distancing between representatives and the represented constitute a major Achilles' heel for these dynamics. This problem is well known and has long been addressed by constitutional scholars and experts. Nevertheless, for the time being, we cannot afford to abdicate the system we know: we still need representation and political parties to guarantee those irreducible pillars of democratic regimes.

The criticism directed at deliberative theories, especially those of Habermas and Rawls, lies in their attempt – admirable in intention but debatable in outcome – to find a third way for democratic survival amid the substantial overflow of conflict, aiming to eliminate it through a propensity toward consensual democracy.

From democracy as paradox derive conflict and compromise as junction points of the system. Deliberative democracy contains, however, the paradox of only seemingly advocating confrontation, while essentially suppressing it. It puts forward epistemic claims that are objectively counterfactual, involving social processes based on elements of social psychology that are impossible both to predict and to realize. As Raffaele Bifulco aptly notes:

“Even in this case, the claims of deliberative democracy are counterfactual. Indeed, how can it be established that everyone conforms to principles that are not only moral but also rooted in social psychology? And who determines whether an argument is reasonable or impartial? The risk of a paternalistic drift cannot be excluded. Furthermore, the separation between strategic action (negotiation) and communicative action (argumentation), originating from Habermas, is too rigid and detached from reality, since there are ties between voting, negotiation, and argumentation that often cannot be underestimated. And why should dissent or disagreement necessarily be signs of an incomplete dialogical exchange? Why should preferences and interests, on which the liberal world has been formed and current constitutions have taken shape, be evaluated negatively? Lastly, the dimension of power summarized by A. Gramsci as cultural hegemony, based on persuasion aimed at gaining participants for a political and cultural project, is not taken into account. In other words, behind the proceduralist façade lie contents or epistemic claims that risk distancing deliberative democracy from the pluralistic principles of constitutional democracies”⁵³⁷.

Bifulco’s reflection highlights another fundamental issue of deliberative democracies: the negative evaluation of conflict between differing preferences and interests, which would even constitute an incompleteness in communication and dialogue. But “why should it be an ideal to think and act in the same way?”⁵³⁸

⁵³⁷ R. BIFULCO, *Democrazia deliberativa e principio di realtà*, in *federalismi.it*, n. 1, 2017, fascicolo speciale, pp. 11-12.

⁵³⁸ L. EINAUDI, *Verso la città divina*, in *Rivista di Milano*, 20 April 1920; then in ID., *Gli ideali di un economista*, La Voce, Firenze, 1921, p. 342; now in ID., *Il buongoverno*, Laterza, Roma-Bari, 2004, p. 31-32.

The risk deliberativists run, therefore, is attempting to confine aspects of political and social reality that are inherently uncontainable and to frame them according to an approach that is, ultimately, moral in nature. They end up riding a real illusion, one that undermines even the attempt to extend democratic participation, since citizens selected by sortition still participate on a voluntary basis, meaning it would inevitably be the politically most active minority – though detached from the representative struggle – that participates.

Within this framework, deliberativists argue centrally that deliberative bodies are merely auxiliary, complementary tools: with the exception of some more radical authors, the whole of deliberative democracy preaches the complementarity of these tools.

However, this seems easy to say but rather difficult to implement systematically: beyond all the critical issues mentioned, how can parliamentary activity and deliberative assemblies not be competitive? How can one avoid the boomerang effect that the ultimate decision always rests with the elected representatives, since it cannot be otherwise?

Moreover, even admitting different solutions, such as the inclusion of sortition members alongside elected officials, the critical problems persist. Whether it be a mixed bicameralism between representation and sortition, or a chamber elected alongside a chamber selected by sortition, or a mixed

composition within a single chamber⁵³⁹, parliamentary systems would face a serious problem of legitimacy. This is because an extraordinary and destabilizing element – unrelated to the representative framework either functionally or culturally – would be introduced in a system where trust relationships are the *raison d'être* and cornerstone of the form of government⁵⁴⁰.

The choice of selecting rulers by vote is indeed a product of rationalism that, from the seventeenth century to the golden age of the Enlightenment, permeated the Western world. What a liberal democracy carries with it is the overflow of the sovereign people as a unified and indivisible body, as well as the coherence of an aggregative logic and compromise, which have so far enabled the best possible preservation of that precious heritage bequeathed to us by the history of constitutionalism.

On the contrary, today we witness the emergence of a different concept and a different practice of compromise. Namely, a compromise no longer born of rationality and democratic-aggregative partitioning, the contemporary descendant of the Enlightenment, aimed at achieving balance – whether institutional, social, cultural, and so forth – but rather as a product of

⁵³⁹ M. CASERTA, C. GAROFALO, A. PLUCHINO, A. RAPISARDA, S. SPAGANO, *Democrazia a sorte. Ovvero la sorte della democrazia*, Catania, 2012, It is an interesting proposal to envisage a mixed composition, with members elected and selected by lot within Parliament. From a scientific point of view, the book demonstrates the actual virtues of random selection, also showing how the model is a tool that benefits business organisations. However, its application to constitutional engineering cannot ignore certain caveats, which the lottery solution fails to address.

⁵⁴⁰On the bicameral hypothesis, see T. BOURICIUS, *Why hybrid bicameralism is not right for sortition* e P. E. VANDAMME, V. JACQUET, C. NIESSEN, J. PITSEYES, M. REUCHAMPS, *Intercameral relations in a bicameral elected and sortition legislature*, both in *Politics & Society*, n. 46, 2018.

populist irrationalism, precisely because there are no solutions. Thus, democracy merely folds back onto itself.

In particular, the comparison with the ancient world becomes functional to understanding the origins of the logic of compromise that would emerge in the modern age. Specifically, it is in the *pòleis* of ancient Greece, known as the cradle of democracy, that we find the most marked differences, yet also some common traits. The latter can be traced to the enduring necessity, already intuited by the ancients, of equilibrium. Indeed, even the idea of checks and balances and the separation of functions, powers, and therefore offices, constitutes an integral part of the logic of compromise.

As we have seen, in the first and most famous government of the people, the organ within which the people found placement, the Ἰέκκλησία, was not the sole holder of power, but rather part of a far more complex system that governed the city [cf. Chapter I].

The differences with the modern era are thus particularly significant: foremost among them is the geographical context, from which cascade several political and institutional organizational traits of Athenian society unimaginable in modernity. Indeed, the small size, population homogeneity, the primacy of participation and the logic of sortition, and thus only moderate professionalism on the part of governing citizens, as well as a logic only minimally oriented towards efficacy, create conditions that are impossible to replicate in nation-states. Hence, there we find a different kind of compromise: one not tied to pluralism or a diverse society, and far less as one of many byproducts of the need to limit power.

In modernity, conversely, the progressive disintegration of medieval and then absolutist dynamics and frameworks leads to a wholly new and different *Weltanschauung*. Vertically, there is the need for the partitioning of power; horizontally, the need to create conditions for the best possible governance of societies that are larger and more diverse than those of antiquity. Obviously, the Enlightenment and its rationalism – mixed with the stylings of English empiricism – became the intellectual wells that contributed to the flourishing and maturation of this new vision of reality and the world. It was there that the idea of compromise, made up of partitioning and thus balance, began to take root, to be applied to every aspect of governance, from institutions to legislation.

One of the most paradigmatic examples of this practice was without doubt the so-called Connecticut Compromise. As is well known, this took place in late eighteenth-century United States, during the Philadelphia Convention and the drafting of the Constitution. The issue of the relationship between center and periphery was particularly thorny, with two opposing proposals put forward.

The Virginia Plan, of which James Madison was one of the promoters, proposed a bicameral Parliament elected by universal suffrage, with the direct election of the lower house, and a more complex mechanism for the upper house. Indeed, its members were to be chosen by the representatives from a pool of candidates selected by individual state legislatures in numbers proportional to the populations of the states.

The second proposal, the New Jersey Plan, instead advocated a unicameral Parliament where each state would be represented by the same number of members, regardless of size.

Neither solution satisfied the framers, who ultimately resolved the matter by approving the Connecticut Compromise proposed by the Connecticut delegation: a bicameral Congress structured so that the lower house represented the population of the states proportionally, while the upper house allowed an equal number of members per state, irrespective of size.

This constituted one of the fullest expressions of compromise as an expression of balance – an equilibrium pertaining entirely to the quality and structure of the new form of state emerging from the Philadelphia Convention and among the profoundly different visions that had manifested.

As is well known, the structure of the Parliament is the indispensable crossroads of the essence of a representative state, its form of state, and its form of government, and it was precisely one of the most arduous challenges for the Founding Fathers. With that agreement, that *compromise*, it was suggested that the structure of the U.S. Parliament might reflect the federal unity – or, if you prefer, the federal disunity – of the future United States: representatives of individual states, elected democratically but state-by-state and in equal numbers regardless of size – the likes of Alaska and California as well as Rhode Island and Delaware – gathered in a specific chamber, namely the upper house, the Senate, whose role was to bring the states within the Congress; alongside it would sit the house elected by the electorate at large and on a proportional basis.

Thus, the most paradigmatic example in constitutional history of the link between conflict and compromise as the *fil rouge* of democracy: serving, functional, and constitutive of the existential need for a new form of state and the demands of pre-existing territorial and political entities.

That constitutional operation was the fruit of the leadership and driving role that the political class assumed, aware of their desire and duty to forge a new future, and accompanied by a very long-term perspective.

Such a conception of compromise, today, increasingly tends to vanish. Indeed, we are witnessing the emergence of a logic of compromise that is not the outcome of empirical-rational pragmatism and the need for balance and stability, but rather the child of populist irrationalism due to the absence of other viable solutions. Hence, a transformation in the sense of a twisting and degeneration of the concept of compromise, observable in various contemporary cases: just think, for example, of the fragmentation and polarization in Italy's party system which led to the so-called "national unity government" presided over by Mario Draghi between February 2021 and October 2022⁵⁴¹, as well as the tensions that France has experienced since the summer of 2024, when Emmanuel Macron's party suffered defeat in the June European elections, inaugurating troubled times in that country.

All are attempts to piece back together a fractured and polarized Western society. The path of unity and compromise is no longer sincerely and firmly pursued as it was in the political schemes and formulas of the twentieth century. A paradigmatic example in Italy was certainly Enrico Berlin-

⁵⁴¹ See C. MARTINELLI, *Draghi non è come Andreotti: l'unità nazionale si basava sui partiti, oggi sul loro fallimento*, in *Il Riformista*, 25 February 2021.

guer's Historic Compromise in the 1970s, significant for its foresight, as well as the Parri and De Gasperi governments between 1945 and 1947. Unity and compromise today, however, are borne not of conviction but of the absence of alternatives; of the failure of parties and their leadership, which is no longer concrete and tangible but ephemeral and volatile. Where compromises do arise, they result from a genuine groping in the dark by polarized political classes, not from their guiding role in moments of difficulty and transition; they are the outcome of an inability to distinguish between contingent tactics and strategic political formulas aimed at the future toward which they wish to steer their country. Indeed, such logic repeatedly proves to be unsuccessful because it derives not from active, responsible, and forward-looking politics that guide society and the electorate, but from wholly inert and indifferent politics.

Populist irrationalism is what today drives the irrationalism of sortition, understood as a genuine abandonment of rationality and choice, and thus a return to methods not born of modernity and Enlightenment stylings but rather to pre-modern instruments; this because distrust in party intermediation is so low that resorting to chance, with its corollaries of impartiality and equality, becomes the best option.

But is it possible to solve irrationalism with more irrationalism? And above all, with a kind of irrationalism characteristic of other eras and civilizations, which there proved far from irrational but logical and coherent? How can politics today be neutral and impartial?

It is therefore appropriate to exercise caution and make some fundamental distinctions. In this context, recalling what elitist intellectuals have taught can prove useful.

Hence, the idea that elites drive the masses, setting the rules of the game through representation and political parties capable of managing mass systems, remains current; it allows us to identify the fallacies of systems that claim to engineer institutions with no relation to the stylings upon which the West was built. What the masses, and thus the electorate, are called upon to do is to choose those elites, rewarding or punishing them for their performance through voting.

Doctrines has noted how proponents of deliberation advance arguments – such as those of an epistemic nature, mentioned earlier – that bear some resemblance to advocates of restricted suffrage, thus becoming promoters of a so-called “deliberative elitism”⁵⁴². Yet I do not believe the two worlds are comparable. The elitist and deliberative frameworks have nothing to do with one another, and drawing a parallel between them seems mistaken: they have profoundly different rationales and stylings. The former interprets politics as a competition among elites where the electorate plays a decisive role but is not the driver of decisions; the latter places all its bets on the capacities of informed citizens to guide policymaking. If they share any element in common, it is the “elite” component, in the sense that deliberative practices ultimately create new elites.

⁵⁴² S. CHAMBERS, *Rhetoric and the public sphere: Has deliberative democracy abandoned mass democracy?*, in *Political Theory*, 3, 2009, pp. 323-350; A. ZEI, *Il diritto e il caso...*, cit., p. 252.

But are we really sure all this is useful? Are we certain we want to repudiate parties and representative government, which have thus far provided us with the best possible tool to govern nations and masses?

4. The (Not So) Curious Case of Authoritarian Deliberation

An interesting occasion for reflection on deliberative democracy concerns the so-called authoritarian deliberation. In other words, it presents an excellent opportunity to critically question the actual usefulness of deliberative democracy as an instrument in contemporary Western democracies. From this perspective, comparison with experiences developed in authoritarian regimes proves particularly valuable, offering insights into the potential – but above all the limits – of this paradigm.

The Chinese experience is the most interesting and structured, and a source of fertile reflection. Not only because of the complexity arising from the formation of hybrid dynamics, resulting from the use of tools typically associated with democratic frameworks, but also due to the difficulty of defining and situating these deliberative practices within the democratic form of state. Indeed, there is lively debate regarding how to integrate deliberative democracy tools within the mechanisms of representative government. Thus, the topic is inherently delicate, and it becomes even more so when applied to an authoritarian context. Yet paradoxically, and perhaps only seemingly, the complexity of application there appears to vanish: compared to the West, China has in fact seen many more implementations

of participatory forums over the past 20-30 years, and the process continues to grow and stabilize.

However, the reflections of scholars studying authoritarian deliberation shift, compared to Western theorists, from the functioning of the form of government to that of the form of state. The question posed is whether deliberative instruments – born intrinsically from democratic theory – might constitute a cornerstone for a democratic evolution of the country. Alternatively, one might ask whether the starting assumption is mistaken: that is, whether it is erroneous to assume a priori that deliberative instruments are necessarily inherent to democratic dynamics.

The popularity of deliberative tools has crossed not only geographical but also political-institutional boundaries, spreading, in fact, into regimes lacking a democratic form of state, particularly in the Eastern world. Research on the proliferation of deliberation and direct citizen participation in public policy formation in these countries allows us to broaden the perspective further and explore interesting fields of reflection, which are also useful for deliberative studies in the Western context.

Indeed, starting in the 1990s, a genuine deliberative wave curiously swept through certain authoritarian regimes in Asia and the Americas.

Among the most interesting experiments is particularly the Chinese one⁵⁴³, where a hybrid formula combining authoritarianism and participatory elements is widespread, varied in itself, and strongly promoted by the ruling party, especially at the local level. It can be safely asserted that the party has no interest in so-called regime-level democratization. Nonetheless, in China, “authoritarian deliberation is conceptually possible, empirically existent, and functionally motivated”⁵⁴⁴. Hence, scholars have focused precisely on the curious circumstance whereby forms of participation that in the West emerged and were theorized as participatory and deliberative democracy are applied even in non-democratic regimes. This is proof that deliberation is an autonomous method, not necessarily tied to the democratic form of state, and as a method, it can adapt to the necessities of the context in which it is applied. It is on the type of deliberation that doctrine concerned with the topic has questioned itself and continues to do so: specifically, whether and to what extent deliberative methods that have flourished in such regimes possess a democratic nature, and whether, eventually, they can contribute to the “democratic naturalization” of the countries where they are applied.

⁵⁴³ *Ex multis*, see S. OGDEN, *Inklings of Democracy in China*, Cambridge University Press, Cambridge, 2002; B. HE, *Participatory and Deliberative Institutions in China*, in E. LEIB, B. HE, (eds.), *The Search for Deliberative Democracy in China*, New York, 2006; B. HE, S. THØGERSEN, *Giving the people a voice? Experiments with consultative authoritarian institutions in China*, in *Journal of Contemporary China*, 19, 2020, p. 675; B. HE, M. E. WARREN, *Authoritarian Deliberation: The Deliberative Turn in Chinese Political*, in *Perspectives on Politics*, Vol. 9, 2, 2011, p. 269. Besides China, participatory experiences in authoritarian countries have taken place in Cuba, Vietnam and Singapore.

⁵⁴⁴ B. HE, M. E. WARREN, *Authoritarian Deliberation: The Deliberative Turn in Chinese Political*, cit., p. 269.

Evidence of such uncertainty is reflected in the very translation of deliberative democracy into Chinese: *xie shang min zhu*, a term first used as a translation in the early 2000s by Chinese scholars, combines *xie* (“doing things together,” cooperation, harmony) with *shang* (dialogue, consultation, discussion). Thus, democracy (*min zhu*) is modified by *xie shang*: that is, discussing issues in a communal and collaborative spirit. However, some Chinese scholars have deemed this translation somewhat incorrect, since *xie shang min zhu* is often used by the government to refer to consultative democracy, while among academics it is used as a synonym for deliberative democracy proper. The problem seems to lie upstream: the intrinsic ambiguity over whether the deliberative arenas practiced in the country have a democratic nature, and thus whether they genuinely express deliberative practices comparable to Western ones, or whether they are rather closer to mere consultation.

For this reason, many scholars have coined neologisms to refer to these practices, all effectively capturing the ambiguity of these experiences⁵⁴⁵: “deliberative dictatorship”⁵⁴⁶, “consultative Leninism”⁵⁴⁷, “consultative

⁵⁴⁵ For an empirical summary study of the subject of deliberation in China see D. TONG, B. HE, *How democratic are Chinese grassroots deliberations? An empirical study of 393 deliberation experiments in China*, in *Japanese Journal of Political Science*, 19, 2018, p. 630.

⁵⁴⁶ M. LEONARD, *What Does China Think?*, New York, 2008.

⁵⁴⁷ S. TSANG, *Consultative Leninism: China’s new political framework*, in *Journal of Contemporary China*, 18, 2009, p. 865.

authoritarianism”⁵⁴⁸, “networked authoritarianism”⁵⁴⁹ or, in particular, “authoritarian deliberation”, as defined by academics such as Baogang He and Mark Warren, who were among the first to deal with the topic⁵⁵⁰. This inaugurated a line of reflection that has become a real challenge for Western jurists, constitutionalists, and political scientists, and even a somewhat uncomfortable presence in the deliberative literature⁵⁵¹. Indeed, the clear and robust connection between democracy and deliberation has led democratic theorists to ignore the difficult problem of identifying deliberative influence under authoritarian circumstances. And in fact, authoritarian regimes are, on average, unfriendly to deliberative approaches to conflict. Decision-making is closed and strict limits are placed on spaces of public discourse, such as the press, publishing houses, the Internet, advocacy groups, and universities. Authoritarian rulers typically command; they do not invite the people to deliberate⁵⁵². Yet, the Chinese regime still employs deliberative methods.

⁵⁴⁸ B. HE, S. THØGERSEN, *Giving the people a voice? Experiments with consultative authoritarian institutions in China*, cit.

⁵⁴⁹ R. MACKINNON, *China's networked authoritarianism*, in *Journal of Democracy*, 32, 2011, p. 32.

⁵⁵⁰ The term first appeared in B. HE, Western theories of deliberative democracy and the Chinese practice of complex deliberative governance, in E. LEIB, B. HE, (eds.), *The Search for Deliberative Democracy in China*, cit., pp. 133-148. Later, in B. HE, M. E. WARREN, cit., the Authors develop the concept and carry out a theoretical reflection on the possibility of speaking of something qualifying as authoritarian deliberation, and they do it starting from the split between the concept of deliberation and democracy, which in almost all Western studies on deliberative theories and practices cannot be traced.

⁵⁵¹ B. HE, *Deliberative culture and politics: the persistence of authoritarian deliberation in China*, in *Political Theory*, 42, 2014, p. 58, p. 60.

⁵⁵² B. HE, M. WARREN, *Authoritarian Deliberation...*, cit., p. 159.

But how did deliberative practices arise in China?

About thirty years ago, at the end of the 1980s, the Chinese communist regime introduced village-level elections and other participatory practices. Subsequently, other innovations have followed, including approval and recall voting at the local level, public hearings, deliberative polls, citizen rights to sue the state, initiatives to make government information public, an increasing use of Peoples' Congresses to discuss policy, and acceptance of some kinds of autonomous civil society organizations⁵⁵³. In short, forms of inclusion and citizen participation in public policy-making processes were gradually introduced, motivated by the governing authorities' need to obtain cooperation and greater legitimacy in policymaking operations⁵⁵⁴. This objective led them to initiate the application of deliberative instruments in the absence of democratic empowerment. Indeed,

“this local deliberative democracy with Chinese characteristics can be seen as an uneasy and unstable ‘marriage’ of democratic (participation, deliberation, and limited empowerment) and authoritarian (heavy-handed top-down rule, despotism, disempowerment of dissident groups, and erosion of human rights) elements. This ‘marriage’ is situated firmly within policy processes that incorporate mechanisms and procedures to reduce and control social conflicts against the back-

⁵⁵³ Ivi, p. 269; B. HE, *Rural Democracy in China*, New York, 2007, Chap. 6.

⁵⁵⁴ By the way, it is worth mentioning how the neo-Confucian culture of post-Maoist China imposes non-trivial moral responsibilities on elites, see B. HE, M. WARREN, *Authoritarian deliberation...*, cit., p. 162.

ground of economic, political, and social developments and complex governing issues in China”⁵⁵⁵.

Therefore, in the discussion concerning the democratic nature of these tools, many authors have emphasized how they actually resemble mere consultations and public manipulations. Even when it is possible to detect, in some experiences, characteristics typical of deliberation, these would not be democratic at all. Where positive effects such as fairness, citizen representation, citizen empowerment, the establishment of a genuine collective will among peoples can be extrapolated, these would rather be mere expressions of a “phantom democracy”⁵⁵⁶ and “participation without democracy”⁵⁵⁷ – because, ultimately, they have nothing to do with the substantive dynamics of a democratic form of state. Indeed, the use of these instruments fully corresponds to the state’s need to address governance problems, the increasing complexity of society, and the presence of multi-actor contexts, in which a high degree of expertise and information is required from ruling classes to overcome the challenges of the post-contemporary era, in which China, like the West, is situated⁵⁵⁸. The difficulty of doing

⁵⁵⁵ B. HE, H. WAGENAAR, *Authoritarian Deliberation Revisited*, in *Japanese Journal of Political Science*, 19, 2018, pp. 622-629.

⁵⁵⁶ J. KEANE, *When Trees Fall, Monkeys Scatter: Rethinking Democracy In China*, Routledge, London, 2017.

⁵⁵⁷ G. RODAN, *Participation Without Democracy: Containing Conflict in Southeast Asia*, Ithaca, 2018.

⁵⁵⁸ In particular, moreover, bearing in mind that the Chinese economy is based on a capitalist-type system, carefully guided and strongly conditioned by the state, i.e. by the role played by the Communist Party.

so without dialogue with social components pushes reliance on inclusion and deliberation tools already experimented with in the Western world, which become nothing more than a means to form preferences and policies, to create consensus, and to do so in the absence of a democratic distribution of power structures⁵⁵⁹ – indeed, strengthening the authoritarian base, in a full and functional preservation of the regime.

Investigating the reasons why such instruments were able to take root in the country, it is worth noting that in Chinese political culture, what characterizes deliberative dynamics – namely discussion, mutual listening, and rational argumentation – has, in fact, ancient roots⁵⁶⁰, thanks to the tradition implemented by Confucianism and its practices of common discussion and consultation⁵⁶¹. Thus,

“like the Maoist mass line, the current system remains justified by the Confucian notion of *minben* (people-centric) rule. According to this ideal, elites express the voice of and serve the people. No doubt these inheritances help to explain why ‘deliberative democracy’ is now a common topic in academic and policy circles within China, indeed, so much so that the CCP has developed a system of rewards for party officials who develop new deliberative processes”⁵⁶²,

⁵⁵⁹ *Ivi*, pp. 271-272.

⁵⁶⁰ *Ivi*, p. 276; S. ROSENBERG, Human Nature, Communication and Culture: Rethinking Democratic Deliberation in China and the West, in E. LEIB, B. HE, (eds.), *The Search for Deliberative Democracy in China*, cit.

⁵⁶¹ D. BELL, H. CHAIBONG (eds.), *Confucianism for the Modern World*, Cambridge, 2003; B. HE, *Four Models of Relationship between Confucianism and Democracy*, in *Journal of Chinese Philosophy*, Vol. 37, 1, 2020, p. 18.

⁵⁶² B. HE, M. WARREN, *Authoritarian deliberation...*, cit.

just as it is particularly significant that today numerous deliberative forums are called *kentan* (heart-to-heart talks)⁵⁶³.

In 1987, Party General Secretary Zhao Ziyang stated that a system of social consultation dialogue would be one of the major novelties of the Party's 30th Congress, followed by reforms that would increase the use of public consultation throughout the country. However, this process came to an abrupt halt following the tragic events of Tiananmen Square in 1989, which were followed by a period of severe repression. Nonetheless, in parallel, the flame of deliberation remained alive, precisely because the Chinese ruling classes were aware of the opportunities that these practices could offer in terms of channeling and managing dissent and the increasing complexity of the social fabric.

These practices gradually spread over time as methods applicable both within the Party organization and outside it; in Wenling municipality, between 1996 and 2000, more than 1,190 deliberative practices were experimented with at the municipal level, 190 at the township level, and 150 within government organizations and schools⁵⁶⁴. Also in Wenling city, and particularly in Zeguo, the first deliberative polling was conducted in 2005, an experience which, according to some authors, featured many characteri-

⁵⁶³ *Ibidem*.

⁵⁶⁴ *Democratic Sincerely Talk: The Innovation from Wenling*, Department of Propaganda, Wenling, 2003, p. 98.

stics typical of genuine democratic deliberation⁵⁶⁵. In particular, because it was composed of citizens selected by sortition – a circumstance that, in Chinese deliberative practices, is rather rare⁵⁶⁶, since most participants are selected by the promoters of the arenas, mostly managed by the central state. This is one of the features that most distances these practices from Western ones: as is well-known, deliberative arenas peculiarly employ sortition as a method. This particular aspect perhaps serves as a litmus test, making evident the Chinese twist on democratic deliberative practices to adapt and make them functional to an authoritarian context.

Some scholars, as mentioned earlier, focus on the distinction between deliberation and consultation, considering Chinese participatory practices to be more expressions of the latter than the former: consultation being a means of communication used by the government to obtain information; whereas deliberative practices imply something more, encouraging an environment of confrontation and discussion, where participants can potentially influence decisions. Often, when participatory forums are celebrated

⁵⁶⁵ See the analysis of the Zeguo experiment, with all related data, conducted by J. FISHKIN, B. HE, R. C. LUSKIN, A. SIU, *Deliberative Democracy in an Unlikely Place: Deliberative Polling in China*, in *British Journal of Political Science*, Vol. 40, 2, 2020, p. 435. See also P. HSU, *In Search of Public Accountability: the 'Wenling Model' in China*, in *Australian Journal of Public Administration*, Vol. 68, 1, 2020, p. 40; J. FEWSMITH, *The Logic and Limits of Political Reform in China*, New York, 2013. And the deliberative polling theorised by James Fishkin could become the solution that could reconcile the dilemma between deliberation and representation in authoritarian states, see B. HE, *Reconciling Deliberation and Representation: Chinese Challenges to Deliberative Democracy*, in *Representation*, Vol. 51, 1, 2015.

⁵⁶⁶ D. TONG, B. HE, *How democratic are Chinese grassroots deliberations? An empirical study of 393 deliberation experiments in China*, cit.

in China, there is reluctance to create a genuinely deliberative space⁵⁶⁷. Rather, such operations tend to be more aimed at improving governance than at building deliberative democracy as an intrinsic value of political dynamics. Furthermore, it has been noted that discussions do not undermine regime legitimacy, as they are largely connected to specific local issues, having little to do with the country's general political and social matters⁵⁶⁸. Some scholars reflecting on a participatory case in China regarding the healthcare system affirm that the deliberative process is far from producing democratic transition; it would rather lead to mere governance improvement⁵⁶⁹ – an objective perhaps widely sought by the CCP.

Conversely, other authors argue there is a clear tendency toward democratic evolution: indeed, community members can practice democracy on those occasions, tackling concrete problems, acquiring information about them, and discussing solutions⁵⁷⁰. For yet others, any evolutionary process will only be realized if deliberative practices foster the gradual development of a more consolidated public sphere, a much more effective government responsiveness, and increased implementation of participation. In this sense, some Chinese scholars express positive views on the probable

⁵⁶⁷ Y. KORNREICH, I. VERTINSKY, P. B. POTTER, *Consultation and deliberation in China: the making of China's health-care reform*, in *The China Journal*, 68, 2012, p. 176.

⁵⁶⁸ B. TANG, *The discursive turn: deliberative governance in China's urbanized villages*, in *Journal of Contemporary China*, 24, 2015.

⁵⁶⁹ Y. KORNREICH, I. VERTINSKY, P. B. POTTER, *Consultation and deliberation in China: the making of China's health-care reform*, in *The China Journal*, 68, 2012, p. 176.

⁵⁷⁰ J. UNGER, A. CHAN, H. CHUNG, *Deliberative democracy at China's grassroots: case studies of a hidden phenomenon*, in *Politics & Society*, 42, 2014.

prospects of a process consolidating a genuine deliberative democracy⁵⁷¹. However, it is necessary to consider another aspect.

As mentioned earlier, starting in the 1990s, the so-called electoral democracy emerged, referring to introductory reforms of direct elections to select governors or party secretaries at the local level, specifically at the township level⁵⁷². Between 2000 and 2012, after the very first experiment in Sichuan province, this method became the primary means for selecting and appointing local secretaries. However, these “elections” were entirely controlled and directed by the party; all candidates were CCP members, and there were no independents or candidates from other political forces. Hence, doctrine has referred to these as semi-competitive elections⁵⁷³. As a result, such mechanisms reportedly led to improved legitimacy and support for local governments, as well as enhanced governance efficiency – thus providing genuine backing to the regime⁵⁷⁴.

⁵⁷¹ See LIN, *Citizen deliberation and the development of grassroots democracy in China*, in *Academic Monthly*, 39, 2007, p. 13; BAO, *On the construction of institution and value of deliberative democracy in practice*, in *Journal of Tianjin CPC School*, 46, 2013, p. 3.

⁵⁷² In Chinese it is called ‘public appointment and direct election’ (公推直選 *gongtui zhi-xuan*), D. MA, S. HSU, *The Political Consequences of Deliberative Democracy and Electoral Democracy in China: An Empirical Comparative Analysis from Four Counties*, in *The China Review*, Vol. 18, 2, 2018, note 20.

⁵⁷³ H. LAI, *Semi-competitive Elections at Township Level in Sichuan Province*, in *China Perspectives*, 51, 2004, p. 13. Between the late 1990s and 2012, more than a thousand townships used this type of election, see Z. WANG AND D. MA, *Participation and Competition: Innovations in Cadre Election and Selection in China’s Townships*, in *Journal of Contemporary China*, 24, 2025, p. 298

⁵⁷⁴ D. MA, Z. WANG, *Governance Innovations and Citizens’ Trust in Local Government: Electoral Impacts in China’s Townships*, in *Japanese Journal of Political Science*, Vol. 15, 3, p. 373; W. TSAI AND P. KAO, *Public Nomination and Direct Election in China: An Adaptive Mechanism for Party Recruitment and Regime Perpetuation*, in *Asian Survey*, Vol. 52, 3, 2012, p. 484.

It is worth noting, however, that township-level election experiments were halted from 2013 onwards, which may indicate that fears had spread within the Party that local electoral democracy could become, over the long term, a potential threat to maintaining authoritarian rule⁵⁷⁵.

Shortly thereafter, in November 2013, the third plenary session of the 18th National Party Congress was held, which strongly encouraged the development of deliberative democracy: officially termed socialist consultative democracy. This declaration of intent was confirmed by a document from the Party's Central Commission on February 9, 2015, announcing, on the one hand, the strengthening of "socialist consultative democracy" (the document was titled *Opinions on Strengthening Socialist Consultative Democracy*); on the other hand, on June 25, 2015, the role of the Chinese People's Political Consultative Conference in further deliberative practices was emphasized, thus demonstrating the regime's preference for this method.

In any case, debate among scholars remains lively, particularly between those who emphasize the impossibility of developing electoral democracy

⁵⁷⁵ "A professor of Peking University told the author in private that in 2012 President Xi Jinping rejected a political reform plan on the selection of party cadres designed by Vice President Li Yuanchao. The plan was intended to expand the range of the electoral democracy experiment implemented under Hu-Wen. The alleged reason for Xi rejecting this plan was that electoral democracy would threaten the CCP's control at the grassroots level", cf D. MA, S. HSU, *The Political Consequences of Deliberative Democracy and Electoral Democracy in China: An Empirical Comparative Analysis from Four Counties*, in 18(2) *The China Review*, Vol. 18, 2, 2018.

in the country⁵⁷⁶, as it would be hardly feasible, and others who advocate for the full development of both, arguing that deliberation cannot exist without electoral democracy⁵⁷⁷. What seems fairly uncontested in doctrine is the recognition that both are means that could potentially produce two opposing effects: either helping the authoritarian regime or progressively undermining it through gradual and widespread democratization. The question posed by those who have studied the topic is therefore which effects these tools may have in a non-democratic form of state and which of the two would be better suited to a country like China. Certainly, both have been promoted by governing bodies to improve the quality of public governance and their relationship with the masses. Moreover, when fears arose over losing control of electoral democracy, the government shifted toward the deliberative method.

Thus, the *raison d'être* of these tools seems to arise from the desire to preserve and maintain authoritarian rule. The only experience closest to Western deliberative dynamics was Zeguo, and so far, there have been no other comparable deliberative polling experiments, except on a very limi-

⁵⁷⁶ “To summarize the positions of these scholars, three points stand out for arguing why ‘deliberative democracy’ is more suitable in China than ‘electoral democracy’: first, ‘deliberative democracy’ by nature is superior to ‘electoral democracy’; second, China’s cultural traditions and existing institutions are more suitable for developing ‘deliberative democracy’ than ‘electoral democracy’; and third, ‘deliberative democracy’ will face fewer obstacles in China and thus is more suitable for the Chinese”, D. MA, S. HSU, *The Political Consequences of Deliberative Democracy and Electoral Democracy in China: An Empirical Comparative Analysis from Four Counties*, in 18(2) *The China Review*, Vol. 18, 2, 2018, p. 7.

⁵⁷⁷ *Ibidem*, pp. 3-4.

ted scale⁵⁷⁸. And today, especially after the abandonment of direct village elections and the rise of Xi Jinping, it is very difficult to imagine an evolution towards a so-called “deliberation-led democratization,” and the feeling is rather that of the construction of a “deliberative authoritarianism”⁵⁷⁹, whereby “authoritarianism 2.0 may be about indefinitely extending authoritarianism rather than gradually paving the way for some kind of transition to more democratic ways of governing”⁵⁸⁰, since the Party has so far shown no willingness to implement genuinely democratic methods and reforms. And in itself, deliberative tools do not seem to have the power to overturn such a consolidated regime alone.

Therefore, the question to ask is not so much whether and how electoral democracy or deliberation might lead to potential democratization, but to reflect on the reasons why, and the ways in which, these tools, born and designed within an authoritarian context and functional to it, can never have any seed of democratic-led development as long as there is a monopoly of power. Indeed, despite the fact that “experiments with public deliberation in China appear to be increasingly genuine, substantive, inclusive, and often impressive”, the CCP continues to maintain control over them⁵⁸¹.

⁵⁷⁸ *Ibidem*, p. 25. The authors also point out how “in contrast to He’s findings from a survey of Zeguo in 2005, we did not find strong evidence verifying the causal mechanism between deliberation reform and political legitimacy, nor did we observe a link between deliberation reform and aspirations for democracy”.

⁵⁷⁹ B. HE, M. WARREN, *Authoritarian deliberation...*, cit., p.156.

⁵⁸⁰ S. ZHAO, *Xi Jinping’s Maoist Revival*, in *Journal of Democracy*, Vol. 27, 3, 2016, p. 83.

⁵⁸¹ B. HE, M. WARREN, *Authoritarian deliberation...*, cit., p. 159.

The reflection to be made is rather different with respect to deliberative methods. Namely, the observation that tools which today in the Western world are heralded as an update of democracy, often with salvific overtones, at the same time may have been borrowed by non-democratic regimes – and with what long-term effects. This proves that constitutional law is not only about norms. The terrain of politics and the actors who apply the law are foundational elements of the functioning of institutions: everything is relative, and public law instruments owe much of their functionality to the legal, political, and historical context in which they are placed.

Thus, the impression in China is not so much of a phantom democracy or a democratization process, but rather of a skewed democracy, an evolved authoritarianism disguised under the guise of quasi-democratic methods – a pure mirage. All this using instruments that were thought to be intrinsically and exclusively linked to democratic dynamics but which have not escaped distortion, aimed at limiting and shaping them according to the needs and demands of those who hold the monopoly of power.

Hence, from the comparison we conducted, trying to dig beyond mere forms, a classical dualism emerges once again – far from being overcome. On one side, the Western tradition, always searching, despite many errors and many idealisms, for new and different forms to articulate the governance of democratic societies, especially to boost new and interpretive rights concerning environmental and future generations' issues; on the other, authoritarian regimes, undoubtedly intelligent and refined, which

feel the need to strengthen consensus also through paths of popular involvement, far from being subversive or dangerous to the established power.

Ultimately, beyond appearances, this is the pluralism of liberal-democratic constitutionalism versus authoritarian conceptions of power based on the denial of the multiple.

A comparison that shows how, perhaps, it is no coincidence that deliberative methods have successfully been imported where the denial of the multiple prevails.

Indeed, on one hand, Western democracies have begun to use deliberative tools to try to heal the disconnect between governed and governors that afflicts them: with greater citizen participation, and particularly so-called “deliberative participation,” where people meet to discuss a certain topic, a revitalization of the democratic circuit would follow. On the other hand, systems that use the same tools in a context far from democratic. This would prove an extreme flexibility of deliberative practices – but I do not believe this is the case.

In fact, the problems are multiple and of different natures. Let us try to schematize them.

First of all, the application of the deliberative method within Western democracies is not necessarily going to produce a revitalization of the representative circuit. The reason is simple: the deliberative method is based on consensus, democracy on conflict. Democracy has always lived on compromises and on systems (especially the parliamentary and representative system) that allow compromise to be enacted. It is therefore legitimate

to doubt whether deliberation, as theoretically elaborated and in some practical experiences, really leads to a strengthening of representation: it risks, in other words, being a mere illusion.

The proof of what has just been stated is well demonstrated by the Chinese experience: there, in a non-democratic system where conflict is impossible, deliberative methods work very well.

Thus, one may ask: is deliberation, fundamentally structured on the search for consensus, really suitable for democracy, whose essence is essentially based on conflict? And therefore, is it really suitable to solve the problems of democratic crisis and to implement new legal requirements? The comparison with the Chinese system certainly highlights the contrast between authoritarianism and democracy, as well as the capacity of authoritarianism to twist legal instruments to its advantage. But is it really a distortion? Or is it possible because the essence of deliberation lends itself better to a social and political context that cannot exist in democracies?

As always, when it comes to institutions and constitutional law, extreme caution is necessary. In this specific case, excessive enthusiasm could prevent us from seeing the greatest risk of deliberative democracy: namely, that it becomes a mere and empty simulacrum of participation, because more participation does not necessarily mean more democracy.

This does not mean, however, that deliberative democracy cannot find a space in representative democracies: if conceived as a means to improve the quality of public debate and citizen information, for example on the occasion of a referendum vote, as in the Citizens' Initiative Review model,

it can have enormous potential, in which case it would truly become a tool serving democratic logic, perfectly compatible.

5. The Silver Lining: The “Oregon Model”, a Synapse Between Deliberative Practices and Referendums

The debate among deliberativists regarding the pursuit of the “path of complementarity” is rather lively. Indeed, reality already provides several examples that fit within this perspective, aiming to make existing tools, such as referenda, more deliberative⁵⁸². This is achieved through a procedure that enables a synergy between deliberation and referendum in order to avoid one of the most pernicious features of this type of consultation – namely, their dichotomous and binary nature, often accompanied by poor voter information on the issues subject to the vote⁵⁸³.

⁵⁸² There is extensive foreign literature on the subject. See J. GASTIL, R. RICHARDS, *Making direct democracy deliberative through random assemblies*, in *Politics & Society*, 41, 2013, pp. 253-281; N. CURATO, M. BOKER, *Linking mini-publics to the deliberative system: a research agenda*, in *Policy Sciences*, 49, 2016, pp. 173-190; S. NIEMEYER, J. JENNSTAL, *Scaling up Deliberative Effects: Applying Lessons of Mini Publics*, in A. BACHTINGER, J. DRYZEK, J. MANSBRIDGE, M. WARREN (eds.), *The Oxford Handbook of Deliberative Democracy*, cit., pp. 329-347; M. FATIN-ROUGE STEFANINI, *Assemblée citoyenne et référendum: quelques exemples étrangers à méditer*, in *Pouvoirs - Revue française d'études constitutionnelles et politiques*, 175, 2020, pp. 77-88.

⁵⁸³ In literature, it has been argued that a CA on the thorny issue of Brexit could have better guided the electorate, and subsequently, a Citizens' Assembly on the future of the UK in the event of a possible exit from the Union. However, it should be remembered that considerations can only be made on the basis of realistic and tangible data: given the lack of widespread use and structuring of deliberative practices at the time, it would have been impossible to even imagine a national CA on Brexit that would have received such widespread media coverage that it could have influenced the dynamics of the situation. Nevertheless, for an analysis of a hypothesis conducted on the subject, which highlights changes in opinion among participants, see A. RENWICK, S. ALLAN, W. JENNINGS, R. MCKEE, M. RUSSELL, G. SMITH, *What kind of Brexit do voters want? Lesson from the Citizens' Assembly on Brexit*, in *The Political Quarterly*, Vol. 89, 4, 2018, pp. 649-658.

This approach was first consolidated in the Irish model: recommendations developed during the Citizens' Assembly are subsequently subjected to a referendum consultation, albeit following the decision of political institutions. This creates a vertical relationship between the Citizens' Assembly, citizens, and political actors, which, however, has not yet been institutionalized; thus, the government retains the discretion to decide case by case whether to follow this path again.

Alongside and beyond the Irish method, a particularly interesting different type of integration between direct and deliberative democracy institutions has emerged. This is the Citizens' Initiative Review (CIR), also known as the "Oregon model," named after the U.S. state that pioneered and institutionalized this form of deliberative practice through state legislation between 2008 and 2009. Supporting both the referendum process and the voting citizens, the procedure involves a randomly selected group of a limited number of individuals, ranging from 18 to 24, serving as a microcosm of society; over a period of 4 to 5 days, they discuss the subject matter of an upcoming referendum with the assistance and support of experts and facilitators⁵⁸⁴. The topic under consideration is not decided by the Citizens' Assembly itself but is already the subject of a popular initiative or state parliamentary proposal. At the conclusion of the deliberation process, the group drafts a brief report summarizing the main issues of the referendum, along with arguments for and against the proposition.

⁵⁸⁴ On the importance of facilitators in deliberative practices, see G. MYERS, *Enabling talk: how the facilitator shapes a focus group*, in *Text & Talk - An Interdisciplinary Journal of Language Discourse & Communication Studies*, Vol. 27, 2007, pp. 79-105.

Compared to other experiences linking deliberative arenas with referenda, this difference is significant. The Citizens' Assembly's report is not intended for political institutions: the relationship is not vertical but horizontal, directed toward other voting citizens. Consequently, the outcomes of the randomly selected citizen group are not aimed at making a decision or proposal on an issue; rather, their purpose is to ensure that, through informed discussion of all aspects related to the topic, the group provides the electorate with useful elements so that individual voters can make informed decisions at the ballot box. In other words, it provides voters with the necessary tools to exercise their voting rights knowledgeably.

This distinction is thus quite decisive. In this case, the incorporation of the principles of random selection and deliberation occurs in full respect of the representative political system's standards, constituting genuine support without risking the creation of problematic imbalances between governing principles. This is the key point of the CIR mechanism, which led Swiss political scientist Nenad Stojanović to develop a robust defense of direct democracy when accompanied by deliberative practices: if endowed with suitable safeguards, direct democracy could, in fact, represent an improvement of democratic processes, counteracting populist tendencies⁵⁸⁵ within the framework of the perspective that “the cure for the ills of Demo-

⁵⁸⁵ N. STOJANOVIĆ, *Democrazia diretta e populismo*, in E. BIALE, C. FUMAGALLI (eds.), *Innovazioni democratiche*, Milano, 2019, pp. 169-225.

cracy is more Democracy”⁵⁸⁶. Among these safeguards, Stojanović specifically identifies the use of the Oregon model (CIR).

Indeed, the success of the Oregon experiments and reflections in the academic literature have led to a gradual diffusion of the CIR, initially in other American states such as Arizona, California, Colorado, and Massachusetts⁵⁸⁷. In Europe, the CIR has been imported into Finland⁵⁸⁸ and Switzerland, where, based on Professor Stojanović’s research project, it was experimentally applied for the first time in 2019 in the Swiss town of Sion⁵⁸⁹. Thus, today, it is the Oregon legal framework that exports and inspires attempts at improvement within the Swiss system, following the transatlantic importation of the direct democracy model a century ago. It is no coincidence that the first European experiment takes place in Switzer-

⁵⁸⁶ J. ADDAMS, *Democracy and Social Ethics*, New York, 1902, An expression later taken up by various subsequent scholars, including the philosopher John Dewey.

⁵⁸⁷ For each experiment, see. <https://healthydemocracy.org/programs/citizens-initiative-review/>.

⁵⁸⁸ For an overview and analysis of the Finnish experience, see <https://participedia.net/case/6437> e M. SETÄLÄ, H. SERUP CHRISTENSEN, M. LEINO, K. STRANDBERG, *Beyond polarization and selective trust: A Citizens’ Jury as a trusted source of information*, in *Politics*, Vol. 43, 4, 2023, pp.472-488.

⁵⁸⁹ This is the ‘Demoscan’ pilot project, carried out as part of a research project funded by the Swiss National Science Foundation (SNSF) and led by Professor Nenad Stojanović of the University of Geneva. The project was first carried out in November 2019 in the city of Sion, and a second implementation took place in September 2021 in the Canton of Geneva. In spring 2023, two more Demoscan projects took place in the city of Bellinzona and in the canton of Aargau. Finally, in June 2023, Demoscan became an association for the implementation of CIR and CA practices: <https://demoscan.ch/it/uber-uns/>.

On the Finnish and Swiss experiences, see also J. GASTIL, K.R. KNOBLOCH, *Hope for democracy: How citizens can bring reason back into politics*, New York, 2020.

land: the CIR model fits well with the mechanisms of the Swiss governmental system⁵⁹⁰, as evidenced by the success of initial trials.

This model can therefore serve as a useful method to address the disadvantages that much of the scientific literature has long highlighted regarding referendum dynamics⁵⁹¹, not only acting as a form of check and balance but simultaneously ensuring that the deliberative procedure does not fall into disuse. Thus, deliberation understood as a methodology for the exchange of differing positions with the aim of arriving at justifiable and broadly shared arguments, such that these positions may change through reciprocal dialogue, can find its place within representative government, adding value to democratic dynamics and helping reconcile and support the other pressing contemporary issue: the increasing demand for greater use of direct democracy tools, often regarded as yet another symptom of the disturbances facing democratic systems⁵⁹².

⁵⁹⁰ In Switzerland, the Federal Council and the cantonal councils inform citizens about voting through a brochure. However, Swiss doctrine has shown that in most cases it is very difficult for citizens to understand the contents of the brochure distributed by the authorities.

⁵⁹¹ Among others, Pierre-Étienne Vandamme has recently made some excellent observations, outlining the proposal for “justified voting” in ID., *Des référendums plus délibérés? Les atouts du vote justifié*, in *Participations*, 20, 2018, pp. 31-34. For some time now, a number of scholars have been strongly opposed to their extensive use, highlighting the prevalence of the harmful effects of referendum practices and the fear of supporting the development of populist tendencies, cf. ex multis, N. URBINATI, *Representative Democracy. Principles and Genealogy*, The University of Chicago Press, Chicago, 2006; Y. MENY, *Populismo: dalla protesta al consolidamento giuridico*, in G. DELLEDONNE, G. MARTINICO, M. MONTI, F. PACINI (eds.), *Populismo e Costituzione. Una prospettiva giuridica*, Mondadori, Milano, 2022.

⁵⁹² Trend highlighted by R. ALTMAN, *The Potential of Direct Democracy: A Global Measure (1900-2014)*, in *Social Indicators Research*, Vol. 133, 2017, pp. 1207-1227.

Here, then, the Oregon model comes to the rescue, supporting tools that already exist and are widely used within democratic systems. Consequently, that breach in the fortress of representative government can indeed become a bridge enabling informed participation in referendum voting – a process carried out by citizens for citizens: *not to make decisions in place of representatives* but to improve the *manner* in which voting occurs when the electorate is called upon to decide.

6. *False Myths and Warning Bells*

An attempt has therefore been made to untangle the threads of a reasoning that touches upon concepts such as direct, participatory, deliberative, and representative democracy, with a particular focus on the binary of representation and deliberation.

One cannot help but note a certain vagueness surrounding these conceptual categories, perhaps with the exception of representative democracy.

These have been extensively explored, especially in interdisciplinary and intradisciplinary contexts by foreign scholars, but never truly resolved. This characteristic, therefore, renders engagement with these topics anything but straightforward.

To the historical and theoretical layering is added the complexity of addressing matters – particularly participation as a complement to representation in public decision-making processes – that are often prey to dangerously symbolic and evocative rhetoric, which fits perfectly with the factual reality of the numerous difficulties the representative democratic model has

been encountering over the past few decades. So much so that it can be affirmed, without much doubt, that this is one of the few issues barely touched or influenced by a polarizing political clash.

The viscosity of the theme is further compounded by an additional aspect: the necessity, in the pursuit of a more mature democracy, to remain vigilant against the risk of falling into its exact opposite and not to succumb to the illusion of “complementarity.” Stating that the “new” participatory instruments should be neither alternatives nor substitutes for representative government does not make the operation more straightforward or easier to implement; opening a “breach in the citadel of representative government”⁵⁹³ is more arduous than it may appear.

Democratic models are certainly always evolving, and the aspiration for their improvement is undoubtedly appealing; however, the awareness must persist that during moments of transition and change it is essential to be wary of the myth of the *deus ex machina*.

The impression, in fact, is that there is a gradual emergence of an intention to set aside the potential that improvements to representative democracy still offer – thus remaining within the realm of its most proper instruments – with the risk of sliding towards collective ecstasy for new forms of citizen participation.

The feeling, in other words, is that a path is opening along which we Western citizens, habituated to the privilege of democracy, are preparing to renounce the evolution of traditional patterns in favor of their revitalization

⁵⁹³ L. BOBBIO, *Dilemmi della democrazia partecipativa*, in *Democrazia e diritto*, 4, 2006.

through an eagerly awaited greater democratization of democracy itself; and often this latter is presented as an evolution and completion of representation, when, on the contrary, it may contain within itself the danger of becoming nothing but a game of mirrors.

This does not mean, however, that one must be condemned to stagnation; nothing is more wearing than the illusion of immutability, and the vitality of political regimes can only be preserved by accepting and responding to the metamorphosis of purposes or structural transformations that are consequential to the necessity of adapting to the needs and evolutions of a changing world, at the moment when the solutions provided become anachronistic. After all, to use the well-known words of Heraclitus, “nothing is as constant as change”.

However, one of contemporary dilemmas is the emergence of fragile political communities struggling to find a shared vision and a common language free from ambiguity; therefore, the poorer the ground of shared values and the deeper the legitimacy crisis, the more participation tends to become the ideal tool of pure rhetoric, entirely illusory⁵⁹⁴.

Moreover, the recognition of the persistent struggle of democratic regimes, the considerable complexity of reality, which often overwhelms our ability to comprehend its causes and developments, and a tangle that seems inextricable make the tendency towards solutions different from those hitherto experimented with quite appealing; especially in light of the enduring awareness, particularly since the fall of social-communist regimes,

⁵⁹⁴ As appropriately pointed out by A. VALASTRO, *Gli istituti di partecipazione tra retorica delle riforme e umiltà dell'attuazione*, in *costituzionalismo.it*, 1, 2017, pp. 35-95, p. 40.

that the democratic ideal is, nonetheless and fortunately, the only possible alternative. Thus, participation simultaneously becomes both a myth to pursue and a mantra to recite.

In multiple sectors of the scientific, social, and political community, the path of “curing democracy with more democracy”⁵⁹⁵ is advocated: aimed at constructing tools complementary to representative democracy and alternative to the populist decline – one of the by-products that transformations in recent decades have helped mature – and oriented towards attempting to contain the ancient dilemma of democracy as a regime of chronic dissatisfaction⁵⁹⁶.

It should be noted that it is essentially this *trenchant* attitude that is being criticized here. Faced with the observation of the malfunctioning of representative democracies, there is a claim to find other and different instruments, distinct both culturally and conceptually, but behind the veil of

⁵⁹⁵ An expression that echoes a famous statement by John Addams, “the cure for the ills of Democracy is more Democracy”, in ID., *Democracy and Social Ethics*, cit.

⁵⁹⁶ And dissatisfaction is, unfortunately and fortunately, structural to a complex regime such as democracy. Signs of frustration with democratic regimes have been the subject of study for some time now. See, for example, H. D. KINGLEMANN, *Mapping political support in the 1990s*, in P. NORRIS (ed.), *Critical citizens. Global support for democratic government*, Oxford, 1999; R. J. DALTON, *Political support in advanced industrial democracies*, in P. NORRIS (ed.), *Critical citizens: global support for democratic governance*, cit; S. PHARR, R. PUTNAM, *Disaffected democracies. What's troubling the trilateral countries?*, Princeton, 2000; M. TORCAL, J. R. MONTERO, *Political disaffection in contemporary democracies*, Routledge, London, 2006; P. NORRIS, *Democratic deficit. Critical citizens revisited*, Oxford University Press, Oxford, 2011. For some authors, the crisis of democracy is interpreted as a potential threat, see M. J. CROZIER, S. P. HUNTINGTON, J. WATANUKI, *The crisis of democracy: report on the governability of democracies to the Trilateral Commission*, New York University Press, New York, 1975; for others, however, it is an opportunity to strengthen it, see C. CROUCH, *Post-democracy*, Cambridge University Press, Cambridge, 2004; P. ROSANVALLON, *La politica nell'era della sfiducia*, Città Aperta, Roma, 2009; C. CROUCH, *Post-democracy after the Crises*, Cambridge University Press, Cambridge, 2020.

the alleged complementarity between “old” and new tools there may lie an imprudent approach towards transformations capable of profoundly altering the balances of contemporary constitutional democracies; or, conversely, incapable of bringing any improvement, because respecting that complementarity sacrifices the effectiveness of outputs, with the risk of adding fuel to the already difficult relationship between governors and governed.

It is true that democratic participation stems from its potential to give political expression to differences, and this point seems broadly shared in the literature, especially where the moment of conflict is exalted⁵⁹⁷, born from the claim of difference and the demand for space for its recognition⁵⁹⁸. It is true that today we witness the dissolution of a society “composed of coherent social worlds” in which “it was sufficient to delegate to represent those social worlds that had their own internal coherence, their own meaning,” and therefore, “today what is at stake is the legibility of society, that is, the ability to narrate society. We have moved from a world in which representation and delegation processes were at work to one in which narrative representation processes are expected – representation capable of making society legible to those who compose it and allowing realities lived in society itself to be made present and visible in public debate, realities that are not simply static but concern individuals’ stories

⁵⁹⁷ C. MOUFFE, *On the Political*, Abingdon-New York, 2005. On Mouffe’s thinking, in comparison with Habermas’s thinking on consensus and conflict, cfr. J. GONZÁLEZ, *Habermas y Mouffe: la democracia entre consenso y conflicto*, in J. FRANZÉ (coord.), *Democracia: ¿Consenso o conflicto? Agonismo y teoría deliberativa en la política contemporánea*, Madrid, 2014, pp. 63-90.

⁵⁹⁸ F. PIZZOLATO, *Partecipazione e partecipazionismo nello Stato democratico*, in *costituzionalismo.it*, 1, 2023, p. 3.

and trajectories. All this produces collective identities that are simultaneously more fragmented and at the same time more historical, more connected to events. Societies are communities of experience, communities of events, not simply communities of position,” and thus they evolve and are constructed through the force of history.

However, it is participatory zealotry that must be avoided – the distortion of participation into a myth is not the risk to be evaded, because it increases democratic disaffection and the alienation of citizens from traditional instruments of political action⁵⁹⁹.

To fully understand all this, it is necessary to recall some fixed points on which the pillars of constitutional democracies rest.

Before norms, before their application, there exist systems. Immersion in a system – whether for scientific research or as citizens of a democracy – is central. This is possible not by teaching democracy but by teaching how to be democratic. It means assuming democratic virtue, internalizing it, and then practicing it daily.

In an important essay some years ago⁶⁰⁰, Gustavo Zagrebelsky revisited this interpretation, to be fully placed within the close link between liberalism and democracy. Democratic virtue is paradoxically – though perhaps not so paradoxically after all – found in the typically liberal conception of self-respect: democracy allows me to respect myself and my prerogatives. This obviously takes place within a community, which also implies respect

⁵⁹⁹ *Ivi*, p. 7.

⁶⁰⁰ G. ZAGREBELSKY, *Imparare democrazia*, Einaudi, Torino, 2016.

for others. Something very difficult today in the face of widespread selfish impulses that risk annihilating it. But above all, it risks becoming blurred for another reason: democracy is demanding, because while the oppression of despotism generates rebellion, the freedom of democracy instead generates fatigue. Thus, within democratic dynamics themselves, its weaknesses are nested.

From the citizens' perspective, this aspect is closely linked to habituation to democracy: living in a democratic regime often means becoming so accustomed to it as to become disinterested. Indeed, the absence of constant democratic practice and citizen indifference, as Tocqueville and Mill already reflected upon in the mid-19th century, correspond to an abdication of the task to act and influence politics through the electoral moment, thereby renouncing one's role within governing democracy and the representative circuit.

The consequence will be a discontinuous and polarized exercise, in which political forces lacking any perspective beyond their immediate interest stir the masses by creating a destructive and deleterious dynamic based on the culture of the enemy, leading to "participation" that is sporadic, ephemeral, and short-lived rather than widespread, continuous, and conceived as part of the lifestyle and mindset of each individual.

A few decades ago, Norberto Bobbio spoke of the "unfulfilled promises of democracy," listing, in a widely shared view especially in hindsight, the factors that were causing the crisis of democracy in the West: from political

apathy to intolerance, to mediocre massification as an undesired by-product of equality⁶⁰¹.

However, I believe those intellectuals are right in warning that labeling all this as unfulfilled promises falls into a trap: that is, the illusion that we must *demand* something from democracy. As if democracy were its own master⁶⁰², and therefore mere passage of time and the progression of rights *through legal norms* were sufficient for its definitive consolidation.

Indeed, the classics had already warned us that it would not be so: democracy and its procedures, even the technical ones, are not something that exists externally to each of us; democracy is us, every day. And if there is disillusionment with democracy, it is because we have fallen into the chimeras of the ease of democracy, basking in the conviction that simply through the extension of the right to vote, thus maximizing participation and implementing its myth, the good functioning of the state would eventually come by itself.

However, the democratic machine is much more complex to keep alive. It is no longer sufficient that democracy has no enemies; it is necessary to bear the burden that comes with having conquered freedoms. In short, the well-known dichotomy of freedom and responsibility.

Precisely because it lives on relativism, democracy possesses a single absolute value: democratic practice. Dogmas and democracy are incompatible because democracy is anti-dogmatism; it is an aversion to “dogmatic

⁶⁰¹ N. BOBBIO, *Il futuro della democrazia*, in ID., *Il futuro della democrazia. Una difesa delle regole del gioco*, Einaudi, Torino, 1984. pp. 8 ff.

⁶⁰² G. ZAGREBELSKY, *Imparare democrazia*, cit.

nonsense”⁶⁰³. This is certainly the most significant legacy that liberal thought has left us. From this derives pluralism and the difficulty of governing it: we often forget how fortunate we are to rejoice in it, because the absence of absolute values is the greatest pride of liberal democracy and the great absence in authoritarian regimes; “to the most perfect dictatorship, I will always prefer the most imperfect democracy,” as Sandro Pertini said.

From this arises the spirit of dialogue and deliberation, which find their eponymous place in Parliaments, which become spaces where representatives can discuss and reason together. Relativism means acknowledging that in politics there is very little that is neutral or impartial. Relativism means recognizing that no decision is right or wrong simply because it is taken by majority or unanimity. As Tocqueville already affirmed, quantity is not synonymous with quality. Simply put, in the many lies everything, and here returns a classical argument from Aristotle’s *Politeia*, according to which when the many decide, a good decision is more likely: the more individuals there are, the more varied and diverse are the perspectives and virtues they bring, because diversity creates wealth.

Today, looking around, this is no longer the case in daily life. We are accustomed to blaming, even disruptively, those who think differently from us, and we idolize and give absolute reason to those who think like us. The tendency is to yield to intolerance, impulses, and moods rather than cultivating a sense of projectuality and compromise.

⁶⁰³ The expression is from Immanuel Kant, in his classic work *Prolegomeni ad ogni metafisica futura che vorrà presentarsi come scienza* (1783), Rusconi, Milano, 1995, p. 247.

Instead, we should resume the thread of minority consciousness because this is the challenge and opportunity – as Giambattista Vico said, “what seemed misfortunes were instead opportunities” – for majority deliberation. The predominance of the majority is always and only relative, provisional, and temporary: this is why Parliaments exist.

Therefore, democracy and politics cannot live on a culture of the enemy. Polarizations kill democratic life, which instead feeds on a culture of the *adversary*. A central and decisive distinction: the adversary is recognized, respected, and considered legitimate, which does not happen in the case of an *enemy*. This is exactly the meaning of the well-known episode at Capitol Hill in January 2021. On that occasion, Donald Trump caused an institutional collapse because, by not recognizing Joe Biden as the legitimate winner, he stepped outside the typically liberal-democratic – and I would say elitist – conception of alternation between political adversaries. What happened in Washington was not merely symbolic or formal; it meant no longer recognizing the field of values and rules within which liberal democracy takes shape and life.

Democracies live not of guerrilla wars but of conflict, opposition, and contradictions: this is the essence of the democratic game. Luigi Einaudi wrote that “only in struggle, only in a perpetual trying and experimenting, only through victories and failures does a society, a nation prosper. When the struggle ends, social death follows”⁶⁰⁴. There is no shortcut to demo-

⁶⁰⁴ L. EINAUDI, *Discorso elementare sulle somiglianze e le dissomiglianze tra liberalismo e socialismo*, now in ID., *Prediche inutili*, Einaudi, Torino, 1962, p. 241.

cracy other than the search for a balance continuously and constantly to be built and rebuilt, provided that the goal is to preserve it.

And so, by virtue of its being intimately made of contradictions, pluralism, complexity, and change, it is necessary to pay the price of the democratic paradox. Limitation of popular sovereignty in the name of freedoms also means abandoning the illusion of consensual logic, internalizing once and for all the logic of conflict and competition, and renouncing the myth of participation as well as representation. Santi Romano, as well as Costantino Mortati and many other great jurists of the past, pointed out how representation was insufficient compared to the variety of interests in society.

It is therefore necessary to be cautious of myths. Because even representation is a fiction that constantly risks becoming a myth. Yet it is a necessary fiction that has allowed order to be given to the paradigms of contemporary nations, and above all, to the entry of the masses into political life, with the construction of a system in which everyone has the possibility to influence the decisions of the ruling class. Representation and voting therefore guarantee the expression of political agency and the domestication of conflict, which is anything but impartial.

And so, in this framework, more than one doubt arises concerning the logic of deliberative democracies. Why sortition? How can politicians be impartial and neutral? Regarding this, the French and Icelandic experiences illustrate this very well. As has been emphasized, “often, in fact, ‘citizens’ assemblies’ fail in their mission because they are unable to organize their message politically, and inevitably this leads to weakening their claims

which, once brought to the attention of representative institutions, because they are not filtered by political parties, end up being rejected or watered down”⁶⁰⁵, precisely because they are not and cannot be political organizations.

On the contrary,

“with reference to the ‘politics of apathy,’ some have even argued that participation, by favoring the integration of institutions with social forces excluded from them, tends rather to maintain the status quo and consolidate the existing power system. In other words, a mere expedient to make the system appear more democratic, while effectively leaving its degree of legitimacy unchanged. Here the risk is highlighted that participatory democracy, from an instrument of correction of representative democracy, turns into nothing more than a ‘more effective means of achieving greater unanimity of consensus... a unanimity conceived... sometimes in the manner of ancient barbarian tribes, as the submersion of every dissenting voice in the clamor of *consensus*, in the *plausus armorum*’”⁶⁰⁶.

In this sense, the Chinese experience mentioned in this Chapter confirms itself once again as an excellent testing ground, providing the opportunity to show the canons of a democracy, deliberative democracy, which is designed to pursue only an illusory, destructive consensus, and real only to the extent that democracy, at that point, takes a step back.

⁶⁰⁵ G. GOTTI, “*Miopia democratica*” del Legislatore e forme innovative di partecipazione pubblica. *Riflessioni a partire da due esperienze francesi*, in *La Rivista «Gruppo di Pisa»*, n. 9, special issue *Democrazie rappresentative e forme di partecipazione*, *Atti del Seminario di diritto comparato*, 20 marzo 2024, pp. 341 ff., p. 352.

⁶⁰⁶ *Ibidem*.

Deliberative tools thus end up becoming further alarms of democratic discontent. In fact, they constitute additional means of populist manipulation, as they offer “mostly symbolic gratification, with evasive or dilatory aims, to divisive and polarizing demands that political-institutional actors do not find electorally convenient to address (besides environmental issues, also those involving ethically sensitive matters such as abortion, end of life, etc.)”⁶⁰⁷. Therefore, “to summarize, one of the main problems posed by the development of participatory democracy is that of a participation we might call disorganized, that is, a participation so accentuated that it no longer achieves any effect, as the demands it carries end up being lost in the applause of arms”⁶⁰⁸: the only effect they could produce, however, is the already mentioned boomerang effect, caused precisely by the symbolic nature of these experiments, which could lead to a widespread and further sense of frustration towards political actors.

⁶⁰⁷ A. FIORENTINO, *La democrazia partecipativa tra crisi della democrazia rappresentativa e crisi climatico-ambientale: alcune riflessioni sulla fioritura delle assemblee dei cittadini per il clima*, in *Federalismi.it*, 24, 2023, p. 89. Suffice it to mention the statements that emerged in the aftermath of a recent CA in the city of Bend, Oregon: “people want to be directly involved in decision-making», despite “putting power in the hands of citizen assemblies is a popular idea in Europe. It hasn’t found nearly as much traction in the United States, but advocates hope it can be a salve for the country’s toxic division”, because these assemblies “can create the conditions to overcome polarization and strengthen societal cohesion”. And yet, the promoters themselves admit that “progress is challenging. An assembly in 2022 in Petaluma, Calif., spun up ideas to repurpose a long-time county fair-ground site. Two years later, the fair still operates under short-term leases while the site’s long-term destiny remains in limbo. In Colorado’s Montrose County, an assembly in 2023 began collecting bold ideas for improving rural day care, but since then, ‘it’s been more of a marathon than a sprint’, says organizer Morgan Lasher”. The heart of the problem is, therefore, always the same: “it all depends on how much political will there is”, G. ANDERS, *Can Citizens Solve Our Toughest Problems?*, In *The Chronicle of Philanthropy*, 4th October 2024. They then become purely symbolic devices, but also potential boomerangs.

⁶⁰⁸ G. GOTTI, “*Miopia democratica*” del Legislatore e forme innovative di partecipazione pubblica. *Riflessioni a partire da due esperienze francesi*, cit.

Deliberative democracy does not seem to address the two deepest problems of the representative short-circuit: that of leadership classes that are no longer capable of being such; that of the electorate, which no longer knows, elitistically speaking, its role in a constitutional democracy. Raffaele Bifulco appropriately asks: “is it really conceivable that, in today’s democracies, the opinions of representatives can change as a result of discussions conducted within parliamentary chambers or outside, in civil society?”⁶⁰⁹

Here, it is necessary that the role of parties as indispensable actors interposed between the State and civil society, as leading guides towards the future of nations, also capable of deliberative discussion and seeking compromise, not be set aside for apparently safer shores.

So far, constitutionalism has shown itself capable of adapting to changing needs and the dynamics of history, up to the democratic conquests of the twentieth century. And in today’s political communities, with no space either for an illusory and mendacious direct democracy or for deleterious games of competition between the governed and the governors, we must once again rely on the representative circuit. Certainly renewed, certainly cleansed of anachronistic encrustations: parties must open themselves to change and demonstrate the capacity for self-reform. Because from crisis, which “consists [...] in the fact that the old dies and the new cannot be born: in this interregnum the most varied morbid phenomena occur”⁶¹⁰, it

⁶⁰⁹ R. BIFULCO, *Democrazia deliberativa e principio di realtà*, cit.

⁶¹⁰ A. GRAMSCI, *Quaderni dal carcere*, Vol. I, Einaudi, Torino, 2014.

is necessary to emerge. And they remain the only solution we have if we do not want to renounce the achievements of liberal-democratic constitutionalism. Political forces and representation cannot yet be considered outdated⁶¹¹ but, rather, are the only credible alternative where “claims for a substitution of representative democracy appear today only wishful flights toward a fanciful and illusory world: the illusion of populism, precisely”⁶¹². Reformulating Norberto Bobbio⁶¹³, the price to be paid for a functioning machine is, in short, to accept the commitment of a few; which often presupposes the indifference of many.

In short: so that democracy does not continue to be the shadow of itself and reduce to a mere electoral spectacle⁶¹⁴, we should not bet on new instruments but on those we already have.

The words of Giovanni Sartori resonate significantly:

“Democracies in their gray daily work often deserve little credit. But complaining about their daily work is one thing; discrediting them in principle is another.

⁶¹¹ In this sense, the historical and comparative overview by C. MARTINELLI, *Rappresentanza parlamentare e partiti politici in una prospettiva stoica e comparata: dal costituzionalismo classico alle democrazie contemporanee e la specificità della storia italiana*, in *Escola Judiciària eleitoral de Bahia*, 10, 2021, pp. 61-102.

From this perspective, it is not acceptable to say that “there can be no room for mediation in representation: this is a contradictory and logically impossible claim. The bottleneck is caused by the will of the people being reduced to the singularity of a single decision-maker”, F. PIZZOLATO, *Partecipazione e partecipazionismo...*, cit. 3, which reports G. DUSO, *Reinventare la democrazia...*, cit. Why should the bottleneck be blamed? Perhaps it is to blame if it does not embrace the idea of democracy as democratic competition.

⁶¹² *Ivi*, p. 99.

⁶¹³ N. BOBBIO, *Il futuro della democrazia*, cit., p. 14.

⁶¹⁴ C. CROUCH, *Post-democracy after the crisis*, Cambridge, 2020, IX.

There is deserved discredit and undeserved discredit. And the discredit that derives from perfectionism that incessantly raises the stakes too high is undeserved. The ingratitude that seems to characterize the contemporary ‘spoiled child’ and the disappointment that often accompanies democratic experiments are also the backlash of a promise too unreachable to be kept. The real danger threatening a democracy that no longer officially has enemies does not lie in the competition of counter-ideals but in claiming a ‘true democracy’ that bypasses and repudiates the one that exists”⁶¹⁵.

It would be more appropriate, rather, to bet on deliberation as a practice carried out by representatives – in other words, on what has always been government by discussion – and not on deliberation as a feature of a specific form of democracy.

Therefore, the starting point would first of all be to ask ourselves whether the crisis of liberal democracies is largely due to the lack of care we have had for them, both from the side of political classes and from the side of us citizens. The next step would be not to persist in the same mistake.

Certainly, if the hope is that liberal democracy will revive by itself, like Baron Munchausen’s horse, or thanks to some institutional recipe promising miracles, what awaits us will still be waves of discontent, frustration, and impulse to fan the winds of history.

⁶¹⁵ G. SARTORI, *La democrazia in trenta lezioni*, Milano, 2010, p. 25.

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