

SYMPOSIUM
LE BON GOUVERNEMENT



THE PRESIDENTIALISATION OF THE
FRENCH SYSTEM IN THE CRISIS OF
POLITICAL REPRESENTATION

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I

The need for Presidentialisation

After ten long years, Rosanvallon completed, with his *Bon Gouvernement*¹, a remarkable historical and theoretical study on the changes taking place in contemporary democracy, leading him to publish three more volumes: *La Contredémocratie*², *La Légitimité démocratique*³, and *La Société des égaux*⁴, as well as numerous further ancillary studies on the subject. The recurring theme of his research, albeit examined from different angles, is that of a general crisis of democracy, and he even states at the beginning of his most recent work that, ‘Our systems can be considered democratic, but we are not governed democratically’.⁵ This situation translates into an attitude of disenchantment and dissatisfaction among citizens faced with governments that do not respect rules of transparency and accountability, proposing increasingly confused and illegible policies.

¹ P. Rosanvallon, *Le bon gouvernement* (from now on BG), Le Seuil, 2015.

² *La Contre-Démocratie: La démocratie à l'âge de la défiance*, Le Seuil, 2006.

³ *La légitimité démocratique. Impartialité, réflexivité, proximité* (from now on L.D.), Le Seuil, 2008.

⁴ *La société des égaux*, Le Seuil, 2011.

⁵ BG, p. 9.

The central idea in his latest work, supported by a careful and in-depth comparative analysis of the political and institutional set-up of contemporary States, starts with this statement: in contemporary political reality there has been, almost everywhere, a gradual but inexorable process of presidentialisation and personalisation of democracies. Such process, in fact, marked the last decades of the twentieth century and brought with it an enormous increase in the power of the executive. In Rosanvallon's view, it is necessary to become aware of a specific fact: presidentialisation is only the effect of the progressive increase in executive power, "which is where the presidentialisation comes from"⁶.

Rosanvallon identifies the causes of the increasing centrality of executive power in a process that began between the late 19th and early 20th centuries, and concerning France in particular, the many scandals that marked the first decades of parliamentarism⁷. However, the move towards a stronger executive was determined by the demand for a unifying command that increased at the time of World War I. Tocqueville⁸ had remarked how war tended to dramatically increase the attribution of civil powers. The outbreak of war in France, which proved to be unprepared, especially for

⁶ *Ibid.*, p. 15.

⁷ With specific reference to France, of particular note is the so-called Panama Canal (1889) scandal, when the bankruptcy of the largely French-owned limited Channel company, the brainchild of Ferdinand de Lesseps, brought to public eye a remarkable number of corrupt members of the French parliament, in order to finance the company with public money. The case, and its legal consequences, leading to the sentencing of ministers and members of parliament, went on until 1898. In Italy, in the same period, government institutions and members of parliament found themselves embroiled in the so-called Banca Romana scandal (1892-1894).

⁸ Cf. A. Tocqueville, *De la Démocratie en Amérique*, vol. 2, 1840, Vrin, Paris, 1990, p. 223 ff.

such a long duration, created the need to unify forces and thus for a strong and unifying government.

Léon Blum himself, albeit a champion of French socialism, noted in 1917 that the French Councils of Ministers were unfit to take real decisions and still less to carry them out. Blum therefore hoped for the establishment of a true President of the Council: “the role of the President of the government is the same as the one the leader of an industry”⁹. Blum needed a man to command, a *temporary monarch*, revocable at any time, but empowered as long as the confidence of Parliament kept him alive, by the sum of the living forces of the Nation.

George Clemenceau, as of November 1917, would be the one to break with the previous tradition of ‘government by assembly’ and to embody in his writings and in his government actions the new ideal of a stronger executive, free from defeatism or, to use his own words, “lords of the official parliamentarism”¹⁰.

Indeed, it was at the end of World War I that the first signs of broadening the sphere of public action appeared, signs that would strengthen even more after World War II, giving rise to the creation of the so-called Welfare State. There would be a concrete expansion of the sphere of public action starting with the conclusion of the Great War, an increase brought about by the enormous social, industrial and economic problems in the wake of the conflict. Nineteenth-century liberal politicians had theorised and practised a virtually ‘empty’ economic policy, limited to being in harmony with the laws of the market on the monetary level and being able to maintain, as far as possible, the

⁹ L. Blum, *L'oeuvre*, vol. 3, 1928-34, Albin Michel, Paris, 1972, p. 511.

¹⁰ G. Clemenceau, *L'homme enchaîné*, 9 Septembre 1917.

budgetary balance¹¹ without worrying about the heavy social effects that such economic policies brought with them.

Everything changed after the Great War, and even more so after World War II. The government had to address the question of full employment, the national product, price trends, the public budget, healthcare, schools, and so forth. The previous supremacy of parliamentary law began to give way to a true *teleocracy*¹²: what counted was the result. And the result, obviously, is produced by the executive.

This extremely brief historical *excursus* is sufficient to show how, in reality, the balance of powers underwent a ‘*torsion*’ towards the executive throughout the whole of the twentieth century. These are some of the reasons more than ever before for the majority of citizens, power means – according to Rosanvallon – principally executive power. This is the power that they expect to successfully manage the circumstances of their activities and their personal lives; the power that they identify as a possibly trustworthy interlocutor.

¹¹ It is well known that one of the main objectives of the post-unification political class in Italy was to balance the books, and this was only achieved thanks to the great sacrifices the lower classes (above all). On 16 March 1876, the President of the Council, Marco Minghetti, announced the balanced budget.

¹² The concept of *teleocracy* is used by M. Oakeshott, (*Rationalism in Politics and Other Essays, Methuen*, London, 1962) in opposition to that of *nomocracy*. The latter is represented by a community governed by a multiplicity of individual objectives that are not ordered according to a hierarchy binding on its members. *Teleocracy* reflects instead the idea of a society characterised by the common objective of an ultimate goal to be achieved by employing certain means in a certain way or responding in a specific way, and according to a hierarchical order, to specific kinds of situations as they arise.

With the passing of time, the executive has therefore changed its skin; it is no longer a passive body and executor of the will of Parliament, as it had been at the dawn of the parliamentary democracies, and in the same way, legislative power has also changed significantly, becoming, in fact, subordinate to the office of government.

It was therefore in the context of these needs, and as a result of this overall trend towards a government headed, as Blum put it, by a *temporary monarch*, that the necessary shift towards the presidentialisation of the executive¹³ took root.

Although it was, according to the author, an almost global movement¹⁴, this clear predominance of executive power was most evident in France. In 1962, with a remarkable 62% of the votes in favour, and despite strong and very fierce opposition from all political fronts¹⁵, France consented to the constitutional

¹³ For a further examination of the tendency to presidentialise the executive in Europe and beyond, see T.E. Frosini, C. Bassu and P. Pettillo, *Il Presidenzialismo che avanza*, Carrocci, 2009.

¹⁴ Cf. T. Pougntke and P. Webb, *The Presidentialization of Politics: A Comparative Study of Modern Democracies*, Oxford University Press, 2005. The comparative study of 14 countries shows how governments now tend to follow a presidentialist line, in particular from the following three points of view: 1) greater executive power and autonomy; 2) greater executive independence from political parties; 3) the emergence of election procedures centred on leadership.

¹⁵ There were strong political reactions: the Communist party became the firmest defenders of traditional parliamentarism, and the socialists, including Léon Blum, complained about a plebiscitarianism in which every aspect of public life would be dominated by just one man and his personal power. François Mitterrand, future President of the Republic of France, spoke of 'domesticated executive power' (*Le Coup d'État permanent*, Plon, 1964, Paris). Nor did the right wing and the liberals fail to express their dissent; Raymond Aron, who had been a *Rassemblement du peuple français* (RPF) militant spoke of a "return to

reform that General Charles De Gaulle sought, with the direct election of the President of the Republic—who would become in most cases the de facto ‘Chief of the Executive’.

II

Presidentialisation, réssorts, risks and inadequacies

According to Max Weber, all forms of democracy have always had to address the problem of choosing a Head. The German sociologist also understood how the social perception of political will was no longer a question of an indeterminate general will, but of specific, immediately perceivable decisions, and that in order to achieve this it was necessary to establish a new relationship between rulers and ruled identified by him in the form of a plebiscite democracy that Weber sought to achieve through the 1919 Weimar Constitution¹⁶, for which he was one of the main inspirations. It is precisely in the Weimar Constitution that Rosanvallon sees the prelude to the presidential government-model.

In traditional European political and constitutional thought, theories of the legitimisation of power have always been theories regarding the *authorisation* of the exercise of power, and it is no coincidence that in his *Pouvoir*¹⁷, Guglielmo Ferrero, reiterating Weber, argues that power always has a problem of legitimation,

Bonapartism”, and denounced “the General’s passion for the absolute” (“La République gaulliste continue”, *Preuves*, No. 143, January 1963).

¹⁶ The political initiative with which Weber accompanied the birth of the Weimar Constitution was summarised in a series of articles published in 1917, *Parlament und Regierung im neugeordneten Deutschland*.

¹⁷ Guglielmo Ferrero, *Pouvoir, les génies invisibles de la cité*, New York, Brentano, 1942.

so even if power comes from above, legitimation always comes from below, because it always requires consensus. And the question that never ceases to arise, even in the presidential government model, is precisely this: the legitimisation of the role that those who govern assume and, even more so, the legitimacy of their action.

With what Rosanvallon calls “the first democratic revolution”¹⁸, i.e., the achievement of universal suffrage, a democracy of authorisation was created, and this was not only what the author calls a democracy of civic duty, in other words, one limited to establishing, through electoral mechanisms, *who* should govern, but not *how* and according to *what* rules.

And in fact, the need to grant legitimacy to the choices of the rulers and to understand the mechanisms of their action is just one of the ‘*ressorts*’ that Rosanvallon identifies as the origin of the movement of presidentialisation, which tries to provide a response to both the social demand for *imputation*, that is, we might say, the assumption of political answerability to the governed by one who governs, and also to an instance of the *willingness* of the citizens themselves to be actors in political life through the one whom they elect. Lastly, but perhaps even more importantly, the drive towards presidentialisation responds to a need for ‘legibility’, namely transparency or clarity of operation on the part of the institutions and decision-making mechanisms. In a world where decision-making processes have become complicated and bureaucracies increasingly powerful, the legibility of the Chief Executive is almost a form of re-appropriation of politics by the citizenry.

¹⁸ *BG*, p. 383.

What we wish to analyse here, however, is not so much the origins and characteristics of this movement as the critical issues inherent in the phenomenon, especially from the point of view of the question of representativeness, which in any case does not cease to make itself felt.

As it stands, the phenomenon of the presidentialisation-personalisation of the executive simply risks remaining a significant development in a democracy of authorisation. And indeed, even where, as in France, the movement de presidentialisation has not limited itself to the functional and institutional dimension alone, as has happened in many countries¹⁹, but has also found a transposition in constitutional terms, the direct election of the Chief Executive alone does not prove sufficient to ensure the democratic nature a government's action. It also risks paying the price for, if not even worse, the

¹⁹ There is no shortage of examples from the comparative perspective: in the United States this was a process that was considered almost a natural historical and political course of events, so that, although the President is actually elected in a two-stage procedure (the citizens select the Electors, who then vote for the President), the election of the Head of the Executive is tantamount, in the minds of the people, to a popular vote. The situation in the so-called new democracies is very different. These, such as those in Asia, Africa, and Latin America, or those that came into being after the collapse of the Soviet bloc are much more numerous: in many of these realities, the birth of what might be termed presidential democracies has been considered a logical and natural consequence of coming out of despotic or dictatorial regimes and acknowledgement of the sovereignty of the people. In Western Europe, the situation is different again. Europe was for a long time the place where the institutions of parliamentary democracy were preserved as they came into being in the 19th century. Suffice it to say that in many European countries (Belgium, the United Kingdom, the Netherlands, Denmark, etc.) the advent of democracy was accompanied by the presence of Constitutional Monarchies, which have remained constant over time. Their presence is in clear contrast with the possibility of establishing any explicit forms of presidentialism.

more traditional problems of representativeness and the legitimisation of power, which have been perceived as obvious critical points in contemporary democracy for some time now.

These risks lie, in particular, in a very majority-based conception of democracy itself that inevitably creates a tension between the question of the *selection* of a governor and that of his *legitimation*. And in fact, the election of a single person, inevitably, almost never guarantees general representation, as they cannot represent everyone, so the one elected most certainly suffers from a legitimacy deficit.

First in *Contredémocratie*²⁰, then in *Le parlement des invisibles*²¹, Rosanvallon noticed that many citizens no longer feel represented by those elected through the political parties. There is a feeling of a representative deficit which, according to the French author, is behind the increasing weight of populist movements, one of the most significant political phenomena of the early 21st century in Europe and beyond. The voice of public opinion (citizen expression) no longer exists apart from in the social networks, which means there is a weakness vis-à-vis the ability of governors to listen to the governed. In some way it is as though the Internet, and *only* the Internet, has become the locus of public opinion²². And it is precisely in this context that, as the traditional parties go into decline, new protest movements have found fertile ground; one thinks of Podemos or the Indignados in Spain, or

²⁰ Cf. note 1.

²¹ *Le Parlement des Invisibles* (from now on *LPI*), Seuil, 2014.

²² It is no coincidence that T. E. Frosini speaks of a right to the Internet as a new right to be constitutionally guaranteed. It is no longer just the exercise of the free manifestation of individual thought but the ability of individuals to form relationships, to transmit and request information...? in *Liberté, égalité, internet*, Editoriale Scientifica, 2015. p. 22.

the Five Stars Movement in Italy, to cite just a few possible examples²³. These phenomena are strongly nourished by the feeling of abandonment felt by many citizens who no longer feel represented by traditional parties or even the trade unions.

Nevertheless, for Rosanvallon, it would be wrong to label this phenomenon simply as ‘citizen apathy’. It is true, in fact, that the current (low) indicators of citizens’ confidence in government are a reflection of a certain degree of disaffection with politics, like the growth of abstentionism, which has been a widespread phenomenon in all democratic countries over the past twenty years or more. It is also true, however, that these indicators and data are to be reconsidered and re-read from a different and broader perspective; they need to be analysed more authentically as a general transformation of citizen participation, which has changed over time.

For the author, it is therefore essential to recognise that democracy has changed profoundly and that citizens are now spokespersons for new forms of representation. Although, after the ‘first democratic revolution’, the election of a representative assembly was considered sufficient to guarantee the relationship between representatives and the represented, today, this is no longer enough to guarantee the relationship between *governors* and *the governed*. And if, on the one hand, the spread of the model of the presidential government, as we have said, is a tangible sign of this evolution as a significant ‘step forward’ towards the abandonment of mere democracy of authorisation, the realisation of a democracy of civic duty is still far off. The full

²³ Other examples are the AFD in Germany, which turned out to be the third party in the last parliamentary elections, the anti-Europe Ukip in the United Kingdom, and the xenophobic and anti-Islamic movements like the PVV in Holland.

accomplishment of the latter would imply the concretisation of a number of fundamental qualities that rulers ought to possess.

In the described context, the governor should, in fact, possess at least three essential qualities: *legibility* – meaning transparency, or literally, the ‘readability’ by the citizens of the decision-making processes of public institutions, allowing them to feel they are an integral part of them. Then *responsibility*²⁴ – which Rosanvallon believes forms the other side of the coin of the exercise of authority, a key element in the relationship between those who govern and those who are governed. Lastly, *responsiveness*, namely the opportunity for the citizens’ expression to actually make its voice heard and to receive some kind of answer. The putting into practice of the mechanisms of a democracy of exercise, would also make possible a democracy of appropriation, capable of making citizens feel really part of it, and a democracy of trust, able to renew the by now worn out relationship of trust between the governors and the governed²⁵.

²⁴ Rosanvallon recalls that an early form of responsibility for political subjects came into being in England in the Middle Ages thanks to the system of impeachment, even if it is important to point out that, in its earliest version, the king could never be impeached because his power was considered divine, so he could never ‘do wrong’. For this reason, the only persons who could originally be subjected to this instrument were the King’s Ministers or his senior officials, and *only* for criminal reasons (charges of corruption and high treason) and not for a purely political form of responsibility. The impeachment procedure has changed since the early seventeenth century, coming to gradually include forms of purely political responsibility. (*BG*, pp. 255 ff.)

²⁵ “This is the huge problem of our times : citizens do not trust their leaders and political institutions anymore”, P. Rosanvallon, *La Contredémocratie* (Paris: Seuil, 2006, p. 9). Rosanvallon opens the first of his volumes inaugurating his cycle of studies on the changes in contemporary democracy by specifically introducing the theme of a “society of mistrust”.

Faced with growing dissatisfaction with the model of parliamentary representation deemed capable of solving the problem of democracy, and faced with the inadequacy of the presidential government model, of which the author also appreciates some positive aspects, Rosanvallon does not fail to explore different possible forms of legitimation of public decision-making within the context of the contemporary institutional systems. Hence his study of the so-called *legitimation of impartiality* and *legitimation of reflexivity*.

III

In search of new forms of legitimation: legitimation through competence and legitimation through impartiality

At the close of the nineteenth century and the beginning of the twentieth century, many theorists²⁶, disappointed with the failings of parliamentarianism, had come to wonder whether a more efficient administrative machine with greater room for manoeuvre and more aggressive technical ability might not, at least in certain areas, serve the public interest better than the democratically elected political personnel.

²⁶ Rosanvallon refers here primarily to the American Woodrow Wilson, future president of the United States who, at the end of the 19th century (“The study of administration”, *Political science quarterly*, Vol. 2, No. 2, 1887) raised the question of the new science of administration, followed by Frank Goodnow, who, in *Politics and administration* (1900) raised the issue of the perception of the executive as an *internal way* of manifesting the sovereignty of the people. In the case of France, the discourse on efficient administration would be taken up by Henri Fayol, who even spoke of industrialising the State in terms of result-oriented organisation (*Industrialisation de l'Etat*, Paris 1921).

In fact, according to Rosanvallon, for a long time, and almost up to the late 1980s, there was widespread international, and especially French, approval of a kind of cooperation between two types of legitimation: electoral for politicians, and public selection for civil servants, the so-called *jacobins d'excellence* of the senior civil service: “these two dimensions of the sacred order of the universal suffrage and of the public service have explicitly imposed their values onto republican ideology”²⁷. Generally speaking, however, trust in the senior civil service is greatly diminished today, and the public currently shows increasing lack of confidence in it – while the social elites, put off by low remuneration, no longer have any interest in joining its ranks. A systematic and, so to speak, broader reading of Rosanvallon’s work shows how, alongside the crisis besetting the traditional models of legitimation, a sort of silent restoration of the locus of representation has taken place. This restoration is taking the place formerly held by the Sovereign, and subsequently occupied, increasingly unsatisfactorily, by the people represented by its Parliament.

In this way, other institutions of representative democracy have been added to those that, despite their ancient origins and their distant and various provenance, today find a new and vast international stage in the search for different forms of legitimation. We are talking about the legitimacy of impartiality and that of reflexiveness: namely the independent authorities guaranteeing impartiality, and the Constitutional courts guaranteeing ‘*reflexivité*’.

For Rosanvallon, independent authorities have been the subject of long reflection, both in historical and comparative legal

²⁷ *L.D.*, p. 13.

terms, in the field of research into new forms of democratic legitimation. The starting point for this investigation is the observation of how, in the different institutional realities taken into consideration (especially the American, considered original, and the English and French), they have, albeit in a great variety of forms, a hybrid nature, because “they detain an executive dimension while carrying out normative and judiciary functions”²⁸. For Rosanvallon, they profoundly revolutionise the traditional conception of the division of powers.

In the French case – perhaps the most interesting from the point of view of the systemic and institutional gap resulting from the strong tradition of what goes under the name of ‘Jacobin State’, namely a State solidly grounded in its centralism – it was a matter, from the first time the new institutional model was imported²⁹, of subtracting powers from the executive in order to counter the suspicion of Government partiality in a very sensitive area (the freedom of communication for the rights of citizens). In other words, certain competences were denied to the legitimately constituted powers on a democratic basis, because, in reality, suspicion of partiality led to the loss of legitimacy³⁰. This was how

²⁸ *Ibid.*, p. 121.

²⁹ The first independent authority established in France was the *Commission Nationale de l’Informatique et des Libertés* (CNIL), established in 1978.

³⁰ In France there are currently 26 Autorités administratives et publiques, 19 of which are administrative and 7 public. It is interesting to note that from 1978 to date the number of authorities has grown enormously, at a rate of almost one per year, totalling over 40. The subject has recently been overhauled thanks to two different but coordinated laws issued at the same time. This is Organic Law 2017-54, containing general rules on the constitution, composition, and control of the authorities, and Organic Law 2017-55, containing a Statute of Independent Authorities and the Independent Public Authorities.

France and others³¹ sought, in ever wider areas, a source of legitimation other than democratic election for important public decisions, one defined by Rosanvallon as legitimacy by impartiality.

But what is the democratic legitimacy of the independent authorities, and what is their impartiality? First of all, Rosanvallon recalls the significant historical precedent of 17th-century English public law, which completely dissociated the notion of representation from that of parliamentary election, notions that did not necessarily go hand in hand. In fact, in that particular institutional philosophy, representation was associated with, and derived from, the ability to be a means of safeguarding the individual freedoms of the represented and a limitation of government power. The task of the political representative was therefore to render the vested powers impartial towards society, and to do so there was no need for elections but for the ability to be truly representative and effective.

In reality, independent authorities have a democratic legitimisation that does not derive from electoral investiture, but from their make-up. Their members are appointed but in no way depend on those who appoint them, and they cannot be revoked. They do not all belong to the same party or represent the same interests. In the way decisions are made, they are typically

³¹ For the English-speaking tradition, Rosanvallon refers to articles by P.L. Strauss, “The place of Agencies in Government, separation of power and fourth branch”, *Columbia Law Review*, Vol. 84, No. 3, 1984, and C. P. Miller *Independent Agency: The Supreme Court Review*, 1986. For a comparative look at this point see R. Caranta, M. Andenas and D. Fairgrieve, *Independent Administrative Authorities*, British Institute of International and Comparative Law, 2005. Still more recent but with a critical vision, see the article by Juliette Roussin, “*Démocratie contestataire ou contestation de la démocratie?: L’impératif de la bonne décision et ses ambiguïtés?*”, *Philosophiques*, Vol. 40, No. 2, 2013.

collegial bodies. They listen to all petitions, taking decisions that, far from excluding the various points of view, are the result of the mediation of the different opinions.

It is a sort of epistemic democracy, the result of constant research, whose strong point lies in the cognitive diversity of the members of the collegial body on the one hand, and their interlocutors, on the other.

Another characteristic that contributes to the impartiality of the independent authorities is what Rosanvallon calls ‘negative generality’. This generality comes from the fact that the authority ensures that no one in the community can enjoy advantages or privileges over others. From this point of view, the ability of an individual authority to distance itself from particular interests in order to ensure the pursuit of the general interest is fundamental.

In conclusion, Rosanvallon sees these bodies as new forms of political representation, since, for contemporary society, the concepts of *impartiality* and ‘*negative generality*’ are fundamental for the legitimisation of public decisions: “their democratic history is starting right now”³².

IV

Once again in search of new forms of legitimation: legitimation of reflexivity

Rosanvallon examines the role of Constitutional Courts in modern democratic regimes in his volume *La Légimité démocratique*, seeing them, as we will see further on, as part of the so-called legitimisation of reflexivity. This consists in a constant

³² P. Rosanvallon, *L.D.*, p. 166.

correction of the democratic incompleteness resulting from the well-known crisis of political representation.

It might even be said that they are by far the most important institution of reflexivity in the modern constitutional systems. It is no coincidence that from the original experiences of the United States, India and the Federal Republic of Germany, the concept of judicial review has become, albeit in very different forms, the core of the institutional and democratic mechanisms on every continent. In fact, there is no recent Constitution, from those of Eastern and Central Europe to all the more recently approved ones, that does not consider the British constitutional model outdated and lacking in formal constitutional control and that does not give a prominent role to constitutional courts.³³

It is clear that today's idea of a Constitutional Court is very different from that of the liberal era propounded by Sieyès³⁴ or Constant, who saw the control of constitutionality as a brake and a limit to the sovereignty of the extemporary initiatives of the lawmaker. Nor is it the twentieth-century Kelsen-like approach where the role of the Constitutional Court is simply that of

³³ On the expansion of Constitutional Courts in the 80s and 90s, see C. N. Tate, T. Vallinder (ed.), *The Global Expansion of Judicial Power*, New York University Press, 1997, and more recently, and, largely focusing on European Constitutional Courts, see the comparative study by A. Stone Sweet, *Governing with judges*, Oxford University Press, 2000. For a look at the Asian world (Taiwan, Mongolia and Korea), see the study by T. Ginsburg, *Judicial Review in New Democracies*, Cambridge University Press, 2003, in which the author emphasises the importance of the role of the Constitutional Courts in the development of democratic institutions in these countries.

³⁴ Sieyès explicitly stated that the function of the constitutional jury was to act as a “salutary stop” with respect to the Parliamentary Assembly and to “contain each action in the domain of the special delegation” (*Opinion de Sieyès sur les articles IV et V du projet de Constitution- 2 Thermidor an III*).

internal control over the legislator's work and, therefore, a negative legislation entirely internal to the legal system.

In this regard, Rosanvallon develops an interesting analysis through dialogue with some of the most important contemporary scholars of constitutional law, and law in general, such as Christopher Eisgruber, Stephen Holmes, and Larry Kramer in the United States, Dominique Rousseau in France, and Gunther Teubner in Germany. Rosanvallon's reasoning takes as its starting point the consideration that constitutional law and, consequently, the functions carried out by Constitutional Courts, are implemented over a long period of time, unlike the much shorter time for the decisions of the executive and the deliberations of the Legislative Assembly. Their role of enriching democratic decisions is above all manifested in the context of the creation of fundamental rights and their principles (the *people-principle*) and (unlike the negative generality of the independent authorities) a form of inclusive generalisation within a single *polis*. In other words, a constitutional judge embodies the inclusive representation of equality, as a possibility for everyone to be considered in terms of his or her existence and dignity: fundamental concepts, as we will see, for Rosanvallon in a contemporary democracy. It is in the nature of the *people-principle* to figure on a typically juridical horizon and to find, therefore, in the language of the Constitutional Courts the privileged locus of its being. Constitutional Courts carry out, in this regard, the fundamental task of tracing decisions back to long term principles and enriching the quality of legislation and political decision making.

The example of France and the preventive control of constitutionality, accessible also to a small parliamentary

minority³⁵ following the 1974 reform, is, for Rosanvallon, a clear confirmation of this. The resulting proliferation of parliamentary appeals has greatly increased the scope for debate and dialogue in the Court, in scholarship, and in Parliament itself. In addition, the formulation by the French Conseil Constitutionnel (1985) of the *obiter dictum* whereby “a law that has been voted upon expresses the general will in compliance with the Constitution” has introduced an element of rupture and quality, bringing a decisive change of direction to the framework of French constitutionalism and the very models for interpreting law. In conclusion, Rosanvallon sees the procedures of constitutional justice as a way to increase the methods, places and times of public deliberation, introducing the equivalent of a “pause for reflection”³⁶.

Constitutional Courts, in the modern meaning of the term, therefore make it possible to set up of a sort of ‘stage for deliberation’, whose composite and reflexive character allows a focus on objectives that would be difficult to reach through public political debate or a mere deliberation. This is why also the Constitutional Courts have the right to sit in the place where the political will is legitimated.

³⁵ Constitutional Law 74-904, which modified art. 61 of the Constitution, acknowledged the possibility of presenting a seisin to the Conseil Constitutionnel as well as to 60 senators or 60 deputies, thus also allowing a not too large parliamentary minority to take recourse to the Council and to supervise Parliament’s respect for the Constitution.

³⁶ *L.D.*, p. 196.

V

The Parliament of the invisible, a narrative democracy

In January 2014, Rosanvallon published a short book, little more than a pamphlet, *Le parlement des invisibles*, in which he set out the ambitions for his new project, one with a highly significant name: *Raconter la vie*. But whose life did this French intellectual mean to recount?

The main topic of this ‘story’ is the life of the citizens who feel excluded from the official country by those in power, the institutions, and the media. According to Rosanvallon, there are growing numbers of citizens who feel forgotten and misunderstood. These are the people who sometimes seem to capture the public attention when, for example, they oppose projects likely to cause territorial upheaval or demonstrate for the recognition of their rights. one thinks of the case of the ‘No-TAV’ (against high-speed trains) in Italy, or other environmentalist movements in Italy and Europe. Theirs is, however, a passing visibility and protagonism, in which only the best-organised contingent comes to the fore, the tip of an immense *iceberg* that remains invisible and threatening, manifesting itself here and there, not so much in protest but in bitter disillusionment. The familiar message remains that “the country does not feel to be represented”³⁷. Too many lives are deemed to be unimportant. Too many initiatives are left on the sideline, too many people feel unseen and unacknowledged.

In any case, for Rosanvallon, it is not possible to restore the strength of democracy without decoding contemporary society, without listening to the needs and ideas that are manifested in its

³⁷ *Le Parlement des Invisibles* (from now on *LPI*), p. 10.

complex whole. The factors that oppose the ability of politics to represent society are structural and well known in the modern democracy analysed by Rosanvallon (election systems, difficulty in identifying with elected rulers, distrust of parliaments, etc...), but there is also another one that has to do with the model of socialisation typical of our day.

Universal suffrage should represent the people, through the vote, but in this way individuals are transformed into numbers, so the people is nothing more than a majority of individuals. But the people remains something indeterminate, bodiless in any real sense. However, one must not give in to facile populist analysis: the distance that separates the world of politics from society is not only the product of the culpable indifference of the world of political jargon. It stems, in fact, also from the increased opacity of a society that is no longer divided into the 'estates' of the *ancien régime* but no longer even into 'classes', as in the capitalist production system.

First of all, the mass workers of the Ford era exist no more. Whereas workers used to be considered to be without initiative, to slot into the anonymity of the assembly line, today we are witnessing the valorisation of individual skills such as creativity, focus, commitment, and the ability to react when problems arise. The worker in the contemporary production system is increasingly seen as an individual.

For Rosanvallon, we are now living in the age of the 'individualism of uniqueness': a new stage in human emancipation in which the destiny of individuals is determined more by their personal history than by their social *status*. "The story of the individual, which is necessarily singular, has now placed itself on top of the condition of the individual, which was permanently

identified with a group, which was itself built upon a main characteristic”³⁸.

This mutation of the individual is necessarily accompanied by a different request for recognition, which is no longer that of counting ‘like the others’ (as in traditional democracy, universal suffrage) but of being counted ‘as oneself’, with one’s own personal history, with one’s proposals and ideas, to be recognised as a bearer of values.

This then is the specifically democratic ambition, not one of mere documentation and research, of the *Raconter la vie* project that Rosanvallon has actually set up and which is still ongoing³⁹. It is a question of building up a form of representation/narration capable of rehabilitating the democratic ideal by proposing a single mode of being for all demands for recognition in order to bring them together into an explicit movement and give them a positive value and coherence⁴⁰.

Giving people a voice and visibility means helping individuals to rally to make their lives become part of a meaningful story. It means making individuals’ stories become part of a collective story. This looks like a decisive element, especially in today’s

³⁸ *Ibid.*, p. 22.

³⁹ The *Raconter la vie* project came closer to fruition through the creation of a website (www.ecrire-un-livre.net/raconterlavie.net) set up in January 2014 on Pierre Rosanvallon’s personal initiative. It had the specific aim of creating a free ‘library of life stories’ open to all. The site is still active and has been widely used from the start. Only 4 months after the opening it had 150 authors and 163 stories.

⁴⁰ For an in-depth study of concrete and further experiments to find new forms of direct citizen involvement, as an alternative to representative democracy, see the experiences described by C. Bassu, “Le nuove frontiere della democrazia rappresentativa”, in *Percorsi Costituzionali*, I, 2017. For the author, these are examples of a “democracy of the modernists” (p. 33).

world where the changing conditions and even places of work have produced a re proletarianisation, a new working class dispersed across thousands of invisible work places: “those that INSEE⁴¹ classifies under this definition are essentially the armies of drivers, deliverers, handlers, storekeepers, order pickers etc...”⁴².

According to Rosanvallon, thousands of other everyday difficulties – apart from working conditions – ranging from transport and safety to more personal ones such as continuing to live together despite being divorced, or a young person wishing to leave the family home, are still waiting to be seen as real ‘social issues’. The democratic political project cannot be limited to a mere democracy of accounting and delegation: there must be a move toward a democracy where everyone in society counts.

It is from this perspective that the project for a *narrative democracy* comes into its own. “This is the condition to build a society of individuals which may be fully equal in dignity, equally recognized and considered, and effectively able to build a common society”⁴³.

Essentially, it is a project to give a voice to the governed once more, but at the same time it enhances the work of those who, albeit unable to understand a large number of social expectations, govern today.

On the other hand, telling the story of one’s life means opening oneself up to others, stimulating an interest. Words and listening are, in themselves, producers of communities and social ties. The *Raconter la vie* website has become, for Rosanvallon, a

⁴¹ Institut nationale de la statistique et des études économiques.

⁴² *LPI*, pp. 24-25.

⁴³ *Ibid.*, p. 27.

“*Facebook societal*” connecting a project for social transformation to personal change⁴⁴.

VI

New proposals for a good government

In the conclusions to *Le Bon Gouvernement*, the author tries to systemise his research with some concrete proposals for reforming the political scenario, almost producing a general theory of public law in terms of democratic participation, ‘extended’ also to the workings of government.

The project envisages the “construction of new democratic organizations” to “restore democracy” in digital society, also contributing to the restoration of the “invisible institution”⁴⁵ based on trust and the creation of new social ties able to address the individuality of the unique, which, as we have seen, is the hallmark of the contemporary world. This would be achieved by ensuring that citizens, also through these new democratic institutions, cease to be ‘sovereign for one day’, but would permanently have means of controlling of those in power, allowing them to submit the action of those in government to compliance with specific obligations⁴⁶.

⁴⁴ Quite rightly T.E. Frosini sees in these forms of ‘direct interventionism’ that seek in the Internet the ability to externalize and decide, an even more ‘confused’ way to replace the traditional option of political representation through the vote (“The struggle for constitutionalism”, in *Percorsi Costituzionali*, I, 2017).

⁴⁵ Cf. *La légitimité démocratique*. In the text, Rosanvallon states that he takes the expression from K. Arrow, *The Limits of organisation*, New York, Norton, 1976, p. 26.

⁴⁶ *LBG*, pp. 383 ff.

Rosanvallon imagines a democracy that would revolve around three new institutions yet to be created: a) Le *Conseil du fonctionnement démocratique*, 'guardian' of the principles of democracy of exercise, such as, for example, fundamental obligations regarding the integrity of governors and transparency of their actions. Imagined in these terms, this safeguarding would require powers of investigation, to ensure that the *Conseil* is also able to impose real *injunctions* in the event of the violation of the principles and obligations it is meant to protect. This would imply the creation of a 'fourth power' in addition to the legislative, executive and judicial, and would even go beyond the powers currently granted to the Independent Authorities already operating in this field, in some cases taking some of their powers on itself. In particular, the powers currently entrusted to two Independent Administrative Authorities present in the French system would be enhanced and transferred to the Council: *l'Haute Autorité pour la transparence de la vie publique*⁴⁷ and *la Commission d'accès aux documents administratifs*⁴⁸. The democratic character of the Council would be guaranteed by the method of selecting its members, currently, however, envisaged by Rosanvallon only as the general provision of a preliminary parliamentary hearing, with the obligation of the Council to provide citizens with information to ensure the transparency of its operations.

b) A series of public committees would constitute the second permanent body necessary to bring about the democracy of exercise. These commissions would be tasked with carrying out

⁴⁷ Instituted by Organic Law No. 2013-906 of 11 October 2013, with the task of receiving and checking declarations regarding the assets and interests of government members and elected officials.

⁴⁸ Established by Law No. 78-753 of 18th July 1978, it aims to facilitate access to administrative documents by issuing opinions in the event of refusal by an administration to allow the exercise of this right.

permanent control of the democratic quality of the government's political choices, from the point of view of both public participation and the legibility of the economic and social effects of the decisions taken. The public committees would deal with major political and social issues, from public health and education to employment. They would organise public debates on these topics to ensure the greatest amount of information and the maximum involvement of the citizens themselves.

Rosanvallon goes as far as to imagine that, following this model, the Commissions would lead to the enlargement, and a stronger democratisation, of the tasks currently carried out by the Parliamentary Assemblies, with even greater effectiveness and freedom of action⁴⁹, being free of party influence. In this case too, the fundamental democratic character of these organs would be assured thanks to the extremely heterogeneous composition of the committees. The committees would combine the principle of objectivity – through the involvement of technical experts in the various subjects –, the principle of 'citizens equivalence' – thanks to the presence of citizens drawn by lots – and, lastly, the principle of 'functional representativeness', thanks to the presence of members from the 'citizen agencies' working in all the fields of interest.

c) Lastly, the third body in his political institutional project would consist of all the organisations of citizen vigilance specialised in the supervision of those in power, which would then lead to the informing and training of the citizens.

These organisations could take the form of associations and foundations working in the field of the protection of the public interest and could also benefit, in order to keep them working,

⁴⁹ *Ibid.*, p 387.

from public funding, as is already the case of political parties and trade unions. Organisations of this kind would aim to create a new form of public participation, aimed at combating corruption, lies or concealment, to ensure a form of government as open and legible as possible.

Indeed, Rosanvallon remarks that similar organisations already exist, albeit in a less developed fashion, in the form of a number of environmental and charitable organisations. This, as the author points out, is the case of the American *Common Cause*, a non-governmental organisation with the aim of promoting the fundamental values of American democracy, or *Transparency International* in its various forms present in European countries. It too is an international non-governmental organisation that aims to fight political and other forms of corruption. It is through these organs, albeit only 'in outline', and on which Rosanvallon foresees the necessity to deepen his research in another book, that the exercise of democracy might eventually be achieved.

And so, just as it took decades to achieve universal suffrage after the first democratic revolution, so too it is only to be expected that the working rules of a democracy of civic duty will take time to finalise, but they will eventually pave the way for the second democratic revolution.

VII

Conclusions

In these short pages, we have tried to explore one of the fundamental themes addressed by Pierre Rosanvallon in *le Bon Gouvernement* and many of his other writings, namely the crisis of political representation that translates into a feeling of abandonment and distrust of their rulers among citizens, and the

inability of rulers to represent the multiple interests present in contemporary society.

The need to feel represented has led, within the institutions themselves, to the search for and creation of new *loci* of representation, which in some cases has proved to be effective despite their not having been elected. As we have seen, this can come about in the cases of ‘legitimacy by competence’ (the senior civil service), ‘legitimacy by impartiality’ (Independent Authorities), and legitimacy by reflexivity (Constitutional Courts). Rosanvallon himself has proposed, and in some way achieved, as the result of the ability of civil society to make its voice heard and to influence the decisions of the rulers, a sort of new Parliament, with broad public participation: *Le Parlement des Invisibles*. In *Le Bon Gouvernement*, Rosanvallon sees the phenomenon of presidentialisation, analysed internationally but focussing especially on France, as a response in terms of visibility, responsibility and transparency to the crisis of institutional legitimisation. Yet this is only a partial response, to which Rosanvallon adds, as we have seen, a proposal for new institutions.

The new proposals, certainly in need of further reflection if they are to become concrete, tend in some way to mediate between the institutional path of citizen participation and a less formal and direct one. But if the analysis of the crisis and the various attempts to remedy it appears very wide and exhaustive, on the comparative juridical level, the remedies still appear very sketchy: the existing ones and those yet to be implemented appear to be attempts to provide a cure for an ailing representative democracy, but to a jurist they are in no way sufficient to substantially modify, still less replace, what is the most ancient, tried and tested, form of government.

In any case, the jurist cannot fail to observe that it is the law, especially from the perspective of its public and constitutional values, which ultimately guarantees the effectiveness of the democratic process.