LEGIBILITY AND TRANSPARENCY IN CONTEMPORARY DEMOCRACY

BY

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With the essay *Le Bon Gouvernement*¹, on the transformation of modern democracy, by Pierre Rosanvallon, we are able to reach a new step, as well as a keen analysis on the political-institutional set-up of contemporary States. The third dimension of “democracy as a form of society” such as the one he intends to define², based on the constitution of a “social equality”, has undergone a kind of heterogeneity of purposes. Although democracy was born from the revolution to achieve social equality, it now seems an order where all modern inequalities are gathered: “Political citizenship advances while social citizenship regresses.”³

² In the book’s introduction, Rosanvallon himself summarizes the studies on the democracy he had carried out in his previous works. In *Le Sacré du citoyen. Histoire du suffrage universel en France* (Paris: Gallimard, 1992), he analyses democracy as “citizenship“, and highlights how the achievement of universal suffrage not only meant a political right, but also a social status. The second dimension, democracy as a “regime”, is the one that originates from two main elements: the representative institution (*Le peuple introvable. Histoire de la représentation démocratique en France*, Paris: Gallimard, 1998), and the sovereign institution (*La démocratie inachevée. Histoire de la souveraineté du peuple en France*, Paris: Gallimard, 2000). The third form of democracy is democracy as a “form of society”, which he analyzes in *La société des égaux* (Paris: Seuil, 2011), where the deepest principle of modern revolution is the revolution for equality.
Democracy has now entered a fourth dimension, a “governmental democracy” in which, consciously or less, we can appreciate a gradual – however inexorable and irreversible – process of “presidentialisation”, a result of the “movement of presidentialisation and personalization of democracies”\(^4\). Over the last decades of the XX century, we assisted to a global change of democracies: the rise of the executive power. “This is the starting point of presidentialisation”.\(^5\) By now, the citizens believe that the political power is almost exclusively the executive one, in its tendency to “presidentialisation” and personalization\(^6\). In fact, this latter form is the one that better responds to the social demand for imputation, and therefore to the taking of political responsibility by ‘one’ towards the citizens. The political responsibility is polarized, and therefore radicalized, thereby becoming an attraction for the masses. Furthermore, this form better responds to a social need of participation in the political life, as well as to needs of legibility, transparency, and clarity.

These are the duties of the philosophical meditation on contemporary democracy. There is a need to outline the specific features of the democracy of civic duty, and a need to describe and highlight what Rosanvallon defines as the “democratic quality of a government”\(^7\), so as to prevent their drifts. Among

\(^4\) *BG*, 111.
\(^5\) *BG*, 15.
\(^7\) *BG*, 213.
democratic qualities, he identified the three concepts of legibility, responsibility, responsiveness.

More specifically, legibility – which literally refers to the citizen’s legibility of the decisional processes of public institutions thereby feeling like integral parts of them – is a pertinent issue that constantly draws the attention of public opinion. It leads us back to the origins of democracy: being a “visible power”, and contrasting any form of concealment of the power, as a “lethal virus” for democracy itself. In order to be “legible”, this power must be “visible”, and in order to be visible, in a democratic sense, it must not have veils. In the last chapter of his book, Rosanvallon talks about three forms of transparency.

The first form of transparency, conceived by the author “as a utopia”, historically dates back to Rousseau’s conception, as defined in his masterpiece The Confessions. “I should make my mind, as it were, transparent to the reader, and I am therefore trying to display it from every angle, to show it in every light, and to ensure there is no movement taking place within it that it does not observe, so that he may be able to judge for himself what

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8 Cf. Vincenzo Sorrentino, *Il potere invisibile. Il segreto e la menzogna nella politica contemporanea* (Bari: Dedalo, 2011, 16), which reconstructs the conceptual plot with which the problem of invisible power has been faced in the course of modernity.

9 Think about the Hobbesian sovereign, who is a “visible power” (Thomas Hobbes, *Leviathan or the Matter, Forme & Power of a Common-Wealth Ecclesiasticall and Civill* (London: 1651, Ch. XVII). Visibility cannot be considered transparency, “since it is destined to consolidate the subjugation of subjects and not to let the goals and terms of the exercise of sovereign power be accessible” (Sorrentino, *Il potere invisibile*, op. cit., 31).

10 BG, 356-365.
principles it is that produces such effects”\textsuperscript{11}. Being “legible” and transparent “like a crystal” is not simply a moral quality, but “it was understood as a form of \textit{social tie}”\textsuperscript{12}. When men and women recognize themselves as individuals, they become citizens fully in tune with each other in the pursuit of the social good.

The second form of transparency is transparency as “ideology”, aimed to uncover – as a political action – what is hidden: scandals, corruption, lies and private interests, always in the view of the public good. “This is quite an original vision of democracy: a sort of regime defined by transparency more than by general will”\textsuperscript{13}. Its ideological form stands in the fact that, at the beginning of the XXI century, transparency manifested itself, becoming widespread as a new religion.

In conclusion, transparency in its instrumental function is the third (and final) form found by Rosanvallon. “Instrumental transparency” is the one that must lead, through transparent procedures, to an “atmosphere of integrity”\textsuperscript{14}. It is certainly a “democratic quality” of a good government.

Starting from these three ways of understanding transparency, we can quickly seek to advance some cues of reflection, by joining three concepts closely linked to transparency, and often called into question when dealing with this subject: \textit{intimate},

\begin{itemize}
  \item \textsuperscript{12} \textit{BG}, 358.
  \item \textsuperscript{13} \textit{BG}, 362.
  \item \textsuperscript{14} \textit{BG}, 365.
\end{itemize}
private, and public\textsuperscript{15}. Is it possible to have “a transparency of the intimate”? Or do we end up reaching a “utopian transparency”, as described by Rosanvallon himself? Is a private transparency possible without ending up with an ideological instrumentalization? Then, what does the transparency of public affairs mean? Does it have just an instrumental function, does it consist only of clearer procedures, or – again – does it refer to the democratic quality of legibility?

In order to define the intimate transparency – without invading other fields – we need to be helped by a definition given by Hobbes in his \textit{Leviathan}: “The secret thoughts of a man run over all things holy, prophane, clean, obscene, grave, and light, without shame, or blame; which verbal discourse cannot do, farther than the judgment shall approve of the time, place, and persons. An anatomist or physician may speak or write his judgment of unclean things; because it is not to please, but profit: but for another man to write his extravagant and pleasant fancies of the same is as if a man, from being tumbled into the dirt, should come and present himself before good company. And it is the want of discretion that makes the difference”.\textsuperscript{16} Who else can lift this ‘veil’ of discretion if not the individual himself? This place of intimacy is like a secret box in which the deeper personal experiences, those that escape from a clear formulation, and not just because you do not want to express them, but also because

\textsuperscript{15} For the definition of these three concepts, see Hannah Arendt, \textit{The Human Condition} (Chicago: The University Chicago Press, 1958, 22-78); Ernesto Garzòn Valdés, \textit{Tolleranza, responsabilità e Stato di diritto. Saggi di filosofia morale e politica} (Bologna: il Mulino, 2003, 97-133).

they are inexpressible, find their room. Every individual is sovereign of this sphere, and any intrusion could damage his/her intimacy as human being.

At the opposite side of intimacy stands the public sphere, characterized by free accessibility to behaviours and decisions of people who live in the society. To clarify this term, we can refer to the definition given by Kant: “All actions relating to the rights of other men are wrong, if their maxim is not compatible with publicity. This principle is not to be regarded merely as ethical, and as belonging only to the doctrine of virtue, but it is also to be regarded as juridical and as pertaining to the rights of men. For a maxim cannot be a right maxim which is such that I cannot allow it to be published without thereby at the same time frustrating my own intention. My intention would necessarily have to be kept entirely secret to succeed, and I could not publicly confess it without inevitably arousing thereby the resistance of all men against my purpose. It is clear that this necessary and universal opposition of all against me on self-evident grounds, can arise from nothing else than the injustice which such a maxim threatens to everyone”.

Therefore, if opacity is a feature of the intimate sphere, the public is the place where transparency is. “Between these two

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18 Saint Augustin in his Confessions claims his sovereignty over his own intimacy: “People are curious to know the lives of others […] Why are they anxious to hear from me what I am? […] And how can they tell when they hear what I say about myself whether I speak the truth, since no man knows what is in a man (Book X, 3).

19 Immanuel Kant, Perpetual Peace: A Philosophical Sketch (1795), from Principles of Politics, trans. by William Hastie (Edinburgh: Clark, 1891).
extremes had better be placed the private, in which a relative transparency reigns”\textsuperscript{20}. Transparency is relative as it requires the presence of at least two actors, \textit{ergo} it is not possible to have a total opacity, otherwise there would be neither communication, nor a total transparency like there is in public: the private sphere would cease to exist, identifying itself in the public sphere. Therefore, in the private sphere there is neither the discretion which characterizes intimacy, nor the transparency which characterizes publicity, but a \textit{set} of unruly behaviours. The private sphere, which should not be confused with intimacy, is the “recognized personal sphere”\textsuperscript{21}. It is the world of the close relationships that people establish. Resuming Waldron’s spatial approach, “the public/private distinction is primarily a matter of geography rather than a matter of the different nature of the moral standards involved”\textsuperscript{22}.

As for the transparencies identified by Rosanvallon, the first one, the utopian transparency of Rousseau’s model, could be defined as a “revealed intimacy”. Not only as a voluntary act of revelation (when one voluntarily reveals his/her secrets to another), but also in the reverse sense, where access itself is seen as a control of the most intimate thoughts, until you reach the last unbreakable barrier. Basing the social union on this form of transparency is not only utopian, but \textit{dystopic}. In this way, one would have access to dark areas mixed with areas of light, where the personality has its origins, and whose manifestation would lead to uncontrolled manipulations, to an \textit{Orwellian Thought Police},

\textsuperscript{20} Ernesto Garzòn Valdés, \textit{Tolleranza, responsabilità e Stato di diritto. Saggi di filosofia morale e politica} op. cit., 109).
thus running the risk of invalidating our ego. This is the same fate of Hugh Person, a character in Nabokov’s novel *Transparent Things*, who, having killed his wife some years before, is projected in a mysterious dystopian dimension, where it is possible to move in time and space, and to see our intimacy and that of the others from the outside\textsuperscript{23}.

The second transparency, the *ideological* one, appears as ‘the rhetoric of the third millennium’, as one of the myths of our time\textsuperscript{24}. It is the faculty of the public opinion to expose the illicit, and to call out corruption, in the name of a democracy, which should have no secrets. On one hand, we rely on direct data access, bypassing any *firewall*, compulsively accumulating information. On the other hand, social media seems to urge people to get things off the chest\textsuperscript{25}, making their private public. New technologies have facilitated this overcoming of the ‘public-private limit’, with the strict conviction that only transparency as well as the elimination of the barriers can make the truth become a true “unvarnished truth”. They are actual political programs: “Thanks for being a part of making Facebook what it is today, and for helping to make the world more open and connected” – stated the Facebook founder Mark Zuckerberg in an open letter on 2\textsuperscript{nd} December 2009. Alternatively, just keep in mind the Wikileaks Case: despite its controversies, its mission was to make accessible some documents with the aim of demonstrating how


\textsuperscript{24} I refer to the following essays: Maria Albergamo (ed. by), *La trasparenza inganna* (Bologna: Luca Sossella Editori, 2016); Byung-Chul Han, *The Transparency Society* (2012), trans. by Erik Butler (Stanford: Stanford briefs, 2015).

\textsuperscript{25} “Western man has become a confessing animal”: Michel Foucault, *Histoire de la sexualité I: La volonté de savoir* (Paris: Gallimard, 1976, 80).
crimes and private interests had been obscured with lies. According to scholars, the Wikileaks Case stems out of the belief that free information could increase transparency, and that transparency *is* a sufficient condition for a better society. It is what Levy defined “a caricature of the electronic democracy”. This ideological transparency forces the private to hide itself until it gets lost in the realm of intimacy or, on the contrary, to expose itself until it blends into the public.

According to Han’s analysis, this ideological use of transparency is a ‘setback to philosophy’, relinquishing both hermeneutics and dialectics. It relinquishes hermeneutics, insofar as in the accumulation of data, in the obsession with accessing everything, and in spreading what has been learned, there is no concern about the interpretation, nor about “grasping” the meaning and value of its “legibility”, as Rosanvallon would state. In addition, such an ideological use of transparency is also far from being dialectic, since in its attempt to penetrate things like crystals, with the intent of claiming the need to break the veil of the *arcana imperii*, it is unable to look at the negative and to deal with it.

Nevertheless, if neither “revealed intimacy” (utopian transparency) nor ideological transparency are qualities in the exercise of democracy, still we have to talk about *instrumental* transparency. As for the latter, we can clearly refer to the

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“minimal” and procedural concepts of democracy, as provided by Bobbio. Democracy is intended by Bobbio as a form of government “characterized by a set of rules (primary or basic) which establish who is authorized to take collective decisions and which procedures are to be applied”\(^{29}\). Such rules and procedures must be made visible. “Modernity has occurred at the same time when methods have been made up to read and measure human activities”\(^{30}\). The latter is demonstrated by Rosanvallon in the *Legibility*-chapter, which gives an account of how initially State accounts were made legible. In fact, the first step in order to break the veil of the *arcana imperii* was financial transparency, which was first implemented in England, and subsequently in France. Not by chance, during the Reign of Louis XVI, Finance Minister Jacques Necker, in his *Account to the King* (1781), wrote: “I wish that such publicity could make more and more indifferent to those obscure writings that try to trouble the administrator’s rest. Their authors are sure that an elevated mind could not descend into the arena to give an answer to them, and take advantage of his silence to shake some opinions with lies”.\(^{31}\) This was the first step towards a concept of transparency – an instrumental one –, capable of reinvigorating public trust in the government.

Again, according to Waldron’s spatial approach, “the borders were moved”: we can identify the second stage during the French Revolution, when people wanted to know the activities of their representatives. The long path towards this direction ended with the accessibility, for everyone, to all activities related to the


\(^{31}\) BG, 218-219.
government actions. Bobbio used the expression “government of democracy” to refer to the “governance of public power in public”, quoting as an example a text coming from Neapolitan Revolution of 1799: Republican Catechism, to instruct the people and make the tyrants fall. “Is there nothing secret in Democratic Government? All the activities of those in power must be known to the Sovereign People, except for some measures of public security, details of which must be divulged once the danger has ceased.” Here are some ingredients of a Democratic State. Publicity is the rule. The secret is the exception. Time is limited.

If democracy, as Rosanvallon – albeit in different words – argued in his previous works, failed at “keeping the promise” of equality, is it able to keep the promise of overthrowing invisible power? Georg Simmel deals with the item of the secret as an organizational principle, whose aim is to subvert information to the governed, thereby consolidating domination relationships. He states that leaders must know that the secret exists. “In other words, the invisible power has to be in some sense clearly

32 In March 14th 2013, Legislative Decree no. 38 stated the principle of transparency as total accessibility to information relating to the activities of public administrations or publicly owned companies.
34 The 37 questions and answers are attributed to Michele Natale, bishop of Vico, and executed in Napoli on August 20th, 1799.
36 I am using both Bobbio’s expression “the broken promises” of democracy (The Future of Democracy, 27), and the expression by Giovanni Sartori’s “Democrazia. Ha un futuro?”, in Lezioni Bobbio. Sette interventi su etica e politica, presentation by Marco Revelli (Torino: Einaudi, 2006, 41).
visible”. As for the transitive property, visibility of power gives no guarantee that there is no invisible power, as Foucault argues. Visibility of power is necessary as a mean of concealment of power itself. Rosanvallon himself makes reference to Louis XIV, who appeared very much in public, but who spoke very little. Therefore, it seems that the Ancien Régime has never been overcome, and that democracy has disregarded its promises.

Can the “instrumental transparency” Rosanvallon talks about in the “democracy of exercise” – be functional to the “legibility” of power? Can the promise of democracy still be fulfilled? If we refer to Kant’s theory to define the public, we may find a useful starting point to establish a criterion of “instrumental transparency”. The Kantian principle could be used a litmus paper to distinguish a good government from a bad one, and instrumental transparency from an ideological and utopian one. If you have made public an act or a series of acts that had so far been kept secret, because if made public, that act or that series of acts could not have been accomplished, you are going to face a scandal. In this case, transparency is instrumental.

The Kantian approach analyses a series of facts which are not included in the instrumental transparency, but which inflate irrelevant news for the purpose of democracy, and for the purposes of good government. Yet, in a context such as the current one of cyberspace, the legibility of the power, both ex


*parte principis* and *ex parte populi*, opens up scenarios that cannot be neglected.

On the basis of the subjective or objective function that the genitive can take on, when we talk about the legibility of power, meanings multiply. Legibility of power can be seen as the rulers’ ability to ‘read’ the governed people, but also as the quality the power has to be seen. The function is subjective from the first point of view, and objective from the second one.

At this point, we cannot ignore the *Panopticon* model proposed by Bentham, nor its symbolic interpretation given by Foucault, according to whom “the disciplinary power, on the other hand, is exercised through its invisibility; at the same time, it imposes on those who are subject to the principle of compulsory visibility”\(^{39}\). According to this model, the couple to see–to be seen is thus dissociated, establishing a disparity that the supervised subject is seen but he/she cannot see, or rather he/she sees the high shape of the tower from where he is spied, but he/she can never verify it\(^{40}\).

By inverting the prospective, *ex parte populi*, the legibility of power can also be understood as the governed people’s chances of reading the power (the rulers), which in turn is (are) watched by the people. Any group or individual, whatever are its origins or cultural background, or whatever are its financial resources, can enter the cyberspace and acquire data, get in touch with other

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groups, and spread news to a large audience\textsuperscript{41}. Bentham’s model is thus overthrown: if the goal of the\textit{ Panopticon} was to prevent anyone from escaping, now the main issue of databases is to prevent someone from coming in from the outside.

Therefore, in the cyberspace world, the model is not simply bi-directional, as a kind of information highway, which, as Lévy argues, would be unhappy and inappropriate as it would tie it to a stream of channelled information. In the cyberspace, communication is qualitatively different. Its character is varied and customizable, transversal and hyper-textual, collective and interactive, with more guidance and more dimensions.

It is as if the Bentham’s\textit{ Panopticon} had been lined with mirrors, with images bouncing, multiplying, inverting, and refracting until the source of the sight was lost. It is no longer a matter of distinguishing “the seeing from the being seen”, as suggested by Foucault in his\textit{ Panopticon}’s reading. We are observing polycentric surveillance networks, where we all can see and we all can be seen\textsuperscript{42}. In this ‘game of mirrors’, it does not matter if what it is reflected is real, because as a reflection, it is true. This vortex of images seems to generate an explosion and a multiplication of “visions of the world”, a chaotic society, as Vattimo states, where the individual is thrown into a “Babel-like disorientation”. Is it worrying for the democracy?


In 2016, the Oxford English Dictionary chose ‘Post-Truth’ as the word of the year. It defined it as “relating to or denoting circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief”\(^{43}\). The ‘Post Truth Society’ is a society in which the concept of ‘truth’ is related to circumstances in which the use of emotions and personal beliefs is able to affect the formation of the public opinion much more than the objectivity of facts themselves.

In the century of the Internet, of the Open Society, and of the 24/7 information flow, the possibility of accessing any content without mediation exponentially increases the legibility of the power both by rulers, and people governed, and also the risks of the conditioning of the public opinion increase. In 2013, the World Economic Forum\(^{44}\) included the digital disinformation in the list of “global risks”, capable of having political, geopolitical and even terroristic implications\(^{45}\). In this sense, new technologies seem to make the concepts of ‘false’ and ‘true’, at a perceptive level, interchangeable, and this is the reason why the issue of

\(^{45}\) The Information Operations (IO) deserve to be deepened by the degree of the perfection achieved, and the intrinsic possibilities of informational and psychological manipulation: such information is the basis of decision-making moments, which can support the achievement of strategic goals, as well as the Information Warfare (IW). It is a methodology that, in times of crisis and conflict, provides the management and the use of information in all its forms and at any level, in order to secure the military advantage. “Information is becoming a strategic resource that may prove as valuable and influential in the post-industrial era as capital and labour have been in the industrial age” (John Arquilla and David Ronfeldt, “Cyberwar is coming!”, Comparative Strategy, 12 (1993): 141–165).
information and mediation is raised, as well as their ability of acting and influencing the targets on a one-way basis.

Maybe, we are not facing the “world visions”, such as those defined by Vattimo, which would bring us back to a sphere of mundus intellegibilis, made of abstract ideas and abstract words recalling a way of thinking made for concepts understood without being seen. There is the risk of facing “images of the world” that do not turn to concepts, and which atrophied our ability to understand and to proceed by ideas. It is the concern expressed by Sartori on the future of the Democracy in the age of the Homo Videns, where abstract and conceptual language is systematically replaced by a poorer perceptive language. In this scenario, the concern for democracy is that the public opinion can be controlled and that “there will be no public opinion but opinion among the public”. 46

Maybe, the instrumental transparency could be a ‘minimum’ quality for the democracy of exercise. Maybe, before legibility as a quality of a good democratic government, we need for everyone to recover the ‘geographical’ difference between intimate, private and public. Maybe, in democracy meant as a government of well-understood, reasoned and shared ideas, those latter ideas that have seen in the invisible power a “virus to fight”, it is necessary to retrieve confidence in the power of thought, even if it is shared on the net, and in its ability to know how to crack in the world of fakes. Therefore, in a democratic government, it is necessary to create the conditions so that everyone could navigate without being overwhelmed in this cyberspace. Education, training and

cultural promotion must be able to regain the helm. After all, we can conclude these reflections getting back to what Montesquieu suggested: “In the republican government, you need all the strength of education.”