

# ARTICLES

## THE CONSTITUTIONAL DIMENSION OF DEMOCRACY WITHIN A DEMOCRATIC SOCIETY

*Francesco Bilancia\**

### *Abstract*

This article aims to shed light on – at the time of the economic crisis – the emerging gap between, on one side, the ideal representation of democracy and its functioning, on the other side, the growing manipulation of popular consent and the related vehement attitude towards its political role. With an approach both historical and comparative, the author underlines the collapse risk of constitutional democracy as necessary form of legal institutions, when its reception within society loses the connections to the rule of law.

### TABLE OF CONTENTS

1. Populism versus legal order. The role of formalism and the normativity of the Law.....	9
2. Law and democracy: legal boundaries to democracy in the constitutional context....	12
3. The origin of contemporary populisms and the economic crisis.....	15
4. Economic crisis and its implications for the so-called middle-class.....	17
5. The changing role of representatives (MP) as a symptom of the contemporary crisis of parliamentarianism.....	19

---

\* Full Professor of Constitutional Law, University “G. D’Annunzio” of Chieti-Pescara.

### **1. Populism versus legal order. The role of formalism and the normativity of the Law**

The intention is here to deal with populism and constitutional effectiveness or, in other words, to discuss the principle of people's legitimacy of the legal and constitutional systems. The complex relation between democracy and constitutional boundaries to political power is also at stake, among the risks emerging from an idea of democracy out - or without - of the legal limits of constitutionalism. This contribution moves from the widespread perception of the emerging divide between the ideal representation of democracy, its functioning on the one side, and the growing manipulation of popular consent and the subsequent vehement attitude toward its political role, on the other side. To deal with contradictions between democracy and the legal system generated by contemporary populisms. When the idea of democracy perceived within society loses its connections to the rule of law it could bring to the breakdown of constitutional democracy as the necessary shape of legal institutions.

Before referring plainly to the severe critical approach frequently manifested behind the use of the word *populism*, it might be essential for our discussion to stress the attention on some preliminary issues, in order to avoid whatsoever misunderstanding. First and foremost, in our opinion, the aforementioned paradigm may not prove to be a valid tool in interpreting a specific political context - such as the Italian one - except for minor findings possibly arising from the comparison with other contemporary political systems. That is, according to our point of view, purely because the simplification<sup>1</sup> hidden behind the dualism between alliances expressing populism on the one side and those representing party politics on the other hand, is not to be considered valid anymore.

Moreover, some of the basic assumptions frequently recalled about the emergence of populism are, in our point of view, simplifying. It is common ground that the radicalization of anti-Europe forces, specifically those who fight against the European Monetary Union, may feed populism. Nevertheless, the discussion cannot be confined to the analysis of this issue, since we strongly

---

<sup>1</sup> See, e.g., the critical remarks of Y. Stavrakakis, *Three Challenges in Contemporary Populism Research*, in <https://www.socialeurope.eu/three-challenges-in-contemporary-populism-research>, May 22nd, 2018.

believe that the critical attitude expressed towards party politics is more complex, that is, multifaceted.

In examining the emerging populist trend I will adopt an historical and comparative approach at the same time, which could help us in highlighting constant elements and features, essential to explain the multiple diversions of the reality from the ideal model of a democratic system. Of the different readings of the aforementioned phenomenon, i.e. the opposition between populism and formalism intended as normativity of the Law<sup>2</sup> and the Constitution, two in particular deserve our attention, as they are capable to help us in better interpreting the reality.

The first reading is rooted in the threat to individual rights represented by democracy, once this concept is interpreted outside the shield of protection of the rule of law. In other words, quite often, decisions formally taken in the name of the democratic principle deeply infringed individual rights, under an historical perspective, both in the past as well as in our contemporary world. Democracy is not just the people consent to whatsoever political decision.

Contrarily, the second reading focuses on the democratic origin of populism itself, which profoundly rests in the sovereignty of the people and in the affirmation of their will. To strengthen this reading, in a recent essay, Marco Revelli<sup>3</sup> points out how the word *populism* is rooted in the Latin word *populus*; analogously as the etymology of the original Greek word *democracy* refers to *demos*, the word used in the ancient Greek language to mean the contemporary concept of the people. To cope with this issue, at the same time, one may think about the possible conflict arising between democracy and individuals just recalling to mind its possible decay, represented by *demagogy* and the distance from the democratic concept of *politeia*<sup>4</sup>. This brings back to an es-

---

<sup>2</sup> Oriented by legal rules pointed out by a democratic political authority.

<sup>3</sup> M. Revelli, *Populismo 2.0* (2017).

<sup>4</sup> That is Platone, *La Repubblica*, Book VIII, chapt. I, 543a-544d, chapt. XI, 557a-558c, chapt. XIV, 562a-563e and Book IX, chapt. I, 571a-572b, in Id., *Opere complete*, vol. 6, it. translation by F. Sartori (2003), respectively 259 ff., 274 ff., 280 ff. and 291 ff.; Aristotele, *Politica*, it. ed. by L. Laurenti (2002), especially Book III, 6-8, 10; Book IV, 2, 4, 11. On these issues, masterfully, L. Canfora, *Il mondo di Atene* (2011), esp. 67 ff., 130 ff., 151 ff. and 156 ff.; Id., *La democrazia. Storia di un'ideologia* (2006), 31 ff., 52 ff., analysing in an historical perspective the evolu-

sential contradiction, as populism itself has anyway to do with democracy, being one of its expressions. Populism, the people and democracy sharing the same reference.

The main dilemma represented here has been already discussed by two prominent scholars; their writings may be considered in alternative but surely are to be read as complementary. Denis Gallighan, on the one side, affirms that “*the universal problem is how a people can both govern itself and have effective government*”<sup>5</sup>. While, Gianni Ferrara, in a work still unpublished<sup>6</sup> so far, highlights the tension between people sovereignty and the will of people, on the one side, and the quest for legal constraints which arises from the same need of affirmation of rights and guarantees for human beings, on the other side. Legal constraints which soon become a limit themselves for the expression of the individuals and their freedom<sup>7</sup>. The law arising as an answer to a need for protection for the individuals and a legal constraint at the same time; bringing this dilemma deeply inside the concept of democracy and democratic law as law based on the consent of the people, grounding legal bounds to individual freedom at the same time<sup>8</sup>.

---

tion of the effectiveness of the different forms of democracy. See, also, E. Gentile, *Il capo e la folla. La genesi della democrazia recitativa* (2016), esp. 3 ff., 8 ff., 22 ff.

<sup>5</sup> *The People, the Constitution, and the Idea of Representation*, in D.J. Galligan, M. Versteeg (eds.), *Social and Political Foundations of Constitutions* (2013).

<sup>6</sup> G. Ferrara, *Sul diritto. Un'ipotesi*, forthcoming.

<sup>7</sup> This is a permanent question in political and legal theory. Among Italian scholars, e.g., see, G. Zagrebelsky, *Il «crucifige!» e la democrazia* (1995); M. Luciani, *Art. 75. Il referendum abrogativo*, in G. Branca, A. Pizzorusso (eds.), *Commentario della Costituzione* (2005), 1 ff., spec. 20 ff., 31 ff.; L. Carlassare, *Costituzionalismo e democrazia nell'alterazione degli equilibri*, in *Studi in onore di Gianni Ferrara*, I, (2005), 561 ff.; Id., *Sovranità popolare e Stato di diritto*, 1 *Costituzionalismo.it* (2006); L. Canfora, *La democrazia. Storia di un'ideologia*, cit. at 4, in an historical perspective; G. Ferrara, *Sulla democrazia costituzionale*, in *Scritti in onore di Lorenza Carlassare*, V, (2009), 1899 ff.; F. Bilancia, *Le forme della democrazia contemporanea e il germe della sua autodistruzione*, in F. Bilancia, F.M. Di Sciullo, A. Gianelli, M.P. Paternò, F. Rimoli e G.M. Salerno (eds.), *Democrazia. Storia e crisi di una forma politica* (2013), 135 ff, and bibliography there quoted; S. Cassese, *La democrazia e i suoi limiti* (2017).

<sup>8</sup> C. Thornhill, *The Citizen and the State. A paradoxical Relation*, Speech at the RCSL Annual Meeting, *Law and Citizenship beyond the States*, Instituto universitário de Lisboa, 12 September 2018, has spoken of “conflict between functional and normative dimensions of citizenship”, qualifying it as a paradox.

## 2. Law and democracy: legal boundaries to democracy in the constitutional context

Yet, the Constitutional framework, in shaping constitutive procedures and rules, looks to be the primary way to gather shared consensus over the rule of law, which is a starting basis in order to promote political stability and legal certainty as well as legitimizing processes of the legal system.

At the same time, the role of the consensus of minorities as fundamental tool itself for legality cannot be denied. In two famous speeches, Gaetano Salvemini<sup>9</sup>, rooted on the consensus of minorities the search for a balance between political rights and democracy. The consensus we refer to here, nevertheless, before being a consensus on the outcomes, on the contents of law, is represented by a shared conviction on deliberative requirements and procedures, which makes acceptable in its content any possible outcome, insofar as it may be considered as the output of the democratic process<sup>10</sup>, consensus on the procedural machinery of democracy (Luhmann). Only a shared certainty on the law-making process can let its contents be accepted by anyone even when contrary to her personal interest, just because has been approved respecting the legal procedure, the rule of law.

Notwithstanding this, it is evident that the balance between the decisional power of the majority and the expression of the guarantees for the minorities represents a hard synthesis: nevertheless such a synthesis requires to stress the real significance of the democratic process in its capacity to express the will of the people through the mechanisms of political representation. If we turn our attention from limits and procedures, *id est* from the deliberative process to its outcome, one may argue that a serious risk of paralysis may arise, once democratic institutions tried to find out an unanimous consensus around the content of their decisions, on the one side. Unanimity is deeply in opposition with effective government. On the other side, one may consider as self-destroying any deviation who calls for an unlimited and un-ruled recourse to the will of people, once that is not shielded by any constitutional legitimacy. Such a perspective is not so odd, while it

---

<sup>9</sup> G. Salvemini, *Sulla democrazia. (Saggi)*, 1936-1937, 1940 (2007).

<sup>10</sup> I am referring here to the masterpiece of H. Kelsen, *Vom Wesen und Wert der Demokratie* (1929), it. ed. in Id., *La democrazia* (1995), spec. 101 ff.

has been limited over time and space, by the recourse to democratic institutions and to constitutional limits.

That is why it looks necessary to discuss the issue of what kind of limits we should cope with. To avoid a self-destroying form of exercise of democratic power<sup>11</sup>, bringing people's consent, pretending to be democratic in itself, against the rule of law, insofar against constitutional democracy. Most limits, as expertise, merit system, counter-majoritarian institutions, have been brought in, in part, by *aristocratic* constituencies, as provided by professional institutions<sup>12</sup>. The same role vested by the judiciary is itself the expression of a limit and may itself be considered controversial, if we just think about the UK system and the still ongoing tension between political constitutionalism, on the one side, and judicial constitutionalism, expressed through the common law of the land through the judiciary, on the other side. Falling again on the dilemma of the apparent opposition of constitutional foundations of democracy and the legal system.

Yet, one cannot indulge in the temptation, expression itself of a populist point of view, to replace processes and procedures embedded by democratic institutions, relying on the power of a selective elite, potentially able to express the interests and the needs of the people. That would be the output of an aristocratic choice, this time intended as a paradigm of inequalities and political and social injustice so far, without being a solution to the original dilemma between the will of people and its translation into decisions taken in the interest of the people; between the need of democratic legitimacy and an effective government.

Therefore, our search for a synthesis between democracy and the affirmation of civil and political rights, may look at the traditional European legal culture as well at the history of legal thinking in Europe. In one of its masterpieces, Aldo Schiavone<sup>13</sup> affirms how western legal culture has been based on a synthesis between the Greek and the Roman paradigm. According to the former, the legal phenomenon is the output of popular assemblies, whose *democratic* nature is ensured by popular sovereignty. Ac-

---

<sup>11</sup> I have already dealt with these issues in F. Bilancia, *Le forme della democrazia contemporanea e il germe della sua autodistruzione*, cit. at 7.

<sup>12</sup> Recently on these issues, S. Cassese, *La democrazia e i suoi limiti*, cit. at 7.

<sup>13</sup> A. Schiavone, *Ius. L'invenzione del diritto in Occidente* (2005), esp. 12 f., 51 f., 76 ff., 92 ff., but *passim*.

According to the Roman paradigm, on the contrary, the legal system is the output of the deliberative process expressed by an authority, even if entrusted by *cives*, the citizens. Whose deliberation are driven instead by rational thinking, making use of conceptual formalisms<sup>14</sup>, guided at the same time by the legal science and by rulings, where politics leaves space to form, to expertise and to knowledge<sup>15</sup>. Opposing *Jus* to *Lex*, where the class of lawyers rules in the name of *Princeps*.

And both paradigms proved challenging democracy itself, in their deviations. As both paradigms are deeply in crisis today.

The first one, the democratic one, may turn into (democratic) radicalism, which opens up to tyranny and to conflicts between legal norms and values, as well depicted in masterpieces of the Greek literature, such as the Socrates' Apology and Antigone<sup>16</sup>. While, the legalization of economic behaviour, the codification of rules on property, on contract may eventually lead the latter, the formal paradigm, to the paradox of legal inequality as a consequence of economic inequalities, in other words to the ruling of economy through the legitimation of law. In the Roman tradition driven by the doctors, for instance, coherently with the respect of the legal tradition, it is up to technicalities and formalisms generated by the judiciary to create *jus*. That is nothing more than the output of the hegemonic power of a social class made of high professionals, such as justices, lawyers, notaries. Destined to rule the world under a corporatist view, turning themselves into an oligarchy of professionals, although loyal to the prince, decades later in the medieval and modern era.

The thesis here is that the conflictual trend between democracy and populism nowadays arises from the blurring of boundaries between these two paradigms. From the loss of effectiveness of them both, from the failure to rule out society even before poli-

---

<sup>14</sup> A. Schiavone, cit. at 13, 171 ff., 194 ff., 214 ff., 233, 246 ff.

<sup>15</sup> A. Schiavone, cit. at 13, 30, 66 ff., 90, 104 ff., 114 ff., 262 ff., 312 ff., 397 ff.

<sup>16</sup> These conflicting paradigms emerge as almost deeply inside the same concept of *law* confronting conscience and common morals, law of the town and sense of justice, as well known, Platone, *Apologia di Socrate*, as well as Id., *Critone*, it. ed. with note by M. Valgimigli; *Introduzione* (v. XXXII ss.) and *Note aggiornate* by A.M. Ioppolo (2000). See also what is referred on this question by A. Schiavone, *Jus*, cit. at 13, 252 ff.

tics which opens up to the break point between political representation and the will of people, to the crisis of parliamentarianism.

The lost perception of the role of constitutional limits to democracy may be among the main evidences of populism, and one of the main pressures on democratic institutions by democracy itself. Where, undoubtedly the most important limits to the self-destroying forces of *kratos*<sup>17</sup> and *demos* are in the Constitution.

That is the main evidence of the *paradox* discussed in our opening remarks. The lost of effectiveness of constitutional limits as the main output of a democratic deficit, *id est* a deficit in representation and the subsequent fall of the principle of legitimacy of the democratic system. Legitimacy, which should be founded by the conjunction between the political power, popular sovereignty and the Constitution.

### **3. The origin of contemporary populisms and the economic crisis**

As already pointed out, a major role in the affirmation of populism worldwide has been played by economic crisis everywhere<sup>18</sup>. To better understand, we could just analyse examples which are closer to our political culture or which simply look more meaningful. In doing this, we have to try to show how in contemporary democracy a correlation exists between the affirmation of populism and the fall of the middle-class.

From an empirical point of view, this class has recently experienced its powerlessness to act as a balance of the different needs within civil society. As one of the main outputs of the crisis of parliamentarianism, in fact, the loss of the capacity to find the common sense to drive the political community<sup>19</sup>, within the constitutional boundaries, left the place to the conquer of political power through government, object of conquest among political parties and movements itself.

The fight for power brought the radicalization of political communication and a wide spread feeling of sharp criticism to-

---

<sup>17</sup> Whose meaning is, at the same time, *power, force and violence*.

<sup>18</sup> See historical analysis and critical considerations on this point by E. Laclau, *On Populist Reason* (2005), it. ed. by D. Tarizzo, *La ragione populista* (2008), esp. 110 ff.

<sup>19</sup> M. Revelli, *Populismo*, cit. at 3, *passim*.

wards political actors, referred to as *the establishment*. Where the common understanding has now turned into a sense of frustration, grudge, intolerance, radicalism, revenge, towards the dominant political class, translated into the choice to damage the establishment more than to find a valid alternative to it, exercising the right to vote more to damage the ruling class than to choose our own representatives.

Hence, the genetic and cultural transformation of the political elites, who left their original role of guide of the democratic process within political representative models, serving an aristocratic function in a broader democratic project. While, the new political actors are deeply performing a new role in interpreting and strengthening anti oligarchic feelings, coming out from the wide spread criticisms against globalization and economic integration, seen as enemies for the social and economic condition of wider classes of the population. To come to the most popular exemplification by an unrealistic slogan such as - just to quote one - the devotion to protectionism by President Trump, through “America first”.

Such slogan may bring the political community far away from the sharing of responsible choices, its implications may confine it to the isolation in the “*turris eburnea*” of identity closure. And more, such a slogan may bring a community to follow one leader abandoning its original pluralistic dimension, where individuals share common aims and interests, instead.

The direction taken by the anti-political parties and anti-parliamentary movements, now, becomes a fight against political power, stressed by the utopian project to rule out the legal phenomenon without political mediation<sup>20</sup>. As if it were possible to have effective government without political mediation in contemporary conflicting societies. Already noted by Antonio Gramsci<sup>21</sup>,

---

<sup>20</sup> Referring to the exemplary view of C. Lasch, *The Revolt of the Elites and the Betrayal of Democracy* (1995), it. ed. by C. Oliva, *La rivolta delle élite. Il tradimento della democrazia*, (2017).

<sup>21</sup> Antonio Gramsci has dedicated many different analyses on these issues. I will refer here at least to what he wrote in his *Quaderno 12 (XXIX)* of 1932 with the title *Appunti e note sparse per un gruppo di saggi sulla storia degli intellettuali*, in Id., *Quaderni del carcere*, III, Critical Edition by V. Gerratana (2001), 1513 ff. See also on this question what referred by L. Canfora, *Critica della retorica democratica* (2007), esp. 61 ff.

who referred to that as the intellectual betrayal<sup>22</sup>, the new trend is now driven more by protectionism against cosmopolitanism – now globalization – far from a common sense of opening toward the world.

As we will immediately see, such cultural processes may be considered driven by real changes, which occurred both in the American experience of The National People's Party, of the Nineteenth Century as well as in contemporary Europe.

#### **4. Economic crisis and its implications for the so-called middle-class**

First, the economic crisis and its implications for the Middle Class. A meaningful explanation was given, e.g., in the US Experience, by the Census Bureau when announced in the late 1890 the closure of the American frontiers<sup>23</sup>. American consciousness over its territory and the limits to that brought the attention over the redistribution of wealth, as a social issue. The definition of American boundaries required to cope with the domestic gap between social classes, between the rich and the poor, against the risk to stabilize such a distinction. The end of territorial expansion to the west coast, eventually reached, put at stake the necessity to share the existing wealth among rich and poor people, so that the “social question” arose.

The loss of self awareness and confidence of the Middle Class<sup>24</sup>, the growing sense of dependence from industrialization, the quest for social benefits, brought this class of individuals to escape from the democratic project and to give up to participation in a democratic way, to the political and economic life of their country.

A trend, which will become even stronger once the manufacturing industry will start leaving the place to the rise of the financial services economy. Which will become actually fatal when

---

<sup>22</sup> C. Lasch, *The Revolt of the Elites*, cit. at 20.

<sup>23</sup> C. Lasch, *The Revolt of the Elites*, cit. at 20, 75 ff.

<sup>24</sup> I found very useful the theoretical analysis, as set forth in an historical perspective, as well as the attention directly called on the evolution of public communicative processes by the stimulating essay of J. Lukacs, *Democracy and Populism* (2015), it. ed. by G. Ferrara Degli Uberti (2006), esp. 30 ff., 35 ff., 38 ff., 41 ff., 57 ff., 149 ff.

the last one will start experiencing its fall<sup>25</sup>, thanks to the financial speculation bubble burst, bringing to the chronicity of physiological unemployment, technically required by the necessity to keep inflation low, to the widening of the gap between social classes and to the radicalization of social immobility.

The American example looks meaningful as a comparison with the most recent transformations in Europe, brought by the social crisis provoked by the evolution of the economy, which translated mainly into the dramatic stop to economic growth brought by the implementation of the internal market in Europe and by the subsequent delocalization of manufacturer industry elsewhere. Hence, momentous processes of major revisions, such as business restructuring, job market reforms, re-thinking of workers circulation across Europe.

Also in Europe, starting from the UK area and moving toward the continent and then to its Southern regions, a revolution in the system of production caused by the loss of productiveness of inputs generated as an alternative the growth of financial economy. This brought to the Middle-class loss of identity, loss of common sharing and to the abandoning of the normal paradigm of wealth deriving from employment. The subsequent financial crisis weakened the same Middle class, reducing the potential impact of keynesian economic policies, because of the role played by the new monetary policies.

No doubt on the close connection between the de-industrialization processes and the Middle-Class crisis, then. Which lead to the arising of a feeling of exclusion from the output of globalization, revenge and populist revolution, driven by the frustration coming from a loss of chances, brought by the loss of employment, wealth, welfare, conceived as the main representatives of civil rights.

Thus contemporary populism could be read as a phenomenon which finds its roots more in the real economic and social transformations before than in a political turnover, and which is able to deeply affect democratic processes and democratic institutions.

The process described above, and the subsequent rebellion of the left out, some of whom, initially included and immediately

---

<sup>25</sup> C. Lasch, *The Revolt of the Elites*, cit. at 20.

after emarginated, turned into a *secessio plebis*, as many times already occurred in the past of western history. This determined the loss of sense of direction, of inclusion and of confidence in democratic institutions as well as in the instruments, tools and procedures lead by popular sovereignty through the democratic representation model within the forms prescribed by contemporary constitutionalism.

If contemporary populisms lay down their roots in social stagnation connected to the industrial crisis and to the fall of the industrial economy, its main consequences are now experienced in the confidence on democratic institutions. Representation through mediation as designed by contemporary Constitutions as essential feature of constitutional democracies, the democratic institutions procedures and rules for its implementation are the main victim of such a phenomenon.

This lead to the loss of the main role performed by formal rules, both in term of determination and legitimization of the outcomes. And to the break in the relationship between *nomos* and *ius*, between the idea of a legal and political experience determined through popular consent expressed through assemblies on the one side, and the other paradigm, based on the legitimacy given by formalism and the expertise of the legal science, on the other side.

Hence, some final remarks which turn the attention from civil society, its turbulences, from the transformations on the economy, from the globalization on the political class, on political leadership, on the governing Elite.

### **5. The changing role of representatives (MP) as a symptom of the contemporary crisis of parliamentarianism**

In a recent writing on political mediation and the weakness of political representation, Mario Dogliani<sup>26</sup> focuses on representation itself, as one of the key concepts in the public law field.

Recalling on the words pronounced by Umberto Terracini in the Italian Constituent Assembly, in the opening session of the general discussion on the Italian Constitution, Dogliani points out

---

<sup>26</sup> M. Dogliani, *Rappresentanza, Governo e mediazione politica*, in 2 *Costituzionalismo.it* (2017), 14.

the centrality of the capacity of the representative bodies to act as role model. Hence, Dogliani concludes that the actual situation has been determined by the incapacity of the political class, the ruling class, to set a good example for the governed. To be and act as example, as a guide for the people<sup>27</sup>.

Hardly one could find a more proper way to explain the contemporary crisis of representativeness. To interpret the distance, if not the break, between political leadership and civil society, the cut between parliamentary institutions and the people, cause and effect at the same time of the deep feeling of opposition and contempt towards the establishment and through them towards representative institutions. That the break of the representative circuit may have started from the top before then from the bottom<sup>28</sup> and may be read as the betrayal of the elites, is a crucial point for our discussion on populism. As pointed out by Dogliani, no representation there may be without a class of representatives aware of its role<sup>29</sup>.

The potential implications of the fall of representation must never be underestimated in their destroying effects, and dangerous derives such as ochlocracy, demagogy, democracy without the institutions of citizenship.

Which brings us again to our starting premises. There cannot be any real, any substantial democracy without the forms of political representativeness, the sole model plausible after the universal *suffragium*, as there cannot be any democratic society, without a leadership able to incarnate the good example, expression of competence and meritocracy. Only in such a context the democratic process may orderly develop through the forms of a democratic experience as set in contemporary Constitutions. Once again we should focus our analysis on this topic: the crisis of representative democracy does not come from contemporary society and its

---

<sup>27</sup> M. Dogliani, *Rappresentanza, Governo e mediazione politica*, cit. at 26, 15.

<sup>28</sup> M. Dogliani, *Rappresentanza, Governo e mediazione politica*, cit. at 26, 15 ff., as already pointed out in Id., *La rappresentanza politica come rappresentanza del valore di uno stato concreto*, in *Scritti in onore di Gaetano Silvestri*, I (2016), 880 ff., quoted in his same work.

<sup>29</sup> In his speech on *Populism and Constitutional Change*, held during the Fermo Summer School 2018 on “*Sociology of Constitution. A System Theory Approach*”, D. Galligan, quoting Niklas Luhmann on this point, has pointed out the importance of the “necessity of maturity for society to be democratically ruled”, Fermo, August the 31st 2018.

weakness, as it is rooted instead on the ruling class fall and its loss both of responsiveness and responsibility.

In other words, the latest drifts defined by the wiser readers as *populism* may be well considered as the outmost output of the inability of the ruling political class to combine law and democracy, to give implementation to the will of people into a democratic framework, namely the one expressed by people sovereignty.

Populisms split the will of the people from its natural implementation through formal constitutional mechanisms. Riding the discontent will lead again finally to a betrayal of popular will, to tyranny, without a renewed, fair pact between the governed *plebs* and the governing *elites*, since no democracy can be conceived outside the boundaries set by the legal system. The *secessio plebis* being, once again in our political and legal history, the original shape of what we now namely call *populism*<sup>30</sup>.

At the same time, a crucial role is played in this context by the aristocracy, whose meaning here is not referred to class belonging, but to their intellectual standing, who must be used in order to enrich democratic institutions instead then delegitimizing them. Populism can be read no more than the most evident output of the distance between the people and the intellectual aristocracy of the governing bodies. Therefore, as the main responsibility may stand in the crisis of the leadership as ruling class, it may be up to the legal culture the same responsibility in driving its recovery.

---

<sup>30</sup> See again the illuminating analysis by M. Revelli, *Populismo*, cit. at 3, 3 ff.