

DEMOCRACY AND LAWMAKING



DIRECT DEMOCRACY  
AND  
REPRESENTATIVE DEMOCRACY

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# Direct Democracy and Representative Democracy

Paolo Bellini

## I

### Introduction

**D**emocracy, as a political concept and a form of government, has an ancient history. The term first appeared in Greece in the fifth century BC, where it was used to identify a kind of political regime in which the people, gathered in an assembly, tended to directly exercise the legislative, executive and/or judicial function as much as possible<sup>1</sup>.

<sup>1</sup> “For all the citizens to be members of the deliberative body and to decide all these matters is a mark of a popular government, for the common people seek for equality of this nature. But there are several modes of such universal membership. One is for the citizens to serve in rotation and not all in a body ...; for there to be joint assemblies only to consider legislation and reforms of the constitution and to hear the reports submitted by the magistrates. Another mode is for all to assemble in a body, but only for the purpose of electing magistrates, enacting laws, considering the declaration of war and the conclusion of peace and holding the audit of magistrates, ... Another mode is for the citizens to meet about the magistracies and the audits and in order to deliberate about declaring war and concluding an alliance, ... A fourth mode is for all to meet in council about all matters, and for the magistracies to decide about

In the current political and cultural context, the ancient ideal of direct democracy, which Rousseau had already redefined in *The Social Contract* (Rousseau 1762) during the eighteenth century, appears to be constantly and vigorously put forward. Such a way of interpreting the legitimisation of power and the form of government presents multiple functional singularities and peculiar founding myths upon which it is necessary to reflect in an analytical way, in order to understand the specific nature of such an ideology and its effects at a systemic level.

## II

### **Representative democracy**

Technically speaking, the form of government of modern liberal-democratic regimes concerns the relations between the executive and the legislative power, so that a liberal representative democracy can be one of three fundamental types: parliamentary, semi-presidential and presidential. In the first case, the government depends on the parliament, where the sovereign people's representatives, elected by the people themselves, sit; in the second case, the President of the Republic is directly elected by the people and has specific prerogatives related to the exercise of the executive power, but is flanked by a Prime Minister whom, although appointed by the President, needs the support of the majority of the parliament; in the third case, the President, after a direct or indirect election (cf. the US system) governs in a monocratic way (by appointing the ministers) and does not depend on the parliament (the legislative power), which is only in charge

nothing but only to make preliminary decisions; this is the mode in which democracy in its last form is administered at the present day..." (Aristotle 1944, Book IV, 1298a).

of control and carrying out the legislative function (Bonvecchio – Bellini 2017, 157-64).

We consider all these cases an example of representative democracy since the electors never ultimately exercise the legislative action, nor the executive one, directly. As a matter of fact, those powers depend on the representatives of the sovereign people, who can periodically be renewed or replaced through the electoral mechanisms. In a representative democracy, therefore, the political power receives its legitimacy from the people, who are the exclusive holders of sovereignty, but it is subsequently and concretely transferred to a political class who will exercise it. Hence the dual function of the people/nation: they represent the constituent power (as theorised in 1789 by Sieyès 1964) from which the actual political-judicial order derives, but they also subsequently exercise, through elections, their sovereignty within the framework laid down by the system they have chosen for themselves. The people/nation is thus considered both a precursor to the establishment of any political system and the foundation of a representative democracy within the actual political order.

In other words, the people/nation carries out, in modern representative democracies, a dual function: it legitimises the existing political-constitutional order at the origin, while at the same time, through the electoral mechanisms, (directly or indirectly) delegating its representatives to form the government. In this sense, it is the ideological cornerstone on which every democracy stands and constitutes a powerful mythical-symbolic narrative which has the ability to determine the existence of stable systems such as the North-American and European ones.

In the democratic narrative, the people/nation is therefore conceived as a collective subject who expresses its will in a non-unanimous way, so that after every round of elections and in every situation, it always appears divided into two or more groups, each

with their own visions and political opinions. As Canetti has appropriately shown, the electoral mechanism of representation, with its liberal guarantees connected to the respect of fundamental individual rights, makes it possible to defuse, by transferring it onto a symbolic level, the implicit charge of destructive violence that is inevitably generated when a part, the majority of the people, imposes on the other part, the minority, decisions which the latter does not share. Through the elections, however, any potentially violent conflict is exclusively transferred onto a representational level, and the ballots cast in the ballot boxes take on a paradigmatic value in order to ensure social peace. One of the most important aspects of any representative democracy lies, therefore, not only in the fact that voting and ensuing operations take on a sacred character, so that there is “the renunciation of death as an instrument of decision” (Canetti 1984, 190), but also in the possibility, for the minoriti(es), of being represented, through the constitution of parliamentary groups and parties capable of expressing dissent against the majority, of which they control the actions and influence the decisions. Obviously, this symbolic mechanism works correctly only when between the electors and the elected there is a relationship of mutual trust and respect, so that the sovereign people can mimetically identify with their representatives, whom they perceive as the bearers of the collective interests of those who chose them.

Representation obviously needs, in order to ensure this mimetic identification, two fundamental conditions: the electors should feel a form of respect towards the elected, based on a rational examination of their conduct; but they should also feel, at the same time, a symbolic and emotional fascination for them. This means that the mimetic identification with their representatives, for the members of the sovereign people, is located both on a narrative, spectacular and imaginative level and on a level of pure ideological involvement, so that citizens actually believe that the political class

promotes the common good and is the bearer of widely shared values. Precisely these latter aspects seem to have entered a deep, disturbing crisis, in the current operating phase of the most important liberal democracies. Even without considering voting intentions during specific electoral deadlines, there is indeed, within several Western political systems, and with different connotations in different nations, a socially widespread and substantial lack of confidence in the political class, in the governments expressed by it and, sometimes, in the democratic institutions themselves (cf. Zmerli – van der Meer 2017).

This kind of attitude is probably determined by a general perception of a deterioration in public ethics, which is essentially fueled by a subtle interplay of specular references, where an increasingly ignorant and misinformed crowd of citizens tends to identify with and, as a consequence, elect to be represented by, politicians they consider similar. They, in turn, pursue their voters on that very same ground where prejudice prevails, with a lack of strong ethical beliefs and the hope of always being able to individually succeed at all costs and at the expense of others. This also depends, to a certain extent, on the decrease of interest of the institutions and *élites* for the social and political construction of the ‘good citizen’ (cf. Bellini 2016). Confiding that an ever-increasing economic wellbeing and a substantial virtualization and spectacularization of the real (Debord 1995 and 1990), used, as a form of anaesthesia, to numb all the irrational, violent and rebellious drives present in every society, would have been enough to ensure the established order, it was deemed unnecessary to seriously invest on such a burdensome and expensive task. Hence the temptation, entertained by several parts of the public opinion, and then intercepted by some parties and political movements, and constantly fuelled by the new information technologies that make it viable in practice, to respond to this crisis in political representation with an appeal to the constituent power of the

sovereign people, transforming the current liberal-democratic formula into an order which should contain as much direct democracy as possible.

### III

#### Direct democracy

The ideal of direct democracy is predicated on the type of regime practiced in Athens between the fifth and fourth century B.C., which, within the modern Western civilization, has been the object of a substantial process of idealisation. The democracy of the Athenians has thus soared into the collective imagination as a model of true and complete democracy, and is often described as the only form of government where the people actually exercise their sovereign prerogatives.

With Rousseau's *Social Contract*, it was given a sort of theoretical enshrinement of the modern age; all those who put forward the ideal of direct democracy as a possible response to the crisis in confidence that is currently plaguing liberal democracies, implicitly or explicitly refer to this text.

Authors like Hardt and Negri (2012) and political movements such as the *Five Star Movement* in Italy make an appeal, unsurprisingly, to the thaumaturgical properties of a participatory and direct democracy, evoking its capacity for a palingenesis of the current parliamentary or presidential systems based on the concept of representation. This unmediated form of democracy, therefore, which in its most extreme theorisations directly involves the sovereign people in the exercise of all three powers – legislative, executive and judicial – (*ibid.*), or, as in Rousseau's case, just the



legislative power<sup>2</sup>, appears to its proponents as a sort of magical potion, capable of healing the worn-out Western liberal democracies.

However, what is left unsaid about this form of government and power legitimisation is its dark and disturbing side for those who care about individual freedom, the efficiency of political systems and a correct and balanced relation between power and knowledge. If we were to summarise its salient features, it can be said that direct democracy:

1. eliminates the very idea of representation.
2. directly brings the constituent power onto the political scene, threatening the stability of every constituted power.
3. triggers potential totalitarian dynamics.
4. inevitably tends to compress individual freedom.

It is rather evident that, whenever the sovereign people, epitomised by the voters, were called to directly exercise a power, be it only the legislative power, this would *de facto* determine the end of representation, i.e. of the mirror in which the people themselves build their self-images and where their manifold voices reside. In this case, although citizens would be expected to legislate by a majority, not to directly exercise the executive power and to renounce self-government (for instance, by setting up a presidential government without a sovereign parliament), the ruling class would constantly depend, for all its acts, on popular will and its ever-changing whim, which would still be necessary to

<sup>2</sup> “We have seen that the legislative power belongs to the people, and can belong to it alone. It may, on the other hand, readily be seen, from the principles laid down above, that the executive power cannot belong to the generality as legislature or Sovereign, because it consists wholly of particular acts which fall outside the competency of the law, and consequently of the Sovereign, whose acts must always be laws” (Rousseau 1762, 43).

govern in practice. On the other hand, if citizens were directly called to make executive decisions, the political class would be left with the task of instructing a propositional phase before voting on the most significant governmental acts, becoming, *de jure* and *de facto*, a power that would coincide with the ability to manipulate and obtain the majority's consent. In that way, the constituent power (the sovereign people) would always become the protagonist of every significant political decision, so that no stable constitutional order could be invoked before them, as every decision would directly emanate from the very source of power, thus being, in its nature, incontestable. The people would therefore become a sort of empirical absolute that would express itself by a majority. The outcomes of such a system, especially in an industrial and technological society, can only be totalitarian in character or, as Plato had understood, at the very least tyrannical<sup>3</sup>. In other words, every time the citizens are called to legislate on everything, or even make governmental decisions, especially within complex and technologically advanced societies, a dangerous overlap between power and knowledge inevitably occurs. This inevitably leads to the uncontested domination of a majority which is almost always oblivious to the issues on which it should decide. This majority, by its very own nature an easy prey for demagogues and populists of all kind, would then always be ready to release, without any form of control, its prejudices and fantasies. As a result, the voices of the experts would go completely unheard, derided by the

<sup>3</sup>“The teacher in such case fears and fawns upon the pupils, and the pupils pay no heed to the teacher or to their overseers either. And in general the young ape their elders and vie with them in speech and action, while the old, accommodating themselves to the young, are full of pleasantry and graciousness, imitating the young for fear they may be thought disagreeable and authoritative... And so the probable outcome of too much freedom is only too much slavery in the individual and the state. ... Probably, then, tyranny develops out of no other constitution than (direct) democracy” (Plato 1969, Book VIII, 563 a-b and 564 a).

interconnected individuals who form the sovereign people. As is already the case on the internet, where on several issues, instead of lending their ear to the most learned in a field, people give credit to those who can better tap into their emotional impulses and collective imagination, the same thing would happen on a much larger scale, in case such a dystopia became reality. Precisely because the people, by a majority, exercise the constituent power, which, in turn, cannot be limited by anything except itself, at least in the mythical-symbolic fiction of popular sovereignty<sup>4</sup>, it would

<sup>4</sup>“... the people exist as a community constituted in accordance with *justice* (legal aspect) and *commonality of interests* (economic/utilitarian aspect), within a symbolic and imaginative framework (value-related aspect). It is not possible, therefore, to assign any kind of sovereignty to the people themselves, since, in accordance with the given definition, they depend on power, as power precedes them both logically and ontologically, and cannot therefore belong to them. In other words, it can be said that *the people are not the source of power, but power is the source of the people*. This statement can be easily proven by the fact that *justice* and *commonality of interests* cannot be conceived as independent of power, whereas power, to exist, needs neither *justice* nor *commonality of interests*. As a matter of fact, power can be exercised in its originating aspect, i.e. as force and command, even without the presumption of either *justice* (common law) or *commonality of interests*, as it happens when individuals, groups or entire communities are subdued and, in conditions of subjugation, slavery or simple subjection, cannot share any law nor have a *commonality of interests* with their rulers. On the other hand, it is impossible to exercise any form of *justice* or *commonality of interests* without a structure of power capable of giving effectiveness to these concepts, so that the people themselves can be shaped at an empirical level. Namely, the establishment of those principles that structure the people as an empirical entity always requires a coercive force of some kind (imaginal, material or spiritual), in the absence of which it translates into a simple desire without any effectiveness, a pure being a potential without ever becoming act. Moreover, the very existence of such ideas (*justice* and *commonality of interests*) is often conditional to the education received, which, in turn, depends on the power itself, which socially founds institutions, such as schools, designated to that purpose. Additionally, from a merely logical point of view, a shared law, on which human disputes should be decided, and the construction of what, each time, should be considered as the common good

not be long before they would make decisions, due to a substantial lack of knowledge, that would trigger such a magnitude of social problems as to generate an emergency with apocalyptic connotations (Bellini 2012). Such a situation would induce, in turn, the very same sovereign people to ask a charismatic *leader* or a well-organised group (of the oligarchic kind) to assume full powers, in order to be saved from their own irrational and senseless choices. This would justify, at that point, a full transfer of power to the new sovereign, in order to allow him or her to operate effectively. Therefore, the *de facto* holder of sovereignty would not be the people anymore, since their constituent power would withdraw once again into the chaos from which it came, leaving space for what would be an essentially totalitarian order which would govern with implacable energy. This new holder of power, in turn, if we consider the swift technological evolution to which our contemporary civilisation is subjected, could even have, in a not-so-distant future, the distinctive features of an artificial intelligence or, more likely, those of a (new class of) cybersymbiotic organisms, half humans, half machines. These organisms, as predicted by Harari in a recent essay (Harari 2016), would govern with a systematic use of algorithms, capable of steering the existence of the millions of beings who voluntarily submitted to them.

Such a disturbing scenario would not only inevitably result in a systematic compression of the individual freedom, but would also bring about, during its initial, pre-totalitarian phase, all kinds of conflicts, including violent ones, between an arrogant majority, strongly entrenched in its hegemonic position, and a minority which, left without representation, would soon rebel. As a matter of fact, in such a context, the people's constituent power, emerging from the chaos in which it is usually pushed back by the constituted

are, without power, undecidable in their axioms of reference.” (Bellini 2007, 143-4).

power and by the principle of representation, would project its own lack of order within any kind of political system. This instability is indeed integral to the fact that majority and minority would in any case be fluid and unstable, given that each citizen could potentially, and alternatively, be part of either group each time. In that sense, direct democracy can be compared to the monsters against whom the Olympians of the Greek pantheon used to fight to establish an order that, however asymmetric, determined a space in which a peaceful and safe existence was possible. Precisely the wish to be safe and a Hobbesian fear of death<sup>5</sup> push the sovereign people, incapable of governing themselves and fallen, by their own hands, into a state of significant uncertainty, perhaps even of pure anarchy, to surrender their whole power to those who are in the condition of ensuring peace and safety, seeing as how they possess not only the art of politics, but also the opportunity to use, since they have access to it and understand its importance, the necessary knowledge for the survival of the society itself.

It is not difficult to imagine the kind of regime which could arise if this type of constituent power took hold within a technological civilisation, where a mass of ignorant citizens, perpetually connected to a network, manipulated by the groups who control it, oblivious of what actually happens, would essentially be at the mercy of oligarchies capable of easily steering their consent through the display of a reassuring, paternal and redeeming *leadership* (cf. Bellini 2012).

<sup>5</sup> “The passions that incline men to peace are: fear of death; desire of such things as are necessary to commodious living; and a hope by their industry to obtain them” (Hobbes 1651, 79).

## IV

### Conclusion

A technological civilisation, with its ability to interconnect all the citizens, by creating hierarchically ordered networks which are a function of the number of connections that each element possesses plus the ability to voluntarily activate such channels<sup>6</sup>, makes direct democracy on a large scale viable. This, however, brings to light all the contradictions related to the authoritative moment that determines every process of power legitimisation, whose bases are of a mythical-symbolic kind, unjustifiable on an empirical and rational level. In fact, by bringing directly onto the political arena, through direct democracy, the sovereign people, as a constituent power to be called upon on any political matter of a certain relevance, both as a principle of legitimisation of the political order and as a form of government, leads *de facto* to a regime where neither an order nor a constituted power can permanently exist, since the constituent power incessantly acts and never retreats to the background. It is as if the God of the Old Testament, after having given Moses the Tablets of Stone, had continued to constantly appear, changing their contents every time. In fact, naive or self-interested considerations on the merits of direct democracy, considered as that form of government where the sovereign people, understood as a sort of political divinity,

<sup>6</sup> “According to network theory, which was developed, in the scientific-experimental field, during the second half of the twentieth century, two fundamental types of network structures are possible: *egalitarian* and *aristocratic*. While the former are characterised by equally-distributed connections among the nodes of a network, the latter are determined by the fact that most existing connections are monopolised by few elements called *hubs*. Just as there is a prevalence, in the economic and technological fields, of network organisations of the second type (aristocratic), of which the internet and the *World Wide Web* are the models *par excellence*, the same thing happens in a strictly political dimension.” (Bellini 2011, 73).

keeper of justice and goodness, can finally and freely express their will, are nothing but pure and simple falsifications. As a matter of fact, such positions tend to neglect (in good or bad faith) the fact that the power always precedes any justification of its legitimacy, since it exists as an immediate and insuppressible relationship among human beings, deeply intertwined with the very same existence of our species. Any justification on why some people give orders and other people take orders may only happen *ex post* and not *ex ante*. Only after becoming aware of how much power relations deeply belong to human nature and qualify it as such, it is possible to try to justify these phenomena, by representing them within a narrative that evokes such concepts as justice and goodness. This happens, very simply, because the human species, unlike bees and other insects such as ants, is made up of individuals equipped with an autonomous language and a self-conscious ego, who, in order to accept any political and social hierarchy, need it to derive from a founding narrative, created with the purpose of justifying the established order<sup>7</sup>. The idea of a sovereign people, therefore, asserts itself as the most suitable narrative to interpret the need for an empirical correspondence between concepts and reality which is typical of modern culture. The people, in their empirical immanence, are indeed designated as something with which it is possible to concretely interact, since their existences are intimately intertwined with those of the individuals in flesh and bone who form it. However, this people exists *de facto* only by virtue of power, which forges common values and identities; otherwise, there would only be a rabble of individuals, so heterogeneous that

<sup>7</sup>“... ruling classes do not justify their power exclusively by de facto possession of it, but try to find a moral and legal basis for it, representing it as the logical and necessary consequence of doctrines and beliefs that are generally recognized and accepted. So if a society is deeply imbued with the Christian spirit the political class will govern by the will of the sovereign, who, in turn, will reign because he is God’s anointed.” (Mosca 1939, 70).

they would have no lowest common denominator that would allow them to recognise themselves as a coherent set. There are countless historical examples of this and it is sufficient, for a correct theoretical understanding of the issue, to consider the importance that the modern State has had in determining the concept and the very same existence of a nation (cf. Bellini 2010).

Ultimately, it is impossible not to ascertain the extreme danger, to every established order, which is generated by the direct and constant call into question of the very same foundation on which the entire order stands; in doing so, the narrative and partially fictional nature of every form of power legitimisation is revealed. The sliding of the representative regimes towards direct democracy thus reveals the fact that the people, whenever they find themselves, and in spite of themselves, having to exercise in a total, incessant and unlimited way the sovereignty that is attributed to them on a symbolic level, always risk surrendering to a disturbing totalitarian tyranny.

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