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Participatory democracy and its dark sides

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Abstract [En]: The paper reflects on the concept of participatory democracy, in terms of its insertion in the space of two principles and, together, objectives to be made effective, through which the essence of democracy is articulated: popular sovereignty and participation. It begins by defining the phrase “participatory democracy”, highlighting the features that distinguish it from the “representative” and “direct” expression of democracy, as well as from bottom-up democracy. The aim is to provide a reflection on the contribution that participatory democracy can offer in terms of a democracy that is as effective as possible, without downplaying the risks that it presents and in the awareness of the structural dynamism, tension and incompleteness of democracy.

Abstract [It]: Nell'intervento si riflette sul concetto di democrazia partecipativa, nella prospettiva del suo inserimento nello spazio di due principi e, insieme, obiettivi da rendere effettivi, attraverso i quali si articola l'essenza della democrazia: la sovranità popolare e la partecipazione. Si muove da una definizione della locuzione “democrazia partecipativa”, mettendo in luce i tratti che la contraddistinguono dalla declinazione “rappresentativa” e “diretta” della democrazia, così come dalla democrazia dal basso. L'intento è proporre una riflessione sull'apporto che la democrazia partecipativa può offrire in direzione di una democrazia quanto più possibile effettiva, senza misconoscere i rischi che essa presenta e nella consapevolezza della strutturale dinamicità, tensione e incompiutezza della democrazia.

Table of contents: **1.** An essential premise: on the meaning of popular sovereignty and participation; **2.** The distinctive *quid* of participatory democracy; **3.** Participatory democracy between demands from below and mystifications; **4.** Concluding observations between imagination and reality.

1. An essential premise: on the meaning of popular sovereignty and participation

In the aim to reflect on the concept of participatory democracy, the paper combines an analysis that begins from the Constitution with a theoretical approach, to therefore deal in detail with the Italian case. Without attempting to analyse the concept of popular sovereignty, or to reconstruct theories of participation, but with the more limited aim of identifying the terrain on which to construct a discourse on participatory democracy, it is worth beginning by recognising the popular sovereignty indicated in Art. 1, par. 2 of the Constitution, and with the aim of «effective participation of all workers in the political, economic and social organisation of the country» (Art. 3, par. 2, Const.).

Popular sovereignty represents a *prius* with respect to the State: It is the foundation of the State. Popular sovereignty is the subject, in other words, of a simple authentication¹: as such, logically, it is not identified

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¹ See G. FERRARA, *La sovranità popolare e le sue forme*, in S. LABRIOLA (edited by), *Valori e principi del regime repubblicano, I. I Sovranità e democrazia*, Roma-Bari, 2006, pp. 261-262.

with the State². The State and its institutions are an expression, in a democratic system, of popular sovereignty³, in the sense that the «State-subject» assumes, with respect to the principle of popular sovereignty, «instrumental nature»⁴, but they do not exhaust popular sovereignty.

Popular sovereignty – it can be added – finds a privileged channel of expression in representative democracy, by means of the political rights, both seen in the strict sense as electoral rights and in the broad sense as also including participation through political parties⁵. However, in the wake of Crisafulli's argument, even the exercise of the right of assembly or freedom of association falls within the field of popular sovereignty and constitutes a form of participation⁶. The exercise of fundamental rights, in other words, citing Ferrajoli, can be configured as the exercise of fragmented popular sovereignty: «fundamental rights give form and content to popular will» and constitute «*fragments of popular sovereignty* for everyone and for each citizen»⁷.

However, a further step is required: the right to vote, parties, associations and freedom, are explicitly contemplated and protected by the Constitution (respectively in accordance with Articles 49 and 18, but also, in general, in accordance with Article 2 of the Constitution); can non-formalised demonstrations also be considered an expression of popular sovereignty?

There are (at least) two arguments which support an affirmative response.

The first: Popular sovereignty can manifest in forms that are not predetermined, precisely as it constitutes an expression of the exercise of rights, such as the right of assembly, freedom of association, freedom of thought⁸.

The second: The notion of popular sovereignty is accompanied by a broad concept of participation⁹, which reflects the different faces that make up (substantial) democracy – political, social, economic –

² As, on the other hand, part of doctrine – Tosato for example – has claimed (E. TOSATO, *Sovranità del popolo e sovranità dello Stato*, in *Riv. Trim. Dir. Pubbl.*, 1957).

³ For everyone, according to C. MORTATI, *Istituzioni di diritto pubblico*, I, X ed., Padova, 1991, p. 153.

⁴ V. CRISAFULLI, *La sovranità popolare nella Costituzione italiana*, in *Rassegna Giuliana di Diritto e Giurisprudenza*, 1954, p. 57.

⁵ If “sovereignty” is identified with the exercise of decision-making rights (voting) due to the electoral body, the “people” holding sovereignty are identified with the electoral body (C. MORTATI, *Art. 1*, in G. BRANCA (edited by), *Commentario della Costituzione, Principi fondamentali*, Bologna-Roma, 1957, pp. 27-28); in the critical sense, see V. CRISAFULLI, *La sovranità popolare*, *op. cit.*, pp. 26 ss.

⁶ Adopting the concept that contemplates, among the forms that make the exercise of popular sovereignty effective, the membership of a party, contributing to determining national policy, or the exercise of the right to assemble peacefully and unarmed, or to associate freely for purposes that are not prohibited for individuals by criminal law (T. MARTINES, *Art. 56-58*, in G. BRANCA (edited by), *Commentario della Costituzione, Le Camere*, Tomo I, Bologna-Roma, 1984, p. 72; for everyone, furthermore, see V. CRISAFULLI, *La sovranità popolare*, *op. cit.*, specially pp. 40 ss.; otherwise C. MORTATI, *Art. 1, op. cit.*, pp. 27-28, e D. NOCILLA, *Popolo (dir. cost.)*, in *Encyclopedie del diritto*, XXXIV, Milano, 1985, p. 387).

⁷ L. FERRAJOLI, *Principia iuris. Teoria del diritto e della democrazia*, 2. *Teoria della democrazia*, Roma-Bari, 2007, pp. 10-11.

⁸ See U. ALLEGRETTI, *Il Movimento internazionale come attore costituzionale*, in *Dem. e dir.*, n. 1/2004, pp. 68 ss.

⁹ On this, see V. CRISAFULLI, *La sovranità popolare*, *op. cit.*, p. 57; recently, see S. D'ALBERGO, *Dalla democrazia sociale alla democrazia costituzionale (un percorso dell'ideologia giuridica)*, in *Costituzionalismo.it*, n. 3/2005, p. 10; G. AZZARITI, *Democrazia*

which find a literal translation in the three dimensions of the formula «political, economic and social organisation» indicated in Art. 3, par. 2, Const.

Art. 3, par. 2, Const. has its roots in Art. 1 Const.¹⁰, and it is expressed in rules regarding economic relationships, as well as in political freedoms and in social rights¹¹: effective participation plays, in various areas, a dynamic role, expressing the tension that is inherent in the democratic process¹².

The active character and “effective” expression of participation lead to being viewed the new experiences of participation (which may or may not involve institutionalisation), not only as legitimate, but also as component which given value. This refers, precisely, to participatory democracy¹³, but also to democracy as «surveillance» activity (Rosanvallon) or to democracy from below (in the multiple manifestations attributable to it, from the experience of “recovered factories” to territorial movements or for the right to housing, from Fridays For Future to social centres, etc.).

Again from the roots of participation in Art. 3, par. 2, Const., its close link with demands for social justice can then be inferred: on one side, participation requires the pre-conditions guaranteed through the emancipation from «obstacles of economic and social order» (being positioned, with respect to the latter, as a goal); on the other, it constitutes an instrument of the project of individual and social emancipation. Participation, in other words, constitutes – at the same time – the object and the subject of the social transformation project and the construction of substantial democracy. If a limit is to be identified, it appears intrinsic to the concept of *democratic participation*.

We therefore move from a concept of popular sovereignty, interpreted as open and dynamic, closely connected to «effective participation», seen as an element of vitality of democracy. It is the perspective – citing Rosa Luxemburg – that “the laborious movement of democratic institutions” possesses a corrective power ... in the living movement of the masses, in their uninterrupted pressure¹⁴, which can give rise to new forms of participation, such as participatory democracy¹⁵.

partecipativa: cultura giuridica e dinamiche istituzionali, in *Costituzionalismo.it*, n. 3/2009; M. MANETTI, *Costituzione, partecipazione democratica, populismo*, in *Rivista AIC*, n. 3/2018, p. 389.

¹⁰ In that regard, on the link between work, participation and equality, see *ex multis*, M. DOGLIANI, C. GIORGIO, *Costituzione italiana: art. 3*, Roma, 2017, p. 101; M. LUCIANI, *Radici e conseguenze della scelta repubblicana di fondare la Repubblica democratica sul lavoro*, in *ADL – Argomenti dir. lavoro*, 3/2010, pp. 634 s.

¹¹ L. BASSO, *Per uno sviluppo democratico nell’ordinamento costituzionale italiano*, in *Studi per il ventesimo anniversario dell’Assemblea costituente*, v. IV: *Aspetti del sistema costituzionale*, Firenze, 1969, p. 17.

¹² Cfr. B. CARAVITA, *Oltre l’egualanza formale. Un’analisi dell’art. 3 comma 2 della Costituzione*, Padova, 1984, p. 113.

¹³ For interesting considerations on the link between participatory democracy and Art. 3, par. 2, Const., see A. VALASTRO, *Gli istituti di partecipazione fra retorica delle riforme e umiltà dell’attuazione*, in *Costituzionalismo.it*, n. 1/2017, spec. pp. 59 ss.; M. PICCHI, *Il diritto di partecipazione: note preliminari (per l’effettività dei diritti sociali)*, in *Rivista del Gruppo di Pisa*, n. 3/2012.

¹⁴ R. LUXEMBURG, *La rivoluzione russa*, 1918.

¹⁵ It connects the incompleteness of democracy and its dynamic essence with the emergence of instruments relating to participatory democracy, in the Habermasian “political public space”, U. ALLEGRETTI, *Democrazia partecipativa e processi di democratizzazione*, in *Dem. e dir.*, n. 2/2008, pp. 177-178.

2. The distinctive *quid* of participatory democracy

The expression “participatory democracy” was established in the 1960s and 1970s, as part of what Held defines as the New Left¹⁶.

Participation – in the words of Pateman – is believed to be capable, aside from the realistic considerations of the effective involvement of the «ordinary man», to make each person «better able to assess the performances of representatives at national level», «better equipped to make decisions», as well as more prepared to exercise control over his/her life and environment¹⁷. This perspective supports the extension of participation to «spheres outside of state government», primarily that «of enterprise»¹⁸, but also that of the local community, as part of an «institutional system open to guaranteeing the possibility of experimenting with new political forms»¹⁹.

The narrative of participatory democracy today mainly re-works some characteristics of the synthesised one: It assumes its educational scope and the capacity to renew democracy. It also enters some constitutions. In this sense, we can consider the classification as «participatory» of the democratic nature of the State in the Bolivarian Constitution of Venezuela or the explicit reference to participatory democracy in the Bolivian Constitution²⁰, but also the Portuguese Constitution which, at Art. 2, envisages the strengthening of participatory democracy.

In Latin American experiences, unlike European ones, the link between participatory democracy and demands for social justice, redistribution of wealth and the fight against inequality is strong²¹.

In today's European versions, the ambition to make participatory democracy the driving force for the democratisation of other spheres, such as, primarily, those of industrial and economic relationships, is lost, marking the distance compared to the theories of the 1960s. Here, the concept more *à la page* is “governance”, which – I apologise for the assertive stance, but for the purposes of this work it does not seem necessary to investigate the concept further – constitutes not so much a place of participation of civil society, but an imposing-consultative procedure, which, behind the mystifying rhetoric of a round

¹⁶ D. HELD, *Models of Democracy*, 1996 (*Modelli di democrazia*, Bologna, 1997, pp. 369 ss.).

¹⁷ C. PATEMAN, *Participation and democratic theory*, Cambridge University Press, 1970, p. 110.

¹⁸ C. PATEMAN, *Participation and democratic theory*, cit., pp. 106-111.

¹⁹ D. HELD, *Modelli di democrazia*, op. cit., p. 379.

²⁰ See the Bolivarian Constitution of Venezuela (1999): «... refundar la República para establecer una sociedad democrática, partecipativa...» (Preamble); «el gobierno de la República Bolivariana de Venezuela y de las entidades políticas que la componen es y será siempre democrático, partecipativo...» (Art. 6) [for an initial comment, see D. PICCIONE, *Presidenzialismo e democrazia partecipativa nella Costituzione bolivariana del Venezuela*, in *Dir. pubbl. comp. ed europeo*, n. 2005-I, pp. 3 ss.; G. ALLEGRETTI, *Politiche di partecipazione in Venezuela: tra discorso costituzionale e pratiche sperimentali*, in *Dem. e dir.*, n. 3/2006, pp. 42 ss., e ID., *Politiche di partecipazione in Venezuela: l'inizio di un percorso di statuizione normativa*, in *Dem. e dir.*, n. 4/2006, pp. 27 ss.]; or the the Bolivian Constitution (2007): «el Estado adopta para su gobierno la forma democrática participativa, representativa y comunitaria» (Art. 11).

²¹ U. ALLEGRETTI, *La democrazia partecipativa in Italia e in Europa*, in *Rivista AIC*, n. 1/2011, p. 5.

table at which potential interested parties sit (with a *mélange* between public and private entities), reproduces inequalities and aims to diffuse the vindictory potential of which civil society sectors may be the spokespersons²².

Mechanisms of participatory democracy line up within the institutional field, constituting a governance management tool, whether at local or national level.

The image of participatory democracy of a place of experimentation of forms of self-government, or alternative political forms, is lost, and a version of it that can be defined as “internal” with respect to the institutions, as a supplementary function of the political-administrative decision-making process, materialises²³.

The question, then, is: How much does the fact that we are discussing methods of organisation of power shift the *focus* from the right of participation (in the perspective of involvement of citizens, in an emancipating key), to governability²⁴ (inscribed in a decision-making logic), as a mark of effectiveness of the decision?

To answer this, we must move into the terrain of participatory democracy, its practices, and its relationships with the other expressions of democracy; preliminarily, the search for its definition is revealed.

In the multiplicity and heterogeneity of the meanings and figures that participatory democracy assumes²⁵, its initial connotation emerges *a contrario*, distinguishing it both from representative democracy and from classic direct democracy²⁶. It is a form of involvement of citizens not attributable to the electoral-

²² In that regard, *ex plurimis*, see M.R. FERRARESE, *La governance tra politica e diritto*, Bologna, 2010; A. ARIENZO, *Dalla corporate governance alla categoria politica di governance*, in G. BORRELLI (edited by), *Governance*, Napoli, 2004, pp. 125 ss.; G. MESSINA, *Diritto liquido? La governance come nuovo paradigma della politica e del diritto*, Milano, 2012; A. ALGOSTINO, *Democrazia, rappresentanza, partecipazione. Il caso del movimento No Tav*, Napoli, 2011, pp. 122 ss.

²³ See P. ROSANVALLON, *La légitimité démocratique. Impartialité, réflexivité, proximité*, Paris, 2008, p. 323.

²⁴ In a critical sense, on governability as a coactive technique, see G. FERRARA, *La crisi del neoliberismo e della governabilità coatta*, in *Costituzionalismo.it*, n. 1/2013).

²⁵ L. BOBBIO, *Dilemmi della democrazia partecipativa*, in *Dem. e dir.*, n. 4/2006, p. 12; U. ALLEGRETTI, *Democrazia partecipativa: un contributo alla democratizzazione della democrazia*, in ID. (a cura di), *Democrazia partecipativa. Esperienze e prospettive in Italia e in Europa*, Firenze, 2010, p. 17; M. DELLA MORTE, *Rappresentanza vs. partecipazione? L'equilibrio costituzionale e la sua crisi*, Milano, 2012, p. 107.

²⁶ As regards the deliberative expression of democracy, the question is more complex: in a nutshell, the latter can be configured both as a form in itself and as a method applicable in the context of other expressions; in this regard, among the classics, see J. COHEN, *Deliberation and Democratic Legitimacy*, in A. HAMLIN - P. PETTIT (eds.), *The Good Polity. Normative Analysis of the State*, Blackwell, Oxford, 1989; J. HABERMAS, *Faktizität und Geltung. Beiträge zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats*, 1992 (*Fatti e norme. Contributi a una teoria discorsiva del diritto e della democrazia*, Milano, 1996, pp. 341 ss.); J. ELSTER (edited by), *Deliberative democracy*, Cambridge, 1998; nonché, più recentemente, [L. FISHKIN](#) and [P. LASLETT](#) (edited by), *Debating Deliberative Democracy*, Wiley-Blackwell, 2003; G. BOSETTI - S. MAFFETTONE (edited by), *Democrazia deliberativa: cosa è*, Roma, 2004; A. GUTMANN - D. THOMPSON, *Why Deliberative Democracy?*, Princeton, 2004; C. R. SUNSTEIN, *Designing Democracy. What Constitutions Do*, Oxford University Press, 2001; A. FLORIDIA, *Un'idea deliberativa della democrazia. Genealogia e principi*, Bologna, 2017; R. BIFULCO, *Democrazia deliberativa e principio di realtà*, in *federalismi.it*, n. 1/2017.

representative or referendum circuit. The absence of elements of spontaneity, self-organisation and independence with respect to the institutions, on the other hand, marks its difference compared to democracy from below²⁷.

Experiences of participatory democracy are, to be clear, participatory budgets (starting from the emblematic and well-known case of Porto Alegre²⁸, only then to reach the Spanish experience²⁹ and the Italian cases^{30,31}, the Berlin civic juries³², the various tools of participatory urban planning³³, the French institution (along with other countries) of *débat public*³⁴, the various *forums*, *consensus building*, *stakeholder involvement*, *tables*³⁵.

²⁷ On democracy from below, see J. BRECHER, T. COSTELLO, B. SMITH, *Globalization from Below. The Power of Solidarity*, 2000; A. ALGOSTINO, *Democrazia, rappresentanza, partecipazione*, *op. cit.*, pp. 133 ss.

²⁸ M. GRET, Y. SINTOMER, *The Porto Alegre Experiment. Learning Lessons for Better Democracy*, London, 2005; B. DE SOUSA SANTOS, *Il bilancio partecipativo a Porto Alegre: per una democrazia redistributiva*, e L. AVRITZER, *Modelli di deliberazione democratica: un'analisi del bilancio partecipativo*, in B. DE SOUSA SANTOS (edited by), *Democratizzare la democrazia. I percorsi della democrazia partecipativa*, Troina (En), 2003, pp. 359 ss.; G. ALLEGRETTI, *L'insegnamento di Porto Alegre. Autoprogettualità come paradigma urbano*, Firenze, 2003.

²⁹ E. GANUZA FERNÁNDEZ, *Los presupuestos participativos en España: impacto y futuro en la ciudades*, in U. ALLEGRETTI (edited by), *Democrazia partecipativa*, *op. cit.*, pp. 113 ss.; ID., *Democrazia e partecipazione: i bilanci partecipativi in Spagna*, in *Dem. e dir.*, 3/2006, pp. 70 ss.

³⁰ A. L. PECORIELLO, F. RISPOLI, *Pratiche di democrazia partecipativa in Italia*, in *Dem. e dir.*, n. 3/2006, pp. 115 ss.; V. CANAFOGLIA, *Cicli procedurali dei bilanci partecipativi: alcuni esempi italiani*, in U. ALLEGRETTI (edited by), *Democrazia partecipativa*, *op. cit.*, pp. 129 ss.

³¹ In a comparative perspective, see Y. SINTOMER, C. HERZBERG, A. RÖECKE, *Les budgets participatifs en Europe*, Paris, 2008; Y. SINTOMER, G. ALLEGRETTI, *I bilanci partecipativi in Europa. Nuove esperienze democratiche nel nuovo continente*, Roma, 2009.

³² A. RÖECKE, Y. SINTOMER, *Estrazione a sorte e democrazia partecipativa: riflessioni sugli esiti delle giurie civiche berlinesi*, in *Dem. e dir.*, n. 3/2006, pp. 87 ss.

³³ For a reference to some experiences and additional bibliography, see A. L. PECORIELLO, F. RISPOLI, *Pratiche di democrazia*, *op. cit.*, spec. pp. 116 ss.; C. CUDIA, *La partecipazione ai procedimenti di pianificazione territoriale tra chiunque è interessato*, in *Dir. pubbl.*, n. 2008/1, pp. 263 ss.; G. DEPLANO (edited by), *Partecipazione e comunicazione nelle nuove forme del piano urbanistico*, Monfalcone (GO), 2009; M. PACI (edited by), *Welfare locale e democrazia partecipativa*, Bologna, 2008.

³⁴ C. BLATRIX, L. BLONDIAUX, J.-M. FOURNIAU, B. HÉRIARD DUBREIL, R. LEFEBVRE, M. REVEL (dir.), *Le débat public: une expérience française de démocratie partecipative*, Paris, 2007; Y. MANSILLON, *L'esperienza del «débat public» in Francia*, in *Dem. e dir.*, n. 3/2006; M. DELL'OMARINO, *Il dibattito pubblico come strumento di democrazia partecipativa. Una breve indagine comparata in occasione della sua introduzione nell'ordinamento italiano*, in *Diritti comparati. Working Paper*, n. 7/2017; C. LOMBARDI, A. LULLO, *Il dibattito pubblico quale strumento di democrazia partecipativa (evoluzione e stato dell'arte)*, in *Amministrazione in Cammino*, 15 luglio 2018, pp. 15 ss.; A. ALGOSTINO, *Democrazia, rappresentanza, partecipazione*, *op. cit.*, pp. 204 ss.

³⁵ In a comparative perspective, see A. FUNG, E. O. WRIGHT (edited by), *Deepening Democracy. Institutional Innovations In Empowered Participatory Governance*, London-New York, 2003; M. H. BACQUÉ, H. REY, Y. SINTOMER (sous la direction de), *Gestion de proximité et démocratie partecipative. Une perspective comparative*, Paris, 2005; A. VALASTRO (edited by), *Le regole della democrazia partecipativa. Itinerari per la costruzione di un metodo di governo*, Napoli, 2010; D. BOLOGNINO, G. C. DE MARTIN (edited by), *Democrazia partecipativa e nuove prospettive della cittadinanza*, Padova, 2010; A. RAMIREZ NÀRDIZ, *Democrazia partecipativa. La democracia partecipativa como profundización en la democracia*, Valencia, 2010.

These are heterogeneous practices unified, primarily, by being forms of atypical participation and, secondly, by being in some way institutionalised³⁶: in them all, there is an involvement of the institutions and a formalisation by law.

Those common elements then have different modulations: the role exercised by the institutions is more active or passive, depending, for example, on the establishment from above or below of methods of participation; the incorporation of forms of law may be rigid or elastic, involve a local or national sphere, constitute a simple experimentation, or be limited to establishing bodies or places of discussion without a formal precise configuration as to their powers.

The Italian experience, at state level, is essentially, at present, top-down, while, at local level, there are bottom-up³⁷ procedures. At state level, the focus is, in particular, on public debate on mega projects, envisaged by the Procurement Code (Italian Legislative Decree no. 50 of 2016, Art. 22); with the specification that, in the broad sense, other instruments (such as, primarily, consultations) are also attributable to participatory democracy³⁸: some of which, such as generalised civic access, can create bottom-up communication channels³⁹.

Public debate is a mechanism dominated by the institutions and, in particular, by the executive. It is sufficient to mention here some elements: 1) the fact that it merely represents a stage in the administrative procedure⁴⁰; 2) the composition of the National Commission for public debate (Decree of the President of the Council of Ministers no. 76 of 2018)⁴¹, which is essentially an expression of the central administrations integrated with some representation of the local administrations, with no input from below, from civil society⁴²; 3) the management (calling and handling) of the debate by the «contracting authority» or the «awarding body» (in the latter case, hypothetically, even a private entity, which, as well as not including any involvement of citizens, also gives rise to doubts on the impartiality of the procedure).

³⁶ M. LUCIANI, *Democrazia rappresentativa e democrazia partecipativa*, in L. CARLASSARE (edited by), *La sovranità popolare nel pensiero di Esposito, Crisafulli*, Paladin, Padova, 2004, p. 184); U. ALLEGRETTI, *Basi giuridiche della democrazia partecipativa in Italia: alcuni orientamenti*, in *Dem. e dir.*, n. 3/2006, p. 159.

³⁷ G. DI GASPARÉ, *Il dibattito pubblico tra democrazia rappresentativa e democrazia partecipativa*, in *Amministrazione In Cammino*, September 30, 2017, p. 4.

³⁸ On this point, see P. MARSOCCI, *Consultazioni pubbliche e partecipazione popolare*, in *Rassegna Parlamentare*, n. 1/2016, pp. 29 ss.; A. VALASTRO, *Gli istituti di partecipazione*, *op. cit.*, pp. 77 ss.

³⁹ In this sense, S. FOÀ, *La nuova trasparenza amministrativa*, in *Diritto amministrativo*, n. 1/2017, specially p. 92.

⁴⁰ G. DI GASPARÉ, *Il dibattito pubblico*, *op. cit.*, p. 6.

⁴¹ D.p.c.m. n. 76 of 2018, Art. 4, par. 1 and par. 2.

⁴² U. ALLEGRETTI (*Un caso di attuazione del principio costituzionale di partecipazione: il regolamento del dibattito pubblico sulle grandi opere*, in *Rivista AIC*, n. 3/2018, p. 470) wonders if the Italian model is not too tied to the public administration.

Here, there is also the question regarding the *gap* – in terms of information and resources – that may arise between the parties, with the disproportion and obstacles that this may determine for *effective* participation (consider, for example, the costs of any intervention of experts).

Overall in “participatory democracy”, the different value of instruments attributable to “simple” consultation must be emphasised, with further typing in relation to the time of consultation (in particular, whether before or after the decision-making process), and instruments relating to participation in the decision (consider any binding value attributed, for example, to decisions relating to the participatory budget)⁴³.

The expression in *ictu oculi* “consultation” form appears to be lacking in effectiveness, as well as easily prone to *ex parte principis* use; while the expression in “decision” form presents inevitable problems of connection with representative democracy, or *tout court* with political equality. We will resume later the discussion on the ambiguities of participatory democracy.

In the Italian implementation at state level of the public debate on mega projects, a positive assessment should be given to the insertion in an initial phase (moreover in the Decree of the President of the Council of Ministers and without further specifications)⁴⁴, in coherence with the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters of 1998 and the rules of the European Union⁴⁵, thus not prejudicing the feasibility of possible alternatives to the work, along with its very implementation⁴⁶.

It is a participation whose outcomes – as specified by Art. 22, par. 4, of Italian Legislative Decree no. 50 of 2016 – are assessed during the final design and discussed in the services conference, thus not binding; this positions the strength of participation on a level that is, so to speak, deliberative, namely relating to the reasonableness of the proposals, requiring from the administration (greater) motivation of its decisions⁴⁷.

⁴³ In that regard, see U. ALLEGRETTI, *Basi giuridiche*, *op. cit.*, p. 158; ID., *Democrazia partecipativa e processi di democratizzazione*, *op. cit.*, pp. 190-191; L. BOBBIO, *Dilemmi della democrazia partecipativa*, *op. cit.*, pp. 22-23.

⁴⁴ D.p.c.m. n. 76 del 2018, Art. 5; on this, see V. MANZETTI, *Il “dibattito pubblico” nel nuovo codice contratti*, in *federalismi.it*, n. 5/2018, pp. 8-9; G. DI GASPARA, *Il dibattito pubblico*, *op. cit.*, p. 6-7; G. MANFREDI, *Il regolamento sul dibattito pubblico: democrazia deliberativa e sindrome nimby*, in *Urbanistica e appalti*, n. 5/2018, p. 605.

⁴⁵ Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, Art. 6, par. 4.

⁴⁶ In this sense, U. ALLEGRETTI, *Un caso di attuazione del principio costituzionale*, *op. cit.*, p. 466. The difference with respect to similar mechanisms, albeit *ad hoc*, used previously, such as the Observatory for the Turin-Lyon railway link, is thereby marked; in this regard, see A. ALGOSTINO, *L’Osservatorio per il collegamento ferroviario Torino-Lione come case-study sulla democrazia e sul dissenso*, in *Costituzionalismo.it*, n. 2/2009).

⁴⁷ The Decree of the President of the Council of Ministers no. 76 of 2018 notes that the contracting authority or the awarding body must highlight, in the final dossier, «the reasons that led to not accepting any proposals» (Art. 7, par. 1, let. d)

We do not intend, with what has just been noted, to criticise the instrument in question as it does not have decision-making power. If this were the case, in fact, complications would arise in the connection with representative democracy and there would be a risk of attributing political decisions to a minority, giving rise to an elitist connotation of participation, in violation of the principle of political equality and popular sovereignty.

3. Participatory democracy between demands from below and mystifications

Having outlined – albeit briefly – the field of action of participatory democracy, the question is: Does it “democratise” democracy?

First of all, a premise. More than ever today, in the era of *global economic governance*, the need becomes clear for a democratisation of the economic sphere, while – as stated – the envisaged institutions of participatory democracy form part of the political-institutional decision-making process.

Having said that, the question, even if restricted to the institutional area, remains: Does participatory democracy increase the “vitality” of democracy⁴⁸? Can the participatory democracy constitute an aid to overcoming the structural limits of representative democracy, the state of asphyxia in which it is found, perhaps by realising some of its «unfulfilled promises» (Bobbio)⁴⁹?

Democracy stands out – observes Alfio Mastropaoolo – «for its boundless ambition» and, at the same time, for its imperfection, for being «a web of conquests», but also of falls and «dramatic denials»⁵⁰. In the incompleteness and, as in all human facts, reversibility, of democracy, its “participatory” expression is included with light and shadows.

The lights: recognition and development of active citizenship, or empowerment of citizens⁵¹, on the basis of Art. 3, par. 2, Const.; reduction of distances between those who decide and those subject to the decision, with a reversal of popular sovereignty; possibility of improving qualitatively political decisions (through the comparison between different knowledge and visions)⁵²; better efficiency and effectiveness of the decision (but we are already, here, in an area of light and shade *nuances*).

⁴⁸ In that regard, see L. BLONDIAUX, *Le nouvel esprit de la démocratie. Actualité de la démocratie participative*, Paris, 2008.

⁴⁹ N. BOBBIO, *Il futuro della democrazia*, Torino, 1983.

⁵⁰ A. MASTROPAOLO, *La democrazia è una causa persa? Paradossi di una invenzione imperfetta*, Torino, 2011, pp. 7, 13.

⁵¹ «Une citoyenneté plus directement active, et plus largement à un accroissement de l'autonomie des individus dans toutes les sphères de leur existence», in Rosanvallon's own words (P. ROSANVALLON, *La légitimité démocratique*, *op. cit.*, p. 322). Rosanvallon notes that the social re-appropriation of politics constitutes the imaginary linking Proudhon's theory, the experience of the Paris Commune or the councils movements of 1918-1920, the industrial democracy between the two wars and the initiatives of the citizens of the Sixties.

⁵² On it, see A. VALASTRO, *Gli istituti di partecipazione*, *op. cit.*, p. 41, pp. 70-71.

Those listed are the possible positive effects of participatory democracy which, on one side, manifest in the direction of representative democracy, innervating it of participation⁵³; on the other, we encounter the relationship with democracy from below, which can find places of communication with the institutions in which to assert demands that struggle to be heard in traditional venues.

But let's turn to the shadows, proceeding point by point.

1. Firstly, the question concerns the possibility of participatory democracy creating new places of expression of social demands⁵⁴ and pluralism, giving a voice to dissent and strengthening the individual and collective emancipation project⁵⁵; which represents, in other words, a small step in counter-hegemonic function compared to the pervasiveness and arrogance of financial capitalism⁵⁶. The risk is that the potential will come to fruition in the opposite direction of a subsumption and absorption of the demands and inclusion: not emancipation and new spaces for the manifestation of dissent but cooptation and assimilation⁵⁷.

How much, for example, does the participatory budget make citizens protagonists in the path towards “freedom from need” and how much, on the other hand, does it deceive them, attributing to them the decision – presented as unavoidable – between which need will be satisfied and which need will not?

Instruments of participation can be transfigured as tools of “soft imposition”⁵⁸, to replace – but only in form – the recourse to coercion (which, in truth, far from disappearing, increased in the early 21st century through repressive measures of dissent contained in the safety legislation); thus, not representing a place of expression of conflicts but a procedure for anaesthetising conflicts.

Consider what was noted by the Constitutional court which, ruling on a public debate (in a matter concerning the law on the issue of the Puglia Region), defines it as «a fundamental stage in the path of culture of participation», a model of discussion between the public administration and the interested parties, emphasising how it fuels dialogue, so as to «bring out any more satisfactory planning solutions» and to diffuse the conflict «potentially implicit in any intervention that has a significant impact on the territory»⁵⁹. Shouldn't we be thinking more about recognition and expression of the conflict that its

⁵³ See G. COTTURRI, *La democrazia partecipativa*, in *Dem. e dir.*, n. 1/2005, pp. 27 ss.; M. DELLA MORTE, *Rappresentanza vs. partecipazione*, *op. cit.*, specially pp. 32 ss.

⁵⁴ U. ALLEGRETTI, *Verso una nuova forma di democrazia: la democrazia partecipativa*, in *Dem. e dir.*, n. 3/2006, p. 13.

⁵⁵ B. DE SOUSA SANTOS, L. AVRITZER, *Per un ampliamento del canone democratico*, in B. DE SOUSA SANTOS (edited by), *Democratizzare la democrazia*, *op. cit.*, p. 22, 32.

⁵⁶ L. GALLINO, *Finanzcapitalismo. La civiltà del denaro in crisi*, Torino, 2011.

⁵⁷ On the point, see B. DE SOUSA SANTOS, L. AVRITZER, *Per un ampliamento*, *op. cit.*, p. 37.

⁵⁸ In that regard, A. MASTROPAOLO, *La democrazia è una causa persa?*, *op. cit.*, p. 334.

⁵⁹ Constitutional Court, Judgment no. 235 of 2018; for an analysis of the Judgment, see P. VIPIANA, *Il dibattito pubblico per la prima volta al vaglio della Corte costituzionale*, in *Forum di Quaderni costituzionali*, 25 March 2019.

prevention and deactivation⁶⁰? Isn't that the aim is "to clear the field" of potential opponents rather than encouraging participation?

With regard to public debate, the following has been written: «the involvement of a public debate facilitates the prevention or restriction of the so-called Nimby phenomenon... namely, the opposition to the aforementioned implementation by entities who live close to the area where the work is to be constructed»⁶¹. Now, it can be objected both that even Nimby claims have the right to citizenship and that the presented interpretation is simplistic: territorial movements very often convey not so much local interests but rather different visions of the world which, in a democratic context, must have political space in which to manifest⁶². Another scholar focuses on the extent of the clash present in environmental conflicts, which are seen as «characterised by fully-fledged social, economic and cultural conflicts», but adds that consideration as an argument to support the utility of public debate in preventing those conflicts, avoiding «delaying or even "blocking" the implementation of works necessary for development and economic recovery»⁶³. The developmental model is taken for granted and unchallengeable, as well as the uniqueness of its manifestations, and it is considered that the presence of oppositions does not constitute an enhancement but, rather, an obstacle.

"Instrumentalisation" can occur when participatory democracy arises spontaneously, from the bottom, but more easily manifests in its forms from the top⁶⁴, when manipulative will can be a structural element of it⁶⁵.

2. We come to the second shadow. As well as avoiding dissent, participatory democracy can represent an excellent *marketing* operation, a sales strategy for policies and decisions. In the European Union White Paper *European Governance*⁶⁶, it is noted that «participation» tends above all to overcome the «feeling of extraneousness with respect to the Union's action», which «numerous Europeans» have, by increasing «confidence in the final result and in the institutions from which Union policies emanate». Taking nothing away from the requirements of better communication and information, shouldn't the focal point be the receipt of demands originating from citizens?

Pretending to be democracy or being democracy?

⁶⁰ On the link between democracy and conflict, see, from the many, G. AZZARITI, *Diritto e conflitti. Lezioni di diritto costituzionale*, Roma-Bari, 2010.

⁶¹ P. VIPIANA, *Il dibattito pubblico*, *op. cit.*, p. 1.

⁶² A. ALGOSTINO, *I movimenti territoriali: una nuova manifestazione del conflitto sociale?*, in *Parolechiare*, 60, *Voice*, December 2018, pp. 35 ss.

⁶³ V. MANZETTI, *Il "dibattito pubblico"*, *op. cit.*, p. 4.

⁶⁴ See the concerns expressed also by those who tend to assess favourably the increase of hypotheses of participatory democracy, such as L. BOBBIO, *Dilemmi della democrazia partecipativa*, *op. cit.*, p. 20.

⁶⁵ See C. CROUCH, *Post-Democracy*, Oxford, 2004.

⁶⁶ Commission of the European Communities, Brussels, 25.7.2001, COM (2001) 428 final.

As noted by Alessandra Valastro, in relation to constitutional reforms, but the question can be expanded, participation appears to be «an attractive terrain for raising the bar of illusory or mendacious rhetoric»⁶⁷. Not just that: the advertising operation around participatory democracy can have a side effect in terms of dealing (another) blow to a representative democracy in crisis, denigrating it, through a presentation *a contrario* of the virtues of “direct participation”⁶⁸. To say nothing of the fact that, moving on a substantial level, on one side, the parliamentary political-representative circuit, already weakened by the verticalisation of power in the executive, is thereby further emptied; on the other, a plebiscitary opposition is created between the people and Parliament. In this sense, the conjunction between reducing the number of parliamentarians⁶⁹ and the reform in question of Art. 71 of the Const. seems emblematic, in the sense of de-legitimising Parliament⁷⁰.

3. Third shadow. An oxymoron: the image of oligarchic or elitist democracy⁷¹. Although there is insistence on the inclusive nature of participatory democracy⁷², on the fact that it grants participation to everyone and, in particular, that in many cases it intends to favour “weak” interests or positions⁷³ (being able, in that regard – it can be added – to reason on the “inequality” inscribed in the perspective of substantial equality), none of the various mechanisms used to choose participants in a practice of participatory democracy is able to avoid the risk of creating hypothetically a “perfect democracy”, but for the few, or sliding towards oligarchic and elitist forms of “government of the best”. The paradox arises by which participatory democracy «aims to include *everyone*, but – in fact - is able to involve concretely only *someone*», whatever the methods used to democratise it (the open door, the microcosm as points of view and the microcosm as random sample)⁷⁴.

The risk arises – and the discussion can be extended, more broadly, to the rhetoric of civil society – that instruments of participatory democracy conceal an anti-egalitarian approach, or concern a so-to-speak

⁶⁷ A. VALASTRO, *Gli istituti di partecipazione*, *op. cit.*, p. 40.

⁶⁸ See, in that regard, the suggestions on the relationship between civil society, *governance* and State, of A. DENEAULT, «*Gouvernance. Le management totalitaire*», 2013.

⁶⁹ A. ALGOSTINO, *Contro la riduzione del numero dei parlamentari, in nome del pluralismo e del conflitto*, in *Questione giustizia* (on line), 10 February 2020.

⁷⁰ See M. LUCIANI, “*Iniziativa legislativa e referendum, le proposte di revisione costituzionale*”, intervento alla Tavola Rotonda AIC, Roma, 1 marzo 2019, in *Osservatorio costituzionale*, n. 1-2/2019; A. ANZON DEMMIG, *L'iniziativa legislativa popolare “indiretta” (c.d. referendum propositivo) nel progetto di legge costituzionale in itinere*, in *Forum Quad. Cost.*, 22 March 2019; A. MORRONE, *L'iniziativa popolare propositiva: per una democrazia plebiscitaria contro la democrazia rappresentativa?*, in *federalismi.it*, n. 23/2018.

⁷¹ In that regard, we can also cite Athenian democracy (L. CANFORA, *La democrazia. Storia di un'ideologia*, Roma-Bari, 2004, specially pp. 31 ss.).

⁷² Cfr. U. ALLEGRETTI, *La democrazia partecipativa in Italia e in Europa*, *op. cit.*, pp. 8-9.

⁷³ U. ALLEGRETTI, *Democrazia partecipativa e processi di democratizzazione*, *op. cit.*, pp. 188-189.

⁷⁴ L. BOBBIO, *Dilemmi della democrazia partecipativa*, *op. cit.*, pp. 14 ss.

“radical-chic” participation; therefore, an effective emancipation of the more disadvantaged social classes is not produced, but a more refined form of exclusion can be established, even if in their name.

4. Fourth shadow: the spectrum of the “total citizen”⁷⁵, of a monopolising participation, in a horizon where individuals are subservient to the interest, artificially presented as univocal, of the *polis*. And the “total citizen” – citing Bobbio – «is none other than, on closer inspection, the other face, no less threatening, of the total state»⁷⁶.

5. Fifth shadow: the atomisation, of persons and interests. From one side, the risk is of implementing the construction of a civil society made up of many individuals⁷⁷, in the logic of the individual entrepreneur of oneself⁷⁸, fuelling the *vulgata* of overcoming the social classes⁷⁹ and dispersing the strength of collective organisations; on the other, the danger is the fragmentation of interests and interventions, with the abandonment of the horizon of the political choice capable of placing individual sector-based interests within a world view.

4. Concluding observations between imagination and reality

Turning to the conclusions, I would like to resume one point in particular, in the perspective of a constructive demystification, relating to the real configuration of power relationships, but at the same time open to an imagination projected towards the future. It seems to me that the consideration of how far participatory democracy is close to the possibilities of expression of dissent and conflict and how far it is close to the control and cooptation is central.

If, with the discussion materialising in relation to the institution that, by par excellence, personifies participatory democracy at state level, «the aim of the public debate is to democratise and legitimise the future decision, so that, although not accepted by everyone, it is acceptable, because everyone was heard» (Mansillon)⁸⁰, the tool must be questioned: it is an enrichment of democracy to prevent the formation of dissent through listening aimed at the acceptability of a decision?

The spaces for discussion are reduced in representative democracy, increasingly self-referential and at the same time hetero-direct⁸¹, and space of consultation and cooperation open up: how can we not think

⁷⁵ R. DAHRENDORF, *Cittadini e partecipazione: al di là della democrazia rappresentativa?*, in *Il cittadino totale. Partecipazione, egualianza e libertà nelle democrazie d'oggi*, Torino, 1977, pp. 33 ss.

⁷⁶ N. BOBBIO, *Il futuro della democrazia*, op. cit., p. 35.

⁷⁷ See M. MANETTI, *Costituzione, partecipazione democratica, populismo*, cit., p. 385.

⁷⁸ F. PIZZOLATO, *Mutazioni del potere economico e nuove immagini della libertà*, in *Costituzionalismo.it*, n. 3/2017.

⁷⁹ On this, see L. GALLINO, *La lotta di classe dopo la lotta di classe*, edited by P. BORGNA, Roma-Bari, 2012; M. TRONTI, *Lavoro*, in *Democrazia e diritto*, nn. 1-2/2012, pp. 10-11; J. HOLLOWAY, *Che fine ha fatto la lotta di classe?*, Roma, 2007; D. LOSURDO, *La lotta di classe. Una storia politica e filosofica*, Roma-Bari, 2013.

⁸⁰ Y. MANSILLON, *L'esperienza del «débat public»*, op. cit., p. 107.

⁸¹ The reference is to the influence of decisions made elsewhere, especially in the nebula of *global economic governance*.

about their use in a plebiscitary way? About the creation of a – using Marcuse's expression – «comfortable, smooth, reasonable, democratic non-freedom»⁸²?

For *effective* participation, its configuration in anti-hegemonic sense is essential, as a space for conflict and, in this perspective, it is fundamental to imagine tools of participation that act, to open at least some small cracks in the hegemony of neo-liberalism, in the sphere of economy; combining, to reason in a Italian constitutional terms, a re-vitalisation of Art. 41 Const. with concretisations of Articles 43 and 46, in the horizon of Art. 3, par. 2, Const.⁸³. It is not just theory: there is the concrete example of the recovered and self-managed factories, but also attempts such as making water public again, envisaging in the management structures forms of participation of citizens which work side by side, collaborating and not subrogating, with the representative circuit of local bodies.

In conclusion, a final specification, in order for tools of participatory democracy to escape the shadows and allow, as proposed by Eduardo Galeano, to “delirar por un ratito” and “adivinar otro mundo posible”⁸⁴, the role of democracy from below, of social movements, of associationism, or of persons who are today taking charge of the project of implementation of the Constitution⁸⁵, demanding emancipation and “being” emancipation, in the sign of what Abensour calls “insurgent democracy”⁸⁶, is essential.

The coexistence between the various forms of democracy (representative, participatory, from below), through the complementary nature of the processes of intermediation and political-party composition, of institutional channels of participation and of phenomena of self-organisation, can give a new life-blood to constitutionalism, in its attempt to limit power in the name of the person and his/her requirements, building a house respectful of pluralism.

⁸² H. MARCUSE, *One-Dimensional Man. Studies in the Ideology of Advanced Industrial Society*, Boston, 1964 (*L'uomo a una dimensione. L'ideologia della società industriale avanzata*, Torino, 1999, p. 15).

⁸³ In that regard, see A. VALASTRO, *Gli istituti di partecipazione*, *op. cit.*, p. 74.

⁸⁴ E. GALEANO, *El derecho al delirio*, 1998 ((in *Patas arriba. La escuela del mundo al revés*, Madrid, 1998)).

⁸⁵ A. ALGOSTINO, *Settant'anni di “uso” della Costituzione: da patto sociale a progetto alternativo? Brevi note per un contributo al seminario di Costituzionalismo.it*, in *Costituzionalismo.it*, n. 2/2018, pp. 123 ss.

⁸⁶ Cfr. M. ABENSOUR, *La Démocratie contre l'État. Marx et le moment machiavélien*, Paris, 2004.