



CONFERENCE  
PROCEEDINGS

# Digital Technologies

and the Stakes  
for Representative  
Democracy

ATHENS, 10-12 JUNE 2022







## Digital Technologies and the Stakes for Representative Democracy

Proceedings of a Conference held at Athens on 10-12 June 2022, co-organized by the Hellenic Parliament Foundation, the European Parliament, the Cypriot House of Representatives, the Estonian Parliament, the Italian Chamber of Deputies, the Portuguese Assembly of the Republic and the Spanish Congress of Deputies

Conference proceedings

*Digital Technologies and the Stakes for Representative Democracy*  
Athens, 10-12 June 2022

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# Digital Technologies and the Stakes for Representative Democracy

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THE HELLENIC PARLIAMENT FOUNDATION  
FOR PARLIAMENTARISM AND DEMOCRACY



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## ΠΡΟΛΟΓΟΣ / FOREWORD\*

ΚΥΡΙΕΣ ΚΑΙ ΚΥΡΙΟΙ, ΑΓΑΠΗΤΟΙ ΦΙΛΟΙ από τα Κοινοβούλια της Εσθονίας, της Κύπρου, της Ιταλίας, της Ισπανίας, της Πορτογαλίας, από το Ευρωπαϊκό Κοινοβούλιο, με μεγάλη χαρά και τιμή σας υποδέχομαι σήμερα στην Αίθουσα Γερουσίας του Ελληνικού Κοινοβουλίου, προκειμένου να ξεκινήσει αυτή η τριήμερη πολιτική και επιστημονική συνεδρίαση με θέμα τις ψηφιακές τεχνολογίες και τι απειλή αντιπροσωπεύουν για τα δημοκρατικά πολιτεύματα, για το αντιπροσωπευτικό σύστημα.

Είχα την τύχη να διαβάσω πριν ελάχιστες μέρες σε μια αθηναϊκή εφημερίδα, μια ενδιαφέρουσα συνέντευξη του κ. Alexandre Quintanilha, του Πορτογάλου συναδέλφου και συμφωνώ απόλυτα μαζί του ότι δεν πρέπει να περιοριστούμε βλέποντας τη μία πλευρά των ψηφιακών εξελίξεων και την παρενέργεια που έχουν στο αντιπροσωπευτικό οικοσύστημα, να περιοριστούμε εις την εκφώνηση, ενδεχομένως, επιταφίων για την αντιπροσωπευτική δημοκρατία.

Όπως καθετί, έτσι και η ψηφιακή επανάσταση η οποία καλπάζει κάθε μέρα και περισσότερο, έχει για τη δημοκρατία τις θετικές πλευρές, έχει και τις προκλήσεις τις οποίες ωστόσο είμαστε σε θέση να τις αντιμετωπίσουμε. Το Συνέδριο που ξεκινάει σήμερα, δεν θα είχε νόημα, εάν το 1780 ένας διαγωνισμός που έγινε από την Ακαδημία Επιστημών και Γραμμάτων του Βερολίνου είχε φέρει αποτέλεσμα. Τι διαγωνισμό είχε κάνει το 1780 η Ακαδημία Επιστημών και Γραμμάτων του Βερολίνου; Το θέμα του διαγωνισμού, το οποίο είχε ζητήσει ο Γάλλος εγκυκλοπαιδιστής Ντ' Αλαμπέρ, είχε στόχο να απαντηθεί ένα ερώτημα: «Είναι ωφέλιμο να λέμε ψέματα στο λαό»; Αυτός ήταν ο διαγωνισμός στο Βερολίνο λίγα χρόνια πριν την Γαλλική Επανάσταση.

Το βραβείο ήταν τεράστιο, 50 χρυσά δουκάτα, έλαβαν μέρος 42 σπουδαίοι φιλόσοφοι, επιστήμονες και εγκυκλοπαιδιστές, οι οποίοι απάντησαν σε αυτό το ερώτημα. Ήταν όμως αδιέξοδη η εξέλιξη αυτής της επιβράβευσης, διότι η κριτική επιτροπή μάλλον πελάγωσε και προκειμένου να ξεφύγει από το να πάρει σαφή θέση, μοίρασε τα 50 χρυσά δουκάτα δίνοντας βραβείο σε δύο φιλόσο-

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\* Welcoming address by the President of the Hellenic Parliament to the participants of the conference “Digital technologies and the stakes for representative democracy”, Hellenic Parliament, 10 June 2022.

φους. Σε έναν που απάντησε ότι είναι ωφέλιμο να λέμε ψέματα και σε έναν που απάντησε ότι δεν είναι ωφέλιμο να λέμε ψέματα. Πήρε ο καθένας από 25 χρυσά δουκάτα και έτσι έληξε άδοξα ο διαγωνισμός και καλούμαστε εμείς, χωρίς το έπαθλο των δουκάτων, να το αντιμετωπίσουμε λόγω της τρομακτικής εξέλιξης της ψηφιακής τεχνολογίας και των απειλών που έχει για το αντιπροσωπευτικό σύστημα.

Επειδή συμβαίνει να πολιτεύομαι πάρα πολλά χρόνια και να εκλέγομαι και την παλαιότερη εποχή που η τεχνολογία δεν ήταν τόσο προχωρημένη στην πολιτική, και τώρα που η τεχνολογία έχει πολιορκήσει πλήρως την πολιτική, θεωρώ ότι η τεχνολογία βασικά αφήνει ανέπαφο τον πυρήνα της πολιτικής. Όταν ένας κυβερνάει καλά, είτε ως πρωθυπουργός, είτε ως δήμαρχος, είτε ως έπαρχος και βελτιώνει τη ζωή των πολιτών, βελτιώνει την οικονομική τους κατάσταση, βελτιώνει την πρόσβασή τους στην Υγεία, στην Παιδεία, προστατεύει το περιβάλλον, είναι δύσκολο οποιαδήποτε ψηφιακή απειλή να τον ταρακουνήσει. Όταν όμως τα πράγματα δεν είναι καλά, τότε η ψηφιακή επίθεση μπορεί να τον διαλύσει, ενώ αν δεν υπήρχε αυτό τότε τα πράγματα μπορεί να ήταν και πιο εύκολα. Νιώθω δηλαδή ότι η ψηφιακή ανάμειξη στην πολιτική είναι για να χειροτερέψει μια κακή εικόνα που υπάρχει, όχι όμως να ανατρέψει μια θετική πραγματικότητα.

Η εποχή μας όμως είναι γεμάτη κρίσεις, έχουμε την πανδημία, έχουμε το περιβάλλον, στην πραγματικότητα θεωρώ ότι ζούμε χωρίς να το έχουμε παραδεχτεί με τα απομεινάρια του περιβάλλοντος, όχι το περιβάλλον όπως το ξέραμε πριν λίγα χρόνια. Αυτή τη στιγμή αναπνέουμε τα απομεινάρια του περιβάλλοντος και μόνο αν το καταλάβουμε αυτό θα μπορέσουμε να το βελτιώσουμε. Τώρα λοιπόν με τις διαρκείς κρίσεις, ο πολιτικός, το αντιπροσωπευτικό σύστημα στη δημοκρατία, γιατί για αυτό μιλάμε, είναι αντιμέτωπος διαρκώς με δυσαρέσκεια, με δυσκολία. Για αυτό και η αποδόμησή του είναι κάτι το οποίο μπορεί να γίνει ανά πάσα στιγμή. Δεν είναι τυχαίο ότι στο πρόσφατο έκτακτο Συμβούλιο Κορυφής της Ευρωπαϊκής Ενώσεως με θέμα την ουκρανική κρίση και τα μέτρα που θα έπρεπε να πάρει η Ευρωπαϊκή Ένωση κατά της Ρωσίας για να την πιέσει στο θέμα της εισβολής στην Ουκρανία, δεν είναι τυχαίο λοιπόν ότι εκτός από την απαγόρευση του πετρελαίου, εκτός από την ενίσχυση της Ουκρανίας, εκτός από το έκτο κύμα των κυρώσεων, υπάρχει, 31 Μαΐου (πριν από λίγες ημέρες), στα Συμπεράσματα, η 17η παράγραφος, η οποία λέει ότι η Ευρωπαϊκή Ένωση θα πρέπει να πείσει και άλλες, τρίτες, χώρες να στηρίξουν την Ουκρανία, αλλά θα πρέπει επίσης να πείσει όλους αυτούς να αντιμετωπίσουν το ψευδές ρωσικό αφήγημα και τη χειραγώγηση των πληροφοριών και

να αποτρέψουν την αποφυγή και την καταστρατήγηση των κυρώσεων. Η χειραγώγηση λοιπόν των πληροφοριών και το ψευδές αφήγημα είναι πια έντονα μέσα στη ζωή μας, όχι μόνο τοπικά αλλά και γεωπολιτικά, γεωστρατηγικά. Άρα είναι ένα θέμα το οποίο καλούμαστε να αντιμετωπίσουμε.

Η Ευρωπαϊκή Ένωση θα έχει σύντομα (το 2023) ένα νέο νομοθετικό πλαίσιο, στο οποίο θα επιχειρεί να βάλει σε τάξη όλους αυτούς τους διαδικτυακούς «συντρόφους» μας, να βάλει σε τάξη τη ρητορική μίσους, να βάλει σε τάξη τους αλγόριθμους, να βάλει σε τάξη τον έλεγχο των ψευδών ειδήσεων, και είναι όντως μια φιλόδοξη νομοθεσία. Πιστεύω όμως ότι όλες αυτές οι απόπειρες, τελικά, δεν αρκούν. Γιατί πάντα η επινοητικότητα εκείνων οι οποίοι θέλουν να παραπλανήσουν είναι πολύ πιο μπροστά από την επινοητικότητα εκείνων που θέλουν να εμποδίσουν την παραπλάνηση. Οπότε πάμε πάλι πίσω στα κλασικά. Πάμε πάλι πίσω στα κλασικά ζητήματα της πληροφόρησης.

Ποια είναι η αντίδραση στην παραπληροφόρηση τελικά; Ο μεγαλύτερος Έλληνας ιστορικός της αρχαιότητας, ο Θουκυδίδης, που περιγράφει την αιτία της παρακμής της κλασικής Αθήνας, μέσω του Πελοποννησιακού Πολέμου, μας δίνει μια εξήγηση που είναι σαν να έρχεται από το σήμερα κι όχι 2.500 χρόνια πριν. Στην Κέρκυρα, το ωραιότατο νησί που πολλοί ελπίζω να το ξέρετε από τον τουρισμό, στην Κέρκυρα είχε συμβεί ένας πολύ σκληρός εμφύλιος πόλεμος ανάμεσα στους αριστοκρατικούς και τους δημοκρατικούς. Σκληρότατος εμφύλιος πόλεμος, τραγικός! Και μέσα στις συμφορές του εμφυλίου πολέμου και τα δεινά, ο Θουκυδίδης λέει ότι άλλαζαν την έννοια των λέξεων, για να κάνουν τις λέξεις «υπηρέτες των πράξεών τους».

Δυόμισι χιλιάδες χρόνια πριν, τα fake news είναι πάντα παρόντα. Κι όλη αυτή η περιπέτεια η σημερινή δεν διαφέρει ποιοτικά από την εποχή του εμφυλίου της Κέρκυρας. Διαφέρει ποσοτικά, διότι η τεχνολογία έχει δώσει απέραντο πεδίο στην εξάπλωση των fake news. Η βασική άμυνα σε όλα αυτά, και την εποχή του Θουκυδίδη, και την εποχή της Ακαδημίας του Βερολίνου με τα χρυσά δουκάτα, και τη σημερινή εποχή, η βασική άμυνα –δυστυχώς ή ευτυχώς– είναι η παιδεία και το επίπεδο των πολιτών. Εάν οι πολίτες, που τα Συντάγματά μας – και στην Κύπρο και στην Εσθονία και στην Ιταλία και στην Πορτογαλία και σε όλες τις προηγμένες δημοκρατικές χώρες– τους αποκαλούν «κυρίαρχους», εάν λοιπόν οι κυρίαρχοι πολίτες, τελικά, δεν είναι σε θέση να αναλάβουν τις ευθύνες τους και να ασχοληθούν με την επέλαση όλων αυτών των πληροφοριών και να τις αντιμετωπίσουν κριτικά, τότε καμία ευρωπαϊκή οδηγία, κανένα τριήμερο συνέδριο στην Αθήνα ή στο Ναύπλιο, κανένα workshop, καμία διατριβή διδακτορική, δεν θα αποτρέψει αυτό που μέχρι τώρα αποτρέπεται. Γιατί, παρά

τους απαισιόδοξους, οι δημοκρατίες επιζούν. Επιζούν στυγνών δικτατόρων, επιζούν έντονου λαϊκισμού και δημαγωγίας, πιστεύω πως τελικά θα επιζήσουν και των fake news.

Ο Επίχαρμος ήταν ένας Έλληνας κωμικός ποιητής, ο οποίος σταδιοδρόμησε στις Συρακούσες. Ο μύθος της παγκοσμιοποίησης, ξέρετε, δεν ισχύει. Οι άνθρωποι πάντα άνοιγαν τους ορίζοντές τους και πάντα αντιμετώπιζαν τις προκλήσεις του περιβάλλοντος ταξιδεύοντας. Φαντασθείτε να είσαι Έλληνας ποιητής στις Συρακούσες πριν 2.500 χρόνια! Εκεί λοιπόν ο Επίχαρμος είχε πει ότι οι πολίτες πρέπει να θυμούνται πως πρέπει να είναι «νηφάλιοι και δύσπιστοι». Πρέπει να είναι ήρεμοι και κριτικοί. «*Νᾶφε καὶ μέμνασο ἀπιστεῖν*» ήταν η σύσταση του Επιχάρμου 2.500 χρόνια πριν. Νομίζω πως και οι ευρωπαϊκές οδηγίες, και η δική μας συμβολή, και η καταπολέμηση των fake news μέσω ειδικών αλγορίθμων και νομοθεσιών θα βοηθήσουν σε αυτή τη σύγχρονη μάστιγα. Αλλά νομίζω πως τελικά η πιο χρήσιμη συμβουλή έρχεται από τις Συρακούσες κι έναν κωμικό ποιητή: «Να είσαι νηφάλιος και δύσπιστος».

Σας καλωσορίζω και σας εύχομαι να είστε νηφάλιοι και δύσπιστοι!

ΚΩΝΣΤΑΝΤΙΝΟΣ ΑΝ. ΤΑΣΟΥΛΑΣ

Πρόεδρος της Βουλής των Ελλήνων και  
Πρόεδρος του Ιδρύματος της Βουλής των Ελλήνων  
για τον Κοινοβουλευτισμό και τη Δημοκρατία



LADIES AND GENTLEMEN, DEAR FRIENDS from the Parliaments of Estonia, Cyprus, Italy, Spain, Portugal, and the European Parliament, it is with great pleasure and honour that I welcome you today to the Hall of the Senate of the Hellenic Parliament, at the start of this three-day political and academic conference on digital technology and the stakes for democratic political systems, for representative democracy.

A few days ago, I had the fortune to read in an Athenian newspaper an interesting interview by Mr. Alexandre Quintanilha, my Portuguese colleague, and I fully agree with him that we should not limit ourselves to looking at the one side of the digital developments and the negative impact they have on the representative system and limit ourselves to delivering, perhaps, funeral orations for representative democracy.

As with everything else, the digital revolution, which is increasingly growing, has its positive aspects for democracy, but it also has its challenges, which

however we are in a position to face. The Conference that begins today would have been meaningless if a competition held in 1780 by the Berlin Academy of Sciences and Letters had been successful. What competition was held in 1780 by the Berlin Academy of Sciences and Letters? The topic of the competition, which had been requested by the French encyclopedist d'Alembert, was intended to answer a question: "Is it useful to lie to the people?" This was the competition in Berlin a few years before the French Revolution.

The prize was huge, 50 golden ducats; 42 great philosophers, scientists and encyclopedists took part and answered this question. However, the contest led to a deadlock because the jury was rather puzzled, and in order to avoid taking a clear position, it divided the 50 golden ducats in two halves, giving the prize to two philosophers. One who replied that it is beneficial to lie and one who replied that it is not beneficial to lie. They each took 25 golden ducats and so the competition ended ingloriously. Today we are called upon, without a prize of ducats, to deal with it, due to the tremendous development of digital technology and the threats it poses for representative democracy.

Because I happen to have been in politics for too many years, and to have been elected in the earlier days as well when technology was not as advanced and now that technology has completely "besieged" politics, I do think that technology basically leaves the core of politics intact. When a person governs well, whether as prime minister, as mayor or as prefect, and improves the lives of the citizens, improves their economic situation, improves their access to health care, education, protects the environment, it is hard for any digital threat to shake him/her. However, when things are not good, then the digital attack can devastate the political actor. But if that were not the case, then things might have been easier. And so I feel that digital involvement in politics is to make an existing bad picture worse, but not to overturn a positive reality.

But our times are full of crises, we have the pandemic, we have the environment, in fact, I think we live without admitting it, with the remnants of the environment, but not the environment as we knew it a few years ago. Right now, we are breathing the remains of the environment, and only if we realize that, we can improve it. And so now, with the lasting crises, the politician, representative democracy – because that is what we are talking about – is constantly faced with dissatisfaction, with difficulty. That is why its deconstruction is something that can happen at any time. It is not a coincidence that at the recent Extraordinary Summit of the European Union regarding the Ukrainian crisis and the measures that the European Union should take against Russia in order to put

pressure against the invasion of Ukraine, it is not a coincidence therefore that in addition to the oil ban, in addition to the support for Ukraine, in addition to the sixth round of sanctions, there is, on 31 May (a few days ago), in the Conclusions of the Summit, the 17th paragraph, which states that the European Union should convince other countries as well, third countries, to support Ukraine, but it should also convince all of them to confront the false Russian narrative and the manipulation of information as well as to prevent the evasion and circumvention of sanctions. Thus, the manipulation of information and the false narrative are now very much part of our lives, not only locally but also geopolitically, geostrategically. It is therefore an issue that we are called upon to confront.

The European Union will soon have (in 2023) a new legislative framework, in an attempt to regulate all these online “partners”, to put hate speech in order, to put algorithms in order, to put control of fake news in order, and it is indeed an ambitious legislative measure. But I believe that all these attempts are ultimately not sufficient. Because the ingenuity of all those who want to mislead is always far ahead from the ingenuity of those who want to prevent misleading. Therefore, we go back to the basics. We go back to the classic issues of information.

What is the response to misinformation after all? The greatest Greek historian of antiquity, Thucydides, who describes the cause of the decline of classical Athens, through the Peloponnesian War, gives us an explanation that seems to have come from today, and not from 2,500 years ago. In Corfu, the beautiful island that I hope many of you may have visited, a very fierce civil war had taken place between the aristocrats and the democrats. A very harsh civil war, tragic! And amidst the calamities and the suffering of the civil war, Thucydides says that they were changing the meaning of words, in order to make the words the “servants of their deeds”.

2,500 years ago, fake news are always present. And all this adventure of today is not qualitatively different from the civil war in Corfu. It is quantitatively different, because technology has given a vast scope to the spread of fake news. The basic defence against all of this, whether in the time of Thucydides, or the time of the Berlin Academy with the golden ducats, or in the present day, the basic defence –unfortunately or fortunately– is the education and the standards of the citizens. If the citizens, whom our Constitutions – in Cyprus and in Estonia and in Italy and in Portugal, and in all the advanced democratic states – call “sovereign”, if the sovereign citizens, after all, are not in a position to take responsibility and deal with the influx of all this information, and deal with it

critically, then no European directive, no three-day conference in Athens and Nafplion, no workshop, no doctoral thesis will prevent what has been prevented so far. Because, despite the pessimists, democracies survive. They survive brutal dictators, they survive intense populism and demagoguery, I believe that eventually they will survive fake news.

Epicharmus was a Greek comic poet who pursued a career in Syracuse. The myth of globalization, you know, is not true. People have always broadened their horizons and have always met with challenges of their environment by traveling. Imagine being a Greek poet in Syracuse 2,500 years ago! So there, Epicharmus had said that citizens should remember that they should be “clear-headed and distrustful”. They must be calm and critical. “*Νᾶφε καὶ μέμνασο ἀπιστεῖν*”. “Keep a clear head and remember not to believe a thing”, was Epicharmus’ suggestion 2,500 years ago. I think that the European directives, our own contribution, and the fight against fake news through special algorithms and legislation will help avert this modern scourge. But I think that ultimately the most useful advice comes from Syracuse and a comic poet: “Keep a clear head and remember not to believe a thing”.

I welcome you and wish you to be clear-headed and distrustful.

CONSTANTINE A. TASSOULAS  
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## ABBREVIATIONS

AI	Artificial Intelligence
CFSP/CSDP	Common Foreign and Security Policy/Common Security and Defence Policy [European Union]
CoFE	Conference on the Future of Europe
COP	Conference of the Parties [UN]
COSAC	Conference of Parliamentary Committees for Union Affairs of Parliaments [European Union]
EAVA	European Added Value Unit
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EP	European Parliament
EPRS	European Parliamentary Research Service
EPTA	European Parliamentary Technology Assessment
ICTs	Information and Communication Technologies
LINK	Linking the Levels Unit [European Parliament]
MP/MEP	Member of Parliament/Member of the European Parliament
MRS	Members' Research Service [EPRS]
NYT	<i>New York Times</i>
OTA	Office of Technology Assessment [USA]
POST	Parliamentary Office on Science and Technology [Britain]
STOA	Panel for the Future of Science and Technology (acronym maintained from its previous full name, Science and Technology Options Assessment Panel) [European Parliament]
SURE	Support to mitigate Unemployment Risks in an Emergency [European Union]
TA	Technology Assessment
TAB	Buro fuer Technikfolgen-Abschaetzung [Germany]
TEU	Treaty on the European Union



## INTRODUCTION

### Discussing democracy in the digital era

ON 10-12 JUNE 2022, AN INTERNATIONAL CONFERENCE was held at the Hall of the Senate of the Hellenic Parliament Building (on the third day it moved at the Vouleftikon of Nafplion, the former Greek capital), on the subject “Digital technologies and the stakes for representative democracy”. It was co-organized by the Hellenic Parliament Foundation, the European Parliament, the Cypriot House of Representatives, the Estonian Parliament, the Italian Chamber of Deputies, the Portuguese Assembly of the Republic and the Spanish Congress of Deputies. The conference was held following an initiative of the Hellenic Parliament Foundation, in an effort to further wider discussion among European Parliaments on the prospects of representative democracy, constitutional life and the Rule of Law. It focused on the dilemmas that the breathtaking development of technology poses for constitutional governance, but also on the opportunities for creative adjustment.

Although parliamentary cooperation is already well-developed in Europe, a shared event involving European Parliaments always has its own value in furthering communication between the institutions that form the nucleus of European democracy, and are bound together by common values, practices, experiences, hopes and fears. Admittedly, there was, from the very start, an unspoken assumption in holding this conference, namely, that it could offer a more dynamic perspective through bringing Parliaments into this discussion. The conference pointed to the various, interacting perspectives: the debate on legitimization; the dangers to representative democracy; and the development of best practices by the Parliaments involved. It confirmed what we always knew, namely, that very often parliamentary officials are not only practitioners but also intellectuals in their own right, on the subjects critical for the development of modern representative democracy. I strongly believe that a huge contribution of the conference has been that it combined the perspectives of people from different disciplines, legal experts of the Parliaments concerned, but also the viewpoint of officials responsible for such matters. This further stresses the well-known fact that a contemporary Parliament is more than it used to be

in the nineteenth century: it is also a competent administrative structure, a large organization undertaking activities that touch upon political thought, the handling of crucial dilemmas and interaction with the public as well as with academia. In other words, a contemporary Parliament as an organization is socially and intellectually active and relevant.

The growth in the role of Parliaments follows the wider trends of our times, and reflects developments and interactions which can be traced back into the past. The medieval social and political systems were connected to religion, and thus very difficult to challenge. How could one doubt a social system that had, in a sense, been “given” by God? This could turn dissenters to heretics with obvious repercussions. But modernity, driven also by the development of technology, changed all this. Social systems were no longer determined by a higher power, and therefore should be decided by human beings.

Thus, a crisis of legitimization has been raging since the dawn of modernity, as one of its integral components. How should human society organize itself? How can power be legitimized? Legitimization involves more than the theoretical notions of political organization or ideology. It is the point of convergence between political practice, economies and social systems – all hugely dependent on the growth of science and technology, rapidly accelerating especially after the Industrial Revolution. In essence, legitimization involves the ability of social systems to capture the hearts and minds of the mobilized citizens in largely urbanized mass societies, especially after the mid-nineteenth century.

The challenge, therefore, is not new, but the breathtaking development in science and technology during the twentieth century created a new environment. The acceleration of technological advances produced a very compacted historical time: social and political developments radically sped up, and people had to adjust to more rapid changes than any previous generation: persons living in Central Europe in 1700 led a life very similar to those of their grandparents in 1600; but we, today, lead completely different lives than did our ancestors in the early twentieth century. On the other hand, technological progress in the twentieth century did not necessarily mean a betterment of conditions, as was shown by the cruel trench warfare of 1914-1918, the rise of totalitarianism, and even the development of nuclear weapons able to destroy the globe many times over. The optimism – it now seems to us charming but naïve – of the linear theories of the nineteenth century, based on the ideas of an “inevitable” progress automatically aided by technology, was revised although not altogether abandoned. To give an indicative example, the relentless belief in the objectivity

of science as represented by Sherlock Holmes in the late nineteenth century, was replaced in the interwar years by the calm pessimism of Hercule Poirot who places his emphasis on psychology, and is sad sometimes when reflecting on the dark side of human nature. It was thus becoming clear that there was a further precondition for a better life: the *rational use* of science and technology, which involved choice, and thus pointed to the importance of human decisions.

From the late 1960s, even more the 1970s, a new technological revolution had a huge impact on Western societies. The “new frontier” issues involved the new technological capabilities in outer space, satellites, computers, communication, oceanography, nuclear energy and the environment; on the political field, these new capabilities were combined with a novel emphasis on international cooperation (especially international summitry to deal with the immense economic problems of the time), the start of “globalization”, and the international protection of human rights. This was the dawn of a new era – in view of a lack of a better term, it was called “post-industrial”. As has been perceptively noted, this was the beginning of “our” era, lasting until the present day.<sup>1</sup> The successive technological revolutions in digital technology of later decades followed as an integral part of this new era.

Representative democracy was never disconnected from technological and economic change. Since 1945, admittedly, the power of Parliaments has been stymied by the rise of very powerful executives, but democratic regimes managed to adjust to this partial change. On the other hand, the post-1970s developments of “our era” naturally raise questions and dilemmas regarding the adjustment of representative democracy to these trends. The truth is that in our time the speed and the pace of change – as well as the sheer scale of technological progress – are unprecedented. Can our societies handle such speeds? Can they withstand the pressures? Can they face the malign power of some algorithms designed to interfere with democratic practice and electoral results by spreading a ‘pandemic of misinformation’ which compromises trust?<sup>2</sup> Law, the foundation

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1. Philippe Chassaing, *Les années 1970 : fin d'un monde et origine de notre modernité* (Paris : Armand Colin, 2008); Niall Ferguson, “Introduction: Crisis, What Crisis? The 1970s and the Shock of the Global”, in Niall Ferguson, Charles S. Maier, Erez Manela, and Daniel J. Sargent (eds.), *The Shock of the Global: the 1970s in Perspective* (Cambridge, Mass: The Belknap Press of Harvard University Press, 2011), 1-21.

2. The phrase “pandemic of misinformation” was coined by The Lords Democracy and Digital Technologies Committee. See <https://www.parliament.uk/business/lords/media-centre/house-of-lords-media-notices/2020/jun-20/democracy-under-threat-from-pandemic-of-misinformation-online-lords-democracy-and-digital-technologies-committee/>, accessed 11 March 2023.



of representative democracy, can only react to a disruptive phenomenon; it cannot foresee it. And it is difficult to react effectively when these phenomena come to us at such speeds. Is it the case perhaps that technological growth threatens to make good old representative democracy obsolete or simply irrelevant?

But let us hold our horses for a moment. Pessimistic projections in the face of a new trend are not a novel phenomenon; and in the past, such doubts have not come true. For example, in the early 1970s environmental awareness tended to point to “limits to growth”,<sup>3</sup> that have been exceeded many times since – at a price, perhaps, but, still, visibly. There are both opportunities and threats in the growth of technology, and it is up to us, our societies and institutions, to make the correct political decisions taking advantage of the former while minimizing the latter. This is a prominent conclusion of the 2022 Athens conference, and of this volume.

It is only realistic to acknowledge that the scale of technological advance of our days is qualitatively different from similar phenomena of the past. Developments come at us at breathtaking speeds, and as Constantine Tassoulas, the President of the Hellenic Parliament, noted in his welcoming address on 10 June 2022, “the ingenuity of all those who want to mislead is always far ahead from the ingenuity of those who want to prevent misleading”. We cannot be sure about how to deal with such rapidly advancing technologies; the possibility of mistakes is clearly elevated. But representative democracy stands for a whole civilization, and therefore, can build on its strengths, experience and accumulated wisdom. There is no doubt that, to a large extent, we have to learn as we go, and it cannot be otherwise. Human society is not the product of a laboratory: there is no users’ manual, no pill that we can take and know what to do. Admittedly, representative democracy is a delicate plant, as we have seen many times in history, most prominently in the sad story of the Weimar Republic. Yet, representative democracy has also shown its staying power throughout history, exactly because it has the ability to evolve and adjust. This conference has pointed to the fact that Parliaments in Europe are fully conscious of the dangers, but also ready to adjust and to treat technology as an opportunity.

It was a joy and an honour for the Hellenic Parliament Foundation to host this conference. As its Secretary-General, I need to express my gratitude to

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3. Donella H. Meadows, Dennis L. Meadows, Jorgen Randers, William W. Behrens III, *The Limits to Growth: a Report for the Club of Rome's Project on the Predicament of Mankind* (London: Pan Books, 1972).

the European Parliament, the Cypriot House of Representatives, the Estonian Parliament, the Italian Chamber of Deputies, the Portuguese Assembly of the Republic and the Spanish Congress of Deputies, for honouring us by accepting our invitation to coorganize the event. But I also need to thank warmly the members of the academic committee, representatives of these Parliaments, Nikos K. Alivizatos, Eschel Alpermann, Bruno Dias Pinheiro, Achilles C. Emilianides, Marion Guillart, Theodore Karapiperis, María López Moreno de Cala and Giovanni Rizzoni. Allow me to say that in them, I have found not only trusted colleagues and partners in our common devotion to democracy, but also valuable friends.

EVANTHIS HATZIVASSILIOU



PART I

PARLIAMENTARY LEGITIMACY  
IN THE NEW ERA



# BURKE'S "SPEECH TO THE ELECTORS OF BRISTOL" REVISITED: SOME COMMENTS ON REPRESENTATION IN THE TIMES OF POPULISM\*

*Konstantinos Papageorgiou*



## **A quest for reasoned judgement, not authoritative instructions**

Edmund Burke's famous "Speech to the Electors of Bristol" (hereafter Bristol Speech) was written on the occasion of his election on 3 November 1774 as a Member of the Parliament for Bristol. He did not have to stand as a candidate for Bristol, as he was already elected in the "pocket" borough of Malton, an unimportant constituency for someone with understandably high political ambitions. His candidacy for Bristol, then the second largest city in Britain, came as the result of a favorable turn of fate as he was asked to replace a candidate who withdrew from the race.<sup>1</sup> In his post-electoral address Burke took issue with the views expressed by his fellow representative Henry Cruger, who in his speech "pledged himself to be guided by his constituent's instructions".<sup>2</sup> Burke attacks this popular view about the character of political representation which was pertinent in his time and apparently still is in view of the challenges representative democracy is facing today.<sup>3</sup>

Burke's speech is remarkable, not least for its stunning eloquence. It counters a view of political representation according to which the representative is supposed to act merely as the *porte parole* of the constituents' determinations,

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\* The original stimulus for writing this paper goes back to Nicos Alivizatos and many conversations with him on the topic for which I am grateful. I am also indebted to many interesting exchanges extending over a long span of time to Philip Pettit, Yannis Tassopoulos and Yannis Papadopoulos. I owe special thanks to Apostolos Latsonas for his practical help. I wish to dedicate this paper to two inspiring teachers, devoted scholars and dear friends, Don Matthews and Iain Miller.

1. Jesse Norman, *Edmund Burke: The Visionary Who Invented Modern Politics* (London: William Collins, 2014), 76.

2. Norman, *Edmund Burke*.

3. "Mr. Burke's Speech to the Electors of Bristol", in Edmund Burke, *On Empire, Liberty and Reform: Speeches and Letters*, David Bromwich (ed.) (New Haven: Yale University Press, 2000), 50-57. Cf. "Mr. Burke's Speech at his arrival at Bristol", in Burke, *On Empire*, 45-47.

rather than as an agent capable of delivering his own responsible judgment in a deliberative assembly. According to this view, the representative will have neither a voice nor a will and, most importantly, no judgement of his own. He is bound by the voters' "strict mandate". The voter will speak through him as if he were sitting on the one end of a telephone line addressing someone sitting on the other end and expecting him to carry out his orders. Burke begs to differ:

But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living ... Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.

But why so?, one might ask. Because it would be like putting the cart in front of the horse:

If government were a matter of will upon any side, yours, without question, ought to be superior. But government and legislation are matters of reason and judgment, and not of inclination; and what sort of reason is that, in which the determination precedes the discussion; in which one set of men deliberate, and another decide; and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments?" The citizen's opinion is "weighty and respectable... which a representative ought always to rejoice to hear; and which he ought always most seriously to consider.

But here Burke draws a principled line:

... authoritative instructions; mandates issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience, --these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenor of our constitution." What is a parliament after all, asks Burke. It is certainly not "a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole.

Edmund Burke, a brilliant politician and an endearing personality, was also a great, albeit idiosyncratic, political philosopher of the Enlightenment who appreciated the value of individual freedom tempered by pragmatic reason and judgement. His views were also greatly informed by an acute understanding of history, culture, and political experience. He was very different to that extent from other famous contemporaries. Whatever the merit of his broader views,

the eloquent protest of the Bristol Speech successfully conveys his disaffection with the idea that a representative's job is none other than to function as the receptacle of the wishes, views, and preferences of his constituents. By articulating, therefore, a powerful critique of a *strict delegation model*<sup>4</sup> (sometimes associated with James Madison)<sup>5</sup> the Bristol Speech offers an alternative paradigm of representation, the so-called *trustee model* which stresses the role of the representative as a responsible moral and political agent, acting *in the interest* of his constituents with reason, independent judgment, and a conscience of his own.

One has to keep in mind that Burke's ideas on representation are, as everything Burkean, the result of a *principled compromise* between what he considers a biased and relatively uninformed electorate which can only perceive its short term and partial interest<sup>6</sup> and its astute representative who is committed to serve his political ideals and the public interest in the face of complexity and *fortuna*: "I am to look, indeed, to your opinions, - but to such opinions that you and I must have five years hence. I was not to look at the flash of the day"<sup>7</sup> At

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4. For this distinction, see Suzanne Dovi, "Political Representation", in Edward Zalta (ed.), *The Stanford Encyclopedia of Philosophy* (Fall 2018), in <https://plato.stanford.edu/archives/fall2018/entries/political-representation/>, accessed 4 March 2023. See also the classic monograph of Hanna F. Pitkin, *The Concept of Representation* (Los Angeles: University of California Press, 1967). For a criticism of Pitkin's analytical interpretation of Burke, see James Conniff, "Burke, Bristol, and the Concept of Representation", *The Western Political Quarterly* 30/3 (1977): 329-332. Conniff argues convincingly for a *defensive trusteeship* model in view of the fact that the representative serves primarily the people's interests "through checking the authority of the Crown by blocking actions of the administration ... The representatives do not rule but defend the people against royal misrule" (ibid., 340).

5. I think that we should approach this opposition with caution because Madison's reasons for strict delegation were not an inversion of Burke's reasons for the trustee model. Madison worried more about the capacities of the representatives and wanted to minimize the risks by binding them to the voters will.

6. To be sure what can be held against voters can also apply to representatives, the main difference being that voters are not elected, while representatives are.

7. Cf. his third Bristol address (Burke, *On Empire*, 213-257). This address is perhaps not only the most sincere but also the most revealing of his views on the role of the representative. In this relatively long text Burke responds to concrete accusations made by his Bristol constituency as to his stance vis-à-vis America, Catholicism and Ireland. His arguments shed light on the principled but also practical reasons that inform his political actions in these particular matters. It also better explains the views expressed in his more famous and rhetorically brilliant second address. With his speech at Guildhall (1780) Burke does not simply try to rhetorically overpower his electors but addresses them instead through principled but also applied reasoning, case by case so to speak. This speech corroborates the view that far from being an antidemocratic conservative, Burke is fully aware of his moral and political responsibility towards his voters. This responsibility is not discharged in an abstract "top down" manner but rather in full awareness of the citizen's capacity to track and endorse reasoned political argument.



the outset Burke was enthusiastically received by Bristol because of his criticism of the crown vis-a-vis American trade but he fell into disfavor by pleading for the opening of commerce with Ireland and against discriminatory policies towards Catholics. As he tried to explain to his constituents his standing on these matters was not dictated by a change of heart or disloyalty or personal interest but rather by an overall assessment of what was the right policy for the whole country, including Bristol.<sup>8</sup> Burke was not a Platonist and he certainly detested antidemocratic epistocracy. What he claimed instead was vital space and discretion in handling cases *in the interest* of his voters. At the same time, he was eager to explain his reasons, to justify the policies opted for and he fully recognized the final *accountability* of the representative. His reasons were in other words political, not apolitical, and his understanding of parliamentary politics was not detached from but rather continuous with the obligation of a rational social dialogue and democratic accountability. The deep-seated commitment to an independent judgment of the representative, embedded in a sincere dialogue with the voters<sup>9</sup> reflects perfectly his rejection of a politics of strict delegation and his opting for a “bound” trusteeship model.

In the following pages I will try to do two things. First, I will try to discuss briefly the *strict delegation model* within the larger framework of a normative theory of democracy and popular sovereignty. Second, I will try to place the strict delegation model within the contemporary context of the rise of populism in the era of digital media.

### **Representation or participation?**

One may ask: Why representation in the first place? Why not direct participation? The Greek exemplar of participatory democracy has offered, no doubt, guidance and inspiration through the centuries, not least for aspiring to and realizing a model of political equality and participation in politics.<sup>10</sup> For every adult citizen would in principle be eligible for any political office, including

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8. In Burke's times the representatives' functions were not primarily legislative as we understand them today. Their role was more that of an overseer of the ministries and indirectly of the Crown. Cf. Conniff, “Burke, Bristol, and the Concept of Representation”, 340. See also footnote 4 above.

9. Burke's third Bristol address is revealing in this respect. See above footnote 7.

10. Cf. Christian Meier, “Die Entstehung und Besonderheit der griechischen Demokratie”, in Konrad Kinzl (ed.), *Demokratia, Der Weg zur Demokratie bei den Griechen* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1995), 248-301.

that of judge or a magistrate. But as Paul Cartledge<sup>11</sup> and many others have stressed, Greek *δημοκρατία* was not one thing; it was not a uniform kind of regime throughout the fifth and the fourth century and certainly not only Athenian.<sup>12</sup> And most importantly, to the extent that it was *δημοκρατία/demokratia* in the sense of the rule of the many, it did not always succeed in quelling violent internal strife and political catastrophe. The Tyranny of the Thirties in 404-3 BC may have led to the brutal murdering of 1200-1500 citizens and metics, while in 370 BC the democrats of Argos clubbed to death an equal number of their aristocratic opponents. As Cartledge further suggests, there is ample evidence that Athenian democracy of the fourth century was changing into a “more “managed” or managerial, more top down, less co-operative and egalitarian” regime.<sup>13</sup> So much for the Greek model.

Despite the permanent hold of the myth of direct democracy on our imagination there are further (practical and normative) issues concerning the legitimacy and viability of the Greek model.<sup>14</sup> What first comes to mind is the question of size. We may all convene and decide together as members of a relatively small group about our future policies (think of a jury, a small enterprise or merely a group of vacationing friends) but the numbers of a modern democracy are certainly prohibitive. Still, it is not merely a question of numbers but something more structural that plagues the idea of “direct democracy”, despite the undeniable attractiveness of a regime that invites all to partake in the business of government. Even if most people tend to associate the attractiveness of (quasi) universal<sup>15</sup> participation and inclusion in politics with ancient Greek,

11. Paul Cartledge, *Democracy, A Life* (New York: Oxford University Press, 2016), 183-227.

12. As Joshua Ober points out, revision of laws was authorized by the assembly but carried out by a special body, the *nomothetai* [Joshua Ober, *The Athenian Revolution* (Princeton: Princeton University Press, 1996), 118]. Attempting to change a law within the *εκκλησία του δήμου* (assembly of citizens) was punishable. See also Philip Pettit, *On the People's Terms: A Republican Theory and Model of Democracy* (Cambridge: Cambridge University Press, 2012), 189.

13. Cf. Cartledge, *Democracy*, 224-5.

14. These remarks do not intend to question the function and value of participatory aspects in liberal, representative democracies and certainly not their educative and symbolic character.

15. One usually refers to women and slaves as the standard cases of exclusion from citizenship. However, as George Mavrogordatos reminds us, the resident aliens, so-called metics, are perhaps another, perhaps more powerful, example of political discrimination. Unlike slaves, they were mostly of Greek origin and were also mobilized as rowers in the fleet. Nevertheless, their obligatory engagement for military purposes never led to an acquisition of citizenship. See George Mavrogordatos, “The Classical Model Revisited: Athenian Democracy in Practice”, paper presented to the Workshop *Bringing Citizens Back In: Participatory Democracy and Political Participation* (ECPR Joint Sessions, Edinburgh, 28 March-2 April 2003).

notably Athenian, democracy, the idea finds itself paradoxically in close proximity to the defence of the modern absolutist state. The reason is that in modernity the idea of universal inclusion re-emerges but this time in the watered-down form of a unified sovereign will. Thomas Hobbes and his precursor Jean Bodin defended the case for a single sovereign, individual or collective, as the ultimate bearer of political and legal authority. In truth, the stress lies here more in establishing a *unified authority* than in including everyone; or, rather, the latter aim supports the former. It comes as no surprise then that for this particular line of thought, division of authority meant nothing less than risking deep civil strife and anarchy. Rousseau adopted basically the same model stripping it from its monarchical or oligarchical character, thereby rendering it somehow more “democratic” by introducing the idea of a regular assembly of the people. The assembled people must deliberate with each other, shed their tendency for particularism and rise to the necessary level of generality demanded by the *volonté générale* in making and applying laws. But it is difficult to imagine how unanimity can be aspired to and, more importantly, be achieved by letting disparate views and interests compete in an unmediated way against each other, whether in real or virtual assemblies of the people. Aspiring to such a degree of unanimity seems rather normatively questionable and practically unattainable.

It is normatively questionable because it seeks legitimacy in a voluntarist conception of the popular will. But this cannot be right or at least it cannot be the whole story. Some authors, like Jeremy Waldron, contend that equal participation and equal vote (notably so in modern representative democracies) express the democratic character of popular assemblies. However, resting power directly on “popular will” does not render it more democratic, although, as Dimitrios Kyritsis correctly observes, popular support for democratic decision has a stabilizing effect “for the right reasons”.<sup>16</sup> Even majoritarian decision making can thus hardly guarantee a just outcome in harmony with constitutional essentials, fundamental rights, and rule of law principles. Even a majoritarian decision will certainly need to be attenuated by proper institutional procedures (some kind of mediation through representation by competent and sincere representatives) and, if necessary, by constitutional review.<sup>17</sup> As Kyritsis further

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16. Dimitrios Kyritsis, “Constitutional Review in Representative Democracy”, *Oxford Journal of Legal Studies* 32/2 (2012): 297-324, and in particular 305-313.

17. In fact, the representative in the context of the Burckian “trusteeship” approach was less directly involved in legislation and more in checking and correcting the King’s policies. The representative’s mission was thus not completely unrelated to that of a judge.

points out, not only accountability but also something like a *deliberative distance* is called for.<sup>18</sup> So what holds for representative legislatures holds *mutatis mutandis* also for popular assemblies. Neither do they directly manifest, nor do they indirectly express popular will because there is no such authentic voice of the people to be directly manifested or indirectly expressed in the first place.

Besides, the kind of unanimity aspired to by Bodin, Hobbes and others, is also practically unattainable for another reason. Herein lies an additional problem which has been analyzed with great clarity by Philip Pettit: the so-called *discursive dilemma*.<sup>19</sup> Even if we can imagine an entire electorate getting virtually together, say with the help of electronic media, an unsurmountable obstacle still presents itself. We may as individuals consistently vote for a certain policy, but majority vote will tend to produce *inconsistent legislation* as it will be ultimately unable to detect and purge from the decision-making process inconsistent aggregation of individual sets of judgement. To take an example from ancient Athens, we may decide to use available resources either for battle ships or for festivals or even for both, but lacking a scheme of reflective self-correction we may end up having a majority vote opting for an inconsistent combination of possible policies. This is why “plenary assemblies” of the people, virtual or real, cannot determine governmental policy on complex issues.

But why and how should we be represented and on what principles? We need again to relate the construction of democratic institutions to justice, legitimacy, and their supporting values. Here is a brief sketch. We live a legally and politically structured life under the protection of the laws of a democratic state in order to escape the anarchy and lawlessness of a “state of nature”. The democratic state provides in other words the necessary framework for us to enjoy civil and political rights and makes it possible for us to live in principle a free and undominated life. The state formally recognizes and protects our rights from encroachment but the advantage of a democratically constituted state, in particular (that is compared to other alternatives) lies elsewhere. The point of the democratic state is to honor and safeguard *equal freedom* for its citizens and this can ultimately be implemented only if citizens can also exert control on political decision making. A state that respects its citizens’ basic rights but fails to give them the opportunity to express their opinion and steer its course would be therefore lacking in one very important dimension of legitimacy. It would

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18. For this important point cf. Kyritsis, “Constitutional Review”, 310.

19. Pettit, *On the People’s Terms*, 188-194.

not only fail to show respect to its citizens as free individuals but would also fail to involve them in the responsibility of sharing power with them.

Exerting influence on the state and its powers is of course a complex requirement and the electoral process is certainly not the only point of pressure. The success of democracy depends on so many other institutions including freedom of expression but also the political virtue of citizens themselves, that is their determination to remain alert and “invigilate” over possible trespasses from those who tend to exert power arbitrarily. Democracy is foremost about *sharing responsibility* for individual and common freedom. Citizens must therefore have a say over who and on what terms has the prerogative to design and implement policies that concern us all. Selecting the right people for the job is therefore crucial. This is, in a nutshell, what democratic elections do. Today political parties assist us in this process (far more than in Burke’s time) to select the individuals capable to be legislators and rulers. But we don’t select them only on the basis of their individual capacities but also on the basis of their ideas, proposals and commitment to legislate and govern in our name and interest.

How should we then conceive this particular kind of representation we call political? What is the representative’s proper job? What is our relation to them? What can we expect? Is this needed? A little while ago we discussed, only to dismiss, the case of the “plenary assembly”, that is the idea that we *all* participate in a real or an imaginary, virtual assembly. We said that this cannot be achieved under present-day circumstances, but even if it could, it would guarantee neither the coherence of legislative aims nor the legitimacy of the decision-making process. I believe that if we were to follow the strict delegation model and expected the constituents to give exact instructions to their delegates on the other side of the telephone line, we would be confronted with a similar impasse. A dimension of reflective synthesis would be lacking, one that would protect us from opting for an inconsistent combination of policies, for example choosing to dedicate our entire resources to building triremes for war while also using them to finance festivals for peace. The question remains of how judgement can enter into the deliberative assembly to help us rank our predilection for either p or q or at least a sensible combination of p and q. But there are other concerns too. Seasoned politicians are aware of the constraints of time and circumstance; *fortuna* and *καίρως* are critical not only for the conceiving but also for the devising and implementing a certain policy. Electorates have a certain view of things, sometimes entrenched by the parties and ideology they favor but things can change, sometimes very suddenly, as economic

and environmental crises, pandemics and wars, bitterly remind us. Should we say that the good representative is the one who in the face of evidence and clear warning to the contrary blindly follows her strict mandate? Governments and representative legislative assemblies must therefore be capable of exerting political *judgement* and adapting accordingly the policies laid out to the electorate beforehand when confronted with new challenges. But their discretion should not of course be interpreted as *carte blanche*.

What representation exactly is or should be is a serious matter. It is a core issue of democracy (and it certainly does not only apply to parliamentary elections). How can we otherwise claim to control and influence our politics in the direction we want? How can we otherwise share responsibility for our freedom? As citizens we need, however, to consider that our representatives are not simply an extension of our own, necessarily partial, view of things. They are rather *authoritative agents of political judgement* and as such they should be viewed as responsible and autonomous *mediators* of the “general will”, not its direct raw expression or mirror. Instead, they should reach out to their citizens and voters in order to trace and identify, negotiate, reconstruct and implement what we euphemistically call the “general will”. The assembly we have in mind is therefore neither plenary, nor direct but rather *representative* which means at the same time *responsive, reflective, and proactive*. It is responsive in the sense that it tries to track and capture the electorate’s views and opinions (a), it is reflective because it publicly deliberates on their premises and sensibly reconstructs them in view of binding constitutional values, long and short term policies and special circumstances (b) and it is also, finally, proactive to the extent that it realizes them, through adequate public discussion and mediation efforts (simultaneously publicized and open to contestation), in definite form and with a practically enforceable content (c). This means that its judgement and decisions cannot be perfectly preordained but come as a result of dialectical synthesis drawing on the context of a narrowly partisan but also wider democratic discourse.

We can better grasp this point if we compare it with the so-called *indicative assembly* (Philip Pettit), usually associated with “deliberative opinion polling”, which is a rather artificial way to simulate a statistically representative part on the basis of the composition of a whole. Membership determined by lottery as in ancient assemblies or courts or juries is characteristically indicative. But the problem with this approach is that it somehow freezes judgement, discussion, and discourse by entrapping popular will in a firm cage of statistical representation, uninhabited by real citizens. The final outcome may have no bearing

on what real people really believe and wish. To use a vivid example, imagine important decisions concerning a democracy's stance to war or a serious economic crisis to be decided by an indicative fragment of a representative deliberative committee, automatically renewed on a yearly basis.<sup>20</sup> On the other hand, representatives seeking re-election will tend to care less about being expressive of their electors initial opinions and will care more to project themselves with an appealing profile intended to curry favor with voters and to get the votes that are critical for their re-election.<sup>21</sup> They will be proactive but not necessarily for the common good but rather for their own partial interest.

### **The “great ventriloquist” and the reversal of representation**

I would like to conclude these comments by turning from the ideal theoretical premises to the less satisfactory and certainly problematic reality of our representative democracies. In recent decades we have witnessed a *disfigurement*<sup>22</sup> of democratic processes and representation due to the surge of populism in Europe and America. Populism is not a very recent phenomenon; it has some roots in post-World War II politics, and maybe even earlier, but it also has an unpalatable ancestry in fascism, although it differs from the latter in the sense that it corrodes but does not abolish democracy. It somehow coincides with what political theorists, notably Bernard Manin, have called the *audience democracy*.<sup>23</sup> Contemporary, right or left leaning, populism has exploited the role that electronic media play in our times. If state or private television channels were key instruments for Chaves, Berlusconi, the *Cinque Stelle* movement (M5S) and the Podemos' founder Pablo Iglesias, twitter was the oxygen for Trump –to name just a few.

Electronic media, in particular, greatly contribute to the illusion of political

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20. Cf. Pettit, *On the People's Terms*, 202-205.

21. I owe some of these insights to Philip Pettit's pellucid discussion in chapter 4 (“Democratic influence”) of his seminal book, *On the People's Terms*. Pettit reproduces a telling quotation from Benjamin Constant: “You choose a man to represent you because he has the same interests as you. By the very fact of your choosing him, however, your choice of placing him in a different situation from yours gives him a different interest from the one he is charged with representing” (1810).

22. I think this is an apt characterization and it comes as no surprise that it has been used as part of a title of an important book on contemporary populism and its effects on democracy. See Nadia Urbinati, *Democracy Disfigured: Opinion, Truth, and the People* (Cambridge, MA: Harvard University Press, 2014).

23. Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997), 218-235.

participation by creating an unstructured, free floating public sphere where all sorts of views and opinions can be aired. It is a sea of zillions of bottles with messages purporting to reach an informed public and save shipwrecked souls stranded on socially and psychologically remote islands. But this is not what happens in reality. Instead, populist leaders appropriate the infinite capacities of electronic media and exploit disaffection and in many respects justified anger in order to establish a *direct* and *reverse* relation of influence with the electorate. Populists do not represent in any substantial sense popular will and the opinions of free citizens. They rather undermine and corrode popular will by systematically creating polarization which allows them to appropriate people's capacity to form opinions and views of their own. It's a simple but very effective trick that electronic democracy consistently facilitates. In Nadia Urbinati's<sup>24</sup> telling characterization, the populist leader rather than representing the people becomes the *embodiment* of the people by imitating their voice, by speaking like a ventriloquist in its stead. Populism creates a false unity by systematically cultivating division and polarization amongst the people and in particular so-called "elites". There is hardly ever an appeal to reason or even pragmatism; the mode of communication is at the level of high-pitched emotions and uses symbols appropriated from theology.

The populist leader constructs an agenda out of disparate elements that aims at a frontal opposition to the establishment. Freedom, equality, democracy, justice and rights are fundamental political values, but they hardly appear in the populist narrative as a consistent whole because they are not needed. The populist narrative is not meant to address the free and equal citizen. Populism presents itself through its own self image as a messianic struggle of the forces of the good, the many, against the forces of the evil, the few. Populist discourses employ in other words a moralistic vocabulary appropriately weaponized for the purpose of antiestablishmentarianism. The most common accusation in this respect is the claim that those in power are morally corrupt and bankrupt. The moral depreciation of the opponent is supposed to imply the moral superiority of the accuser. It would be futile to search for reasoned argument in this respect. The discourse consists of cheap and fake materials, lies, exaggerations and some platitudinous truths. But what is most stunning in these populist rants is the collapsing of distinctions between the people, the representatives, and the leader. In

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24. Nadia Urbinati, *Me the People: How Populism Transforms Democracy* (Cambridge: Harvard University Press, 2019), 125-127.



the populist realm they all tend to become one, eclipsing thus the possibility of a real and open democratic discussion.

What do these transformations or rather disfigurements signify for the Burkean distinction and critique of the direct mandate model? Burke is loath to a view of representation as a variation of direct democracy. His reservation is not necessarily a product of some antidemocratic bias, common after all among political theorists and practitioners of his time. We should rather understand his opposition to a strict anchoring of representatives to voters' will as an attempt to create and sustain a necessary *institutional tension* in a process of articulation of popular will. The voters' will cannot directly govern and cannot directly enact legislation. As we saw in Burke's time that was not even the representative main job. But the people can provide opinion and exert influence in constitutionally acceptable modes of communication with those who represent them, and both functions form an invaluable underpinning for representative democracy. But this is exactly what populism wants to annihilate. First, the formation of belief and exchange of opinion in the context of freedom of expression shrinks in favor of an all-encompassing and all-devouring appetite for populist manipulation of opinion and electronic propaganda. In the populist scheme elections do not serve to express the voters' partial opinion; they rather become a method of consecration of the leader as the embodiment of the people. Second, influence on government and legislation is substituted by the will of the leader who is supposed to be representing but is in fact faking the voice the people. The people's unification with the leader and the internalization of his rhetoric are thus made possible. Under the populist script Burke's warning becomes relevant again through a radical abolition of essential distinctions. The representatives do not represent the people and do not have to make any resolutions whatsoever; they fill in supporting roles in a play that has only one real protagonist. Because the leader is ultimately the direct representative of people's will, the incarnatus.<sup>25</sup> There is no need for deliberation and critical judgement here. Neither does the populist leader have to be answerable to his electors. He is answerable only to himself as the incarnation of the people. We come thus back to the plenary assembly phantasy, only this time it is incorporated in the will of only one person. It comes back as dangerous for democracy and the people as ever. In fact, the illusion of the direct representation of popular will is thus being used to undermine genuine representative democracy.

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25. On this concept and its ancestry, cf. Urbinati, *Me the People*, 169.

# THE FUTURE OF THE LAW IN MODERN REPRESENTATIVE DEMOCRACIES

*Javier de Piniés*



The situation of the Law in the twenty-first century can only be described as critical. If by Law we mean legal provisions that, with an abstract and general content and according to a legislative procedure, are adopted by the Parliament and subject to the sanction of the Head of the State, we cannot but confirm an ongoing crisis.

The competent body to pass laws is no longer exclusively the Parliament, since the Executive branch can adopt rules with the force of law; thus, the legislative procedure is absolutely determined by the involvement of the government through the majority parliamentary group; the subject-matter of the Law is no longer general and abstract, and is now made up of numerous singular references distinguishing many specific situations, coupled with the absence of any minimum criteria of correction and regulatory technique.

Faced with this situation, we must find the source and grounds of the current situation and propose solutions. We cannot fully disregard traditional elements that shaped hierarchical rules ranking Laws, as current political systems both democratic and autocratic have been doing, since they emerged from a very specific objective of establishing the Law as the foundation of the legitimacy of the power of the State.

The subject-matter of this analysis are democratic systems and those which, bearing in mind their legal framework, stem from French influence, hence the references shall deal mainly with France, Italy and Spain; however, many of the considerations included may also be applicable to other regulatory systems, even those which are part of what is traditionally known as Common Law.

According to this notion, the typical elements of any given Law are the result of a political, legal and social process known by everyone, and concerning which certain references should be kept in mind.

In the first place, for the Law as a specific concept to be consolidated, it was necessary to carry out a political, legal and social simplification process which started with the transition from the early to the late Middle Ages by means of

what in Spanish doctrine is known as diarchy, or medieval *Rex-Regnum*, which left behind the also known typically feudal polyarchy.

The development of the “de-objectification” of the Crown, as termed by Otto Hintze, was essential in this process since it gave rise to the concept of the State as a corporate body independent from the King and separate from civil society.

This process culminated with the emergence of the concept of sovereignty, by means of the legitimate monopoly of the use of force (according to the classical definition by Max Weber) and the emergence of absolutism as a form of State.

For the modern concept of Law to materialize, the political and bureaucratic simplification entailed by the emergence of the modern State around the absolute King was indeed vital, even if it may seem paradoxical. Tocqueville best explained the continuity between the liberal State and the *Ancien Régime* as regards its general and administrative aspects, thanks to the process of equality, which, given the concentration of power in the King had already emerged during this Regime.

The emergence of the traditional concept of Law required a political, legal and social simplification of society, which had already taken place under absolutism, whereby the monarch, as the body representing the sovereign and regulatory power of the State, issued universally applicable rules that continued to coexist with a plethora of rules that only the establishment of the liberal State managed to clarify.

The bourgeoisie did not disapprove of the concentration of power and the extension of the bureaucratic system of absolutism, but rather reinforced and extended it, adapting it to its needs and aligning the legal framework to its aspirations.

The second requirement for the emergence of the concept of Law was the transformation of the system with the incorporation of the structuring principles of liberal constitutionalism, namely, national sovereignty, representative democracy, separation of powers, rule of law, freedom and equality.

At the same time, to guarantee this process of legal rationalization supportive of the concept of Law, there had to be a foundation and a legal and political limit that could only be achieved by means of the principles of the liberal revolutions of the end of the eighteenth century.

The outcome of this regulatory revolution was the Law, as an expression of sovereignty, vested in the nation, which acted as the foundation of the legitimacy of the liberal political system that had been depersonalized and legalized at the same time.

The concept of Law was shaped by the theoretical contributions of Locke, Montesquieu, Rousseau and Kant, it was incorporated in the Constitutions of France of 1791, Spain of 1812 and Italy of 1848, and remained unchanged well into the twentieth century.

The famous Carré de Malberg might have best explained the formal concept of Law which prevailed in France and in the countries under its influence as opposed to the typically German material concept of Law.

As is well known, this difference resides in the fact that the formal concept of the subject-matter or content is solely subject to the limits entailed by the need to be regulated in a general and abstract manner, resulting from the principle of equality, since the legislative power is the highest expression of sovereignty (as stated by Bodino in his *Six Books of the Republic*) and, hence, cannot be subject to legal limits (thus the Constitution could only be a political Code of programmatical nature). Whereas, in the German model of the nineteenth century that was based on the monarchical principle, the legislative element was solely related to property and liberty and the King's regulatory power remained otherwise unaffected.

Thus, the nineteenth-century formal concept of Law did not envisage any legal limit posed to its subject-matter by another provision, since it was the rule that ranked highest in the regulatory framework. The sole specific requirement, which was not always observed, was that its content should be general and abstract, based on Rousseau's classical definition, as "expression of the general will of the people".

As regards its procedural elements, the parliament was fully autonomous to legally regulate the different stages of the procedure, although the relevant Constitution may set certain limits. The general absence of political parties, as they are currently known, enabled the autonomy of parliamentarians who gathered in parliamentary sections solely to organize the relevant work and achieved legislative results, which are still in force today given their technical quality.

The Executive branch solely enjoyed regulatory power to enforce the Law and it was not entitled to contradict it.

This regulatory situation of the Law was inherent to an individualistic society that lacked a generally interventionist the State, where the bourgeoisie played the main role and established a regulatory system aimed at fostering its economic and political development.

The democratic and social transformation of the liberal State, that was trig-

gered by the socialist movements of the second half of the nineteenth century, modified the principles inherent to the liberal State and thus fully transformed the concept of Law.

The emergence of the social and democratic State based on the Rule of Law after the Second World War, enshrined in the Constitutions of Italy in 1947, France in 1958 or Spain in 1978, entails accepting popular sovereignty as a principle, based on the acknowledgment of universal suffrage, the rights of participation and the economic and social rights that enable effective equal opportunities. But, above all, the elements that shape the current political systems are, on the one hand, the administrative intervention in society, making the State responsible for the “existence provision” of its citizens in the words of Forsthoff, and, on the other hand, political parties became active subjects in the political sphere.

These changes, coupled with the current complex socio-economic and technological situation, led some authors like Umberto Eco to compare it with the complex and disperse situation of the Middle Ages. In addition, the swiftness and urgency prevailing in our societies, based on a concept of wellness and leisure that must be provided to citizens, who are also subject to the aforementioned social and technological changes has led some authors like Sartori to describe this “new species” as “*homo videns*”.

The first consequence resulting from these changes is regulatory internationalization, which can be clearly witnessed in the EU and in the protection of human rights granted by the Strasbourg Court.

The second most relevant consequence is that of establishing the Constitution as the supreme law of the legal framework, as an expression of people’s sovereignty to which all other laws are subject, including those adopted by the Parliament. Hence, the Constitutional Court has consolidated itself as a body responsible for monitoring the constitutionality of laws.

The third is granting the government or the Executive the power to issue rules with the force of law, as is the case in Spain with decree-laws envisaged in article 86 of the Constitution, and a greater level of autonomy in regulatory interventions by means of regulations. Similarly, there has been a certain empowerment of autonomous regions, for example in the Autonomous Regions of Spain or the Regions of Italy.

The fourth is the establishment of the legislative procedure by the Constitution, which sets limits to the autonomy of the Chamber. Above all, political parties, through majority groups, determine the action of the whole Chamber

and submit it to urgent and massive interventions, for which the Parliament lacks adequate organization and resources.

The fifth consequence has to do with the content of the laws, which are no longer general and abstract bodies of legislation, but singular or special rules, with complex and technical legal provisions, fully determined by urgent administrative and social demands which result in poorly drafted and hardly understandable laws.

Against this background, possible solutions are suggested to give some respite to the legislative power of the Parliament and its laws, while acknowledging how difficult it is to fully revert this process.

Regarding the *content of the laws* and the *competent bodies* to adopt them, we deem that the solution envisaged by the French Constitution of 1958, in the sense of reinforcing the position of the Executive, even if it may seem paradoxical, may guarantee legislative interventions of the Parliament.

It is interesting to note how in historical terms the German regulatory system that had a traditional foundation, managed to put together a legal theory that entailed a much stricter respect for the legislative task conducted by the Parliament and the principle of legality as compared to the French system, built upon liberal concepts.

As we have already mentioned, the foundation of the German system was built upon a material version of the concept, granting legislative power over certain specific matters which were reserved for the law; thus, the Executive needed to be authorized to develop such matters, but as regards the rest, mainly dealing with the organization of public powers, it could issue regulations *praeter legem*.

In general terms, the French Constitution of 1958 follows this system, whereby article 34 defines legislative matters, and article 37 the autonomous regulatory power of the Executive, although without the expected outcome and with a different foundation.

The reason justifying this option is that, in practice, those systems that have kept the French tradition and formal system have been overtaken by political and regulatory reality, and even the constitutional texts themselves have had to accept a power to issue rules with the force of law, which has turned the legal reserve into a mere formality; on the other hand, the obstacles to issue regulations have been gradually overcome and relaxed, and to this end the implicit legal reserve has been devised, although it has not actually met the intended purpose.

The Executive cannot be straightforwardly empowered to adopt rules with the force of law by means of decree-laws in situations of extraordinary and urgent need; its intervention in these fields should either take the form of regulations, which can be challenged by the affected parties before the Courts,<sup>1</sup> or should not occur, since on many occasions there is no real urgency, and the situation should be regulated with a law issued by the Parliament.

Regarding *content*, the problem caused by the so-called “singular laws” can be noted as well. These laws, even if necessary, must follow a special procedure for their approval (as is the case with British private acts) and be limited as regards their use and the limits to be observed, being the most relevant the effective protection of Judges and Courts in the exercise of citizen’s legitimate rights and interests.

The technical situation of the content of the rules, in general, and of the laws more specifically, is similarly critical. Parliaments should envisage systems to put a limit on the absurdities perpetrated in these situations. The clearest example is the so-called “Omnibus Bills”, which regulate topics of different nature or modify them.

Although in Spain there are several improved or smart regulation guidelines in force at the administrative level, there are no such guidelines at the parliamentary level, where some authors have recommended setting up an Office for Legislative Quality.

Concerning the *procedure*, several elements can be noted. The control that *political parties* have over all their organizations and functions, although difficult to solve, may also be limited incorporating certain techniques with a view to balancing its power within the political system.

Incorporating direct democracy or even *e-democracy* techniques, not being involved in the appointment of judicial bodies, the need to have professional experience for certain positions dealing with the control and oversight of the Administration or even the amendment of the electoral system, with a view to granting greater autonomy to the elected candidate, as it is the case, in theory, in majority systems, are some possible ideas.

More *resources* for the Parliament, both in terms of staff and material, are likewise needed, particularly to be able to face urgent situations.

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1. For example, in Spain laws can only be challenged by the President of the government, the Ombudsperson, 50 Deputies, 50 Senators and the executive and legislative bodies of the Autonomous Regions.

On the other hand, the *urgency* in the procedure can only depend on the factual situation, giving rise to such situations, and not on an agreement. The same would be applicable to the excessive use of the *single reading* for matters of great relevance, as was the case with the two sole constitutional reforms conducted in Spain.

The power of the government to oppose, in *financial matters*, those amendments that may entail increases in public expenditure or decreases in the revenues, as is the case in Spain, must be eliminated straightaway, since the government as holder of parliamentary majority does not need this excessive power.

Finally, a whole set of ideas proposing solutions might be listed here, but time is running out. We must reassert, however, the importance of conveying to society the essential task that the Parliament is to conduct, with common sense, serenity and calm, leaving aside the hurried life surrounding us.

Let me conclude quoting the words of a former Senior Clerk of the *Cortes Generales*, who is today a member of the Royal Academy of Jurisprudence and Legislation, Mr. Ignacio Astarloa: “If the Parliament does not change its current dynamics, the law shall gradually depreciate itself as a poor instrument, delegitimized and secondary, with all that this might imply for the Rule of Law, the Parliament as an institution and parliamentary democracy”.<sup>2</sup>

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# DIGITALIZATION AND THE RISE OF A “PRIVATE” DEMOCRACY? A DEFENCE FOR PARTY REPRESENTATION

Vassiliki Christou



## The questioning of representative democracy

During the past decades, due to multiple crisis phenomena, for instance the financial crisis, the refugee crisis, representative democracy has been seriously doubted. Social movements during the financial crisis, like the indignant,<sup>1</sup> have questioned political parties as intermediates between the people and public power and have exercised pressure towards including more people's initiatives in governance and policy making. Along these lines, mandates, as expressed in referendums, have been considered as the genuine manifestation of the *demos* will. Contrary to that, the agendas of the parties seem to have lost actual or moral weight in being regarded as representative of the real will of the people. In other words, after many decades of dominance in political life, parties are being deeply questioned as the main deliberative fora in the society that prepare the will of the state, the general will.<sup>2</sup> In Britain – the world's oldest representative democracy – nothing less than a constitutional change, Brexit, was decided through a referendum. It was a mandate that the Parliament, Westminster, would only very unwillingly deliver on.<sup>3</sup>

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1. See for example, Gianpaolo Baiocchi, Ernesto Ganuza, “Politics Without Banners: The Spanish Indignados’ experiment in direct democracy”, in Ernst Stetter, Karl Duffek, Ania Skrzypek (eds.), *Next Left: Building New Communities*, Renner Institute (Brussels: Foundation for European Progressive Studies, 2012), 110-117.

2. Oskar Niedermayer, Benjamin Höhne, Uwe Jun (eds.), *Abkehr von den Parteien? Parteiendemokratie und Bürgerprotest* (Wiesbaden: Springer, 2013); David Gehne, Tim Spier (eds.), *Krise oder Wandel der Parteiendemokratie? Festschrift für Ulrich von Alemann* (Wiesbaden: Springer, 2010).

3. Gerald Delanty, “A Divided Nation in a Divided Europe: Emerging Cleavages and the Crisis of European Integration”, in William Outhwaite (ed.), *Brexit: Sociological Responses* (London: Anthem Press, 2017), 111-124; Benjamin J.W. Eddington, “A Poorly Decided Divorce: Brexit’s Effect on the European Union and United Kingdom”, *Suffolk Transnational Law Review* (2018): 101-144; Laurence W. Gormley, “Brexit - Never mind the Whys and Wherefores: Fog in the Channel, Continent Cut off”, *Fordham International Law Journal* 40/4 (2017): 1175-1209; Peter J. Leyland, “Referendums, Constitutional Reform and the Perils of Popular Sovereignty”, *The Italian Law Journal* 3 (2017): 121-131.

In that turbulent background, I had argued, in 2018, that even if direct democracy were possible today due to the new media and digitalization, we would still have to opt for representative democracy, as the only real form of democracy that we know.<sup>4</sup> Ideally, the will of the people is genuinely constructed in multi-level deliberative fora, with the Parliament figuring as the last and most inclusive instance. The reliance on structured, deliberative fora prevents random results and ensures accommodation of all views and interests.<sup>5</sup>

To defend representative democracy, I had appealed, on the one hand, to the arguments of Hans Kelsen and his book on the *Value and Essence of Democracy*.<sup>6</sup> Kelsen is not only the “founding father” of the pure theory of law and of legal positivism; he was also a very engaged supporter of parliamentary democracy.<sup>7</sup> On the other hand, I had used the arguments of Aristovoulos Manessis, the founder of Greek modern constitutional law, himself also a positivist, in his defence of the parliamentary system of government as the best way to achieve the stability of the Constitution, explaining how the views of Manessis were parallel, in many aspects, to those of Hans Kelsen.<sup>8</sup> Manessis, like Kelsen, was a clear and structured legal thinker, a devoted positivist and a progressive democrat. Manessis had the leading idea that a constitution must protect itself by preliminary checks and balances, as those available in parliamentary democracy.<sup>9</sup>

However, neither Kelsen nor Manessis defended parliamentary democracy as an end-in-itself. They both thought that parliamentary democracy was the second-best form of government, since direct engagement of the people in everyday governance by means of mandates addressed to the government was not possible.<sup>10</sup> The abilities for democratic participation offered by digitalization

4. Vassiliki Christou, “Ο λαός, η αντιπροσώπευση και η ‘ατομική’ δημοκρατία” [The people, representation, and “Individual” democracy], *Εφημερίδα Διοικητικού Δικαίου* 3 (2018): 347-369. See also recently Panagiotis Doudonis, *Το πολίτευμα της συνύπαρξης* [The polity of co-existence] (Athens: Armos, 2021).

5. Christou, “Ο λαός, η αντιπροσώπευση”, 364.

6. Hans Kelsen, *Περί της ουσίας και της αξίας της δημοκρατίας* (*Vom Wesen und Wert der Demokratie*, 2nd ed., 1929), introduction and trans.: Michalis Kypraios (Athens: Nomiki Vivliothiki, 1998).

7. Sandrine Baume, *Χανς Κέλσεν. Συνηγορία υπέρ της δημοκρατίας* [Hans Kelsen, plaidoyer for democracy], trans. Vassilis Voutsakis (Athens: Polis, 2016).

8. Christou, “Ο λαός, η αντιπροσώπευση”, 349 and 359.

9. Aristovoulos Manessis, *Αι εγγυήσεις τηρήσεως του Συντάγματος* [How respect of the Constitution is guaranteed], vol. II (1965, re-print Athens: Sakkoulas, 1991), 9-77.

10. Manessis, *Αι εγγυήσεις*, 72, 188-204; see also, Charalambos Kouroundis, “Το αντιπροσωπευτικό σύστημα στη σκέψη του Αριστόβουλου Μάνεση και το αίτημα διεύρυνσης της δημοκρατικής

did not exist in their days, and neither did respective challenges to democracy. However, these new abilities may rather be used to make participation to the various deliberative fora in the society, most predominantly parties, easier<sup>11</sup> than to abandon and replace deliberative fora. I think that the genuine will of the people may only be constructed in deliberative fora escalating to political parties and the Parliament. Deliberation, that is some sort of organised dialogue including everybody that needs to be represented, is necessary for the authentic expression of the political will, a will oriented to the interest of all and to the common good.<sup>12</sup> Indeed, political parties have contributed to the democratization of the representative system itself and have offered our post war world a long period of stability, prosperity, and openness.<sup>13</sup>

In other words, it is beyond doubt that digitalization should be used as a tool to reinvigorate public discourse and to revive democracy, as it does enhance participation and communication channels. However, in this presentation, I shall try to stress out the dangers for democracy that come along with digitalization, as these are more latent. Digitalization seems to be transforming both private and public sphere to something utterly new. On the one hand, the private sphere

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του νομιμοποίησης” [Representative System in the works of Aristovoulos Manessis and the demand to expand democratic legitimation], *To Syntagma* 1 (2019), available at <https://www.constitutionalism.gr/to-antiprosopoftiko-sistima-sti-skepsi-tou-aristovoulou-manesi/>, accessed 4 March 2023; Kelsen, *Περί της ουσίας*, 104-108.

11. See the relevant discussion on the concept of “liquid democracy”, in Anna von Notz, *Liquid Democracy. Internet-basierte Stimmendelegationen in der innerparteilichen Willensbildung*, Beiträge zum Organisationsverfassungsrecht 4 (Tübingen: Mohr Siebeck, 2020). Specifically for the use of digital tools and surveys in party deliberation, Notz, *Liquid Democracy*, 45-273.

12. Jürgen Habermas, *Strukturwandel der Öffentlichkeit. Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft* (Frankfurt am Main: Suhrkamp, 1962, 2nd ed. 1990), 275-360.

13. See Vassiliki Christou, “Brexit, Representative Democracy and Constitutional Reform since 1997”, *European Review of Public Law* 30/3 (2018): 833-886. On the party system more generally, Sydney D. Bailey (ed.), *The British Party System* (London: The Hansard Society, 1952); Eric Shaw, *The Labour Party since 1945. Old Labour: New Labour* (Oxford/Cambridge: Blackwell Publishers, 1996); Oscar W. Gabriel, Oskar Niedermayer, Richard Stöss (eds.), *Parteidemokratie in Deutschland* (Wiesbaden: Springer, 1997); Ulrich von Alemann, *Das Parteiensystem der Bundesrepublik Deutschland* (Wiesbaden: Springer, 2010); Holger Onken, *Parteiensystem im Wandel: Deutschland, Großbritannien, die Niederlande und Österreich im Vergleich* (Wiesbaden Springer, 2013); Martin Morlok, Thomas Pogunte, Ewgenij Sokolov (eds.), *Parteienstaat – Parteidemokratie* (Baden-Baden: Nomos, 2018); Dimitris Tsatsos, Xenophon Kontiades (eds.), *To μέλλον των πολιτικών κομμάτων* [The future of political parties] (Athens: Papazisis, 2003); Evangelos Venizelos, *To «Ανοιχτό Κόμμα»* [The “open party”] (Thessaloniki: Paratiritis, 2001); Thanasis Diamantopoulos, *To Κομματικό Φαινόμενο* [The party phenomenon] (Athens: Papazisis, 1993); Pinelopi Fountedaki, *Ενδοκομματική δημοκρατία και Σύνταγμα* [Internal party democracy and the Constitution] (Athens: Sakkoulas, 1987); Giannis Z. Drossos, *Η νομική θέση των πολιτικών κομμάτων στην Ελλάδα* [The legal status of political parties in Greece] (Athens: Sakkoulas, 1982).

is being restructured by digitalization due to the fact that a mass number of human activities go on record, thus restricting behavioral freedom and freedom from self-censorship on an individual level.<sup>14</sup> Very generally, we may say that the private sphere is being to some extent “publicized”, as the individuals are exposed to the eyes of many more multiple others than they have ever been before. On the other hand, we may speak of a sort of “privatization” of the public sphere, due to the fact that the latter has been fragmented in multiple different audiences that do not have the genuine characteristics of a public sphere, of publicity, as I shall explain in detail below. The result is that none of the private and the public sphere is any longer either clearly private or clearly public, in the sense understood by now. The two spheres seem to have merged into something new, qualitatively different, partly private and partly public, none of which serves the demands of privacy and publicity, as we know them by now. Actually, Jürgen Habermas, in his new book on the new transformation of the public sphere, has spoken of a “Halböffentlichkeit” to describe the function of the new media.<sup>15</sup> However, the distinction between private and public has been fundamental in our understanding of the Modernity. In that respect, by restructuring public and private sphere, digitalization may challenge the way we have conceived the world in the Modernity, that is from the Enlightenment onwards.

The transformation of the political sphere may disturb traditional elements of democratic dialogue and democratic decision making. Already the title of my presentation implies what this transformation of the public sphere is about. The title of my presentation is an oxymoron, a *contradictio in terminis*. It refers to a “private” democracy, whereas democracy is, by definition, public, collective and associational.<sup>16</sup> I use the term “private” to define a situation in which people participate in the common affairs more as private persons than as citizens, that is from the privacy of their homes and their computer screen, they vote, chat and twitter from the distance, they do not deliberate in associations or parties, and they learn the news as produced by the editorial rules of facebook or google. To put it in a nutshell, they find themselves in a situation described in

14. Vassiliki Christou, *Το δικαίωμα στην προστασία από την επεξεργασία δεδομένων. Θεμελίωση-ερμηνεία-προοπτικές* [The right to data protection. Foundations-Interpretation-Prospects], introduction: Nikos Alivizatos (Athens: Sakkoulas, 2017), 10-17.

15. Jürgen Habermas, *Ein neuer Strukturwandel der Öffentlichkeit und die deliberative Politik* (Frankfurt am Main: Suhrkamp, 2022), 47 & 63.

16. Samuel Issacharoff, “Democracy’s Deficits”, *The University of Chicago Law Review* 85/2 (2018): 485-519. Issacharoff advocates that democracy tends to lose its associational character due to the crisis of the party system and of civil society institutions generally.

Greek as “*idiotefsi*” (ιδιώτευση). As I shall explain below, this “*idiotefsi*” is by all means at least twofold: It encompasses a loss of the associational and deliberative character of democracy, most predominantly a retreat of party democracy, on the one hand, and a loss of publicity on the other hand.

### **Risks to the associational and deliberative character of democracy**

I shall first proceed with the threats of digitalization to the associational, and, as a consequence, also to the deliberative character of democracy. Digitalization makes it easy to rule by daily surveys or, in other words, daily referendums. Newly developed survey platforms enable easy and fast voting in any matter.<sup>17</sup> This sort of decision-making models as mandate representation, that is governance based on the instructions of the people.<sup>18</sup> It models as a direct democratic form of engagement. Mandate representation enhances responsive governance, i.e. legislation and state action generally responding directly to the needs of the People.<sup>19</sup>

However, if we look back at the historical evolution of representative democracy, we will find out that mandate representation has been an earlier, immature, pre-war and pre-industrial form of representation.<sup>20</sup> In his 1933 book *The People and the Constitution*, Cecil Emden views the Great Reform Act of 1832, expanding very narrowly the suffrage in Britain, as the trigger for the development of the party system and of government’s responsibility to Parliament. Also, Emden provides an account of how mandate politics were working before the development of the party system. Some decades before the Glorious Revolution, he explains, written documents by electors to their MPs may be found, expressing complaints or requests, and yet, not meant to be addressed as binding and mandatory to the representatives. There were no mandates yet, but

17. See, for example, Barbara Cassin, *Google Me: One-click Democracy* (New York: Fordham University Press, 2017).

18. On mandate representation, see Bruce Williams, “Popular Mandate on Constitutional Amendments”, *Vanderbilt Law Review* (2018): 280; David Peterson, Lawrence Grossback, James Stimson, Amy Gangl, “Congressional Response to Mandate Elections”, *American Journal of Political Science* 47/3 (2003): 411-426; Robert A. Dahl, “Myth of the Presidential Mandate”, *Political Science Quarterly* 105/3 (1990): 355-372; Reinhard Bendix, *Kings or People. Power and the Mandate to Rule* (Berkeley/ Los Angeles/ London: University of California Press, 1978).

19. On responsive democracy, see Paul de Hert, Eugenio Mantovani, “Global Law Will Be Responsive Law, at Least with Regard to Cyberspace”, *Tilburg Law Review* 17/2 (2012): 346-359; Lisa O. Monaco, *Give the People What They Want: The Failure of Responsive Law-making* (Chicago: University of Chicago Law School Roundtable 1996), 735-765; Henry J. Tomasek, “A Responsive and Responsible Twentieth Century Legislature”, *North Dakota Law Review* 48/2 (1971): 257-280.

20. Christou, “Brexit, Representative Democracy”, 848 and 876.

rather petitions to the MPs.<sup>21</sup> However, during the last decades of the eighteenth century, those written documents took the form of pledges or instructions addressed to the candidates for Westminster before the elections. This is what Edmund Burke reacted against with his famous speech to Bristol constituents: An MP may not be instructed or ordered as to how she may decide. An MP owes her electors her sound judgement on what the common good is.<sup>22</sup>

Nonetheless, Burke's approach was more representative than democratic.<sup>23</sup> In fact, it implied an aristocratic ideal of a representative, and did not address the question how the actual interests of the people would be reflected in everyday governance, how representation would become material, neither a pledge or a mandate, nor a *carte blanche* appointment of an MP.<sup>24</sup> This is a question the utilitarians, like John Stuart Mill or Bentham, were happy to answer: To reflect people's interests in governance, expand the franchise, give them the vote, make them actually heard.<sup>25</sup> And as the votes, the interests and the opinions became numerous and pluralistic due to the extension of the suffrage, party representation as a form of deliberative representation, arose.<sup>26</sup> Party representation

21. Cecil S. Emden, *The People and the Constitution. Being a History of the Development of the People's Influence in British Government* (2nd ed., Oxford: Clarendon Press, 1956), 12.

22. See the following well-known excerpt of Burke's speech to the electors of Bristol: "Certainly, gentlemen, it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion, high respect; their business, unremitting attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interest to his own. But his unbiassed opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion", in *The Founders' Constitution*, Volume 1, Chapter 13, Document 7, <http://press-pubs.uchicago.edu/founders/documents/v1ch13s7.html>, accessed 4 March 2023; The University of Chicago Press, *The Works of the Right Honourable Edmund Burke*. 6 vols. (London: Henry G. Bohn, 1854-56) (Speech to the Electors of Bristol, 3 Nov. 1774, Works 1:446-48).

23. See typically Burke's approach to the French revolution: Edmund Burke, *Reflections on the Revolution in France [1790] and Other Writings*, edited and introduced by Jesse Norman (London: Everyman's Library, 2015).

24. On representation theories see Hannah F. Pitkin, *The Concept of Representation* (Berkeley/Los Angeles/London: University of California Press, 1967); Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).

25. See John Stuart Mill, *Considerations on Representative Government* (London: Parker, Son, and Bourn, 1861). Also, Pitkin, *The Concept of Representation*, 190 and 146. See also, on the liberal and democratic views of Bentham, his comments to the Greek Revolutionary Constitution of 1822: Konstantinos Papageorgiou (ed.), *Ο Ιερεμίας Μπένθαμ και η Ελληνική Επανάσταση* [Jeremy Bentham and the Greek Revolution] (Athens: Hellenic Parliament Foundation, 2012).

26. Christou, "Brexit, Representative Democracy...", 839-848.

proved suitable to accommodate the new condition of pluralism by being able to manage conflicting, even selfish, interests, prioritize wills and mandates in a unifying, all things considered, long-term formula: the party programme. Party representation worked as an umbrella, a unifying force, which helped multiply the power of the people and amplify the power of the individual vote.<sup>27</sup> Mandate representation, based on instructions or pledges, could not work under the conditions of universal vote. The mandate had to be constructed after deliberation and compromise. However, after the process of deliberation, the mandate was no longer just a mandate, it was a whole programme, an all-inclusive proposal about how a society should look like.

Today, digital survey platforms make party deliberation seem redundant. However, clicking on buttons, without having deliberated with the others beforehand, does not construct a general will or it constructs a random will, and it leads to random decision-making. Digital referendums cannot replace deliberation in smaller or bigger political associations, but they can only come at the end of a deliberative procedure. Digital questionnaires alone, not employed as part of a discourse in an association or any other deliberative forum, reproduce an individualistic, consumer's perspective to democratic decision-making,<sup>28</sup> and undermine the element of compromise built in associational fora. We cannot demand a political outcome in the way we order a specific meal to be served. A ballot is, of course, something we cast individually, but it is not a private matter, and it is not something we do as consumers. It is something we do as citizens. It may sound counter-intuitive, but by radicalizing political participation, digital solutions, if not embedded in a deliberative forum, may dismantle social and political bonds, and decontextualise political agendas.

Another problem with decontextualized and de-associated digital surveys is the content of the survey, the question itself. As Arthur Balfour, a British parliamentarian and Prime Minister at 1902, put it on one occasion: "Whether the referendum be a good thing or a bad thing, is the decision of the people on a particular thing, but a general election, be it a good thing or a bad thing, is not the

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27. See Reginald Bassett, *The Essentials of Parliamentary Democracy* (with a new introduction by Michael Oakeshott) (1st ed. 1935, 2nd ed. reset and revised, London: Frank Cass & Co Ltd, 1937), 32-33 (1964). Bassett writes: "Party is essentially a unifying force. The narrower its basis the less the power of unification, but, however narrow a party's basis may be, it represents a measure of co-operation. No one can enter or belong to a political party without to some degree subordinating his own particular views or interests?"

28. Richard Bellamy, *Citizenship. A Very Short Introduction* (Oxford: Oxford University Press, 2008), 23.



decision of the people on a particular measure”.<sup>29</sup> Digital surveys, being based on the specificity of certain questions, cannot act in a unifying way or build a consensus on a broad horizon of public issues.<sup>30</sup> Not only is a referendum or a digital survey a question on a particular issue, it may also be, if not embedded in the context of a political association or forum, a question standing alone. In this case, it is not part of a broad conception of a polity, right, left, or centre.

Let us use an example, proposed by Richard Bellamy, to see how a party programme may work in a unifying form, while a survey may not.<sup>31</sup> Let us assume that a vast majority of people agree that we should use lower carbon emissions, but people still disagree about how to do so. 30% may favour nuclear energy, 30% wind power, 20% measures to reduce the use of cars, more green taxes and so on. As a result, no majority can be achieved, if one just has to click on the preferred button, with no consideration of the viewpoint of others. Then a political association, like a party, shall have to engage to build a working majority, and construct a coalition of minorities across a broad spectrum of issues and policies and arrange trade-offs between them. In this way, citizens practice a degree of mutual toleration and accommodation of each other’s interests and concerns. They practice being citizens, instead of consumers. Politics is not about being served the meal one very precisely wishes, it is about finding out – in the process of deliberation and consideration of the others – workable solutions for the best of the political community as a whole. Instead of customized solutions one has to reach out for compromises.

Last but not least, referendums or governance by surveys may also tend to shift the power, but also the responsibility to the People. Government is no longer responsible and accountable to the People, because it simply delivers on the mandate. However, shifting the responsibility to a great mass, the People, means practically that nobody is responsible at all. And this is simply dangerous, as accountability is a backbone of representative democracy.<sup>32</sup>

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29. Emden, *The People and the Constitution*, 297.

30. Christou, “Brexit, Representative Democracy”, 846.

31. Bellamy, *Citizenship*, 8-9.

32. On the matter of accountability and responsibility in parliamentary democracy, see Ifigenia Kamtsidou, *Το Κοινοβουλευτικό Σύστημα. Δημοκρατική Αρχή και Κοινοβουλευτική Ευθύνη* [The parliamentary system. The principle of democracy and government’s responsibility to parliament] (Athens: Savvalas, 2011).

## A loss of publicity

My second point, namely that digitalization has entailed a loss of publicity, is also counter intuitive. How is it possible to speak about a loss of publicity to the extent that internet has made access to information easier and faster and has eliminated place and time restrictions? Also, digital tools have radicalized political participation, so that anyone can speak out and be heard without having to gain the approval of any intermediate body, like a party leader or the publisher of a newspaper.<sup>33</sup> These things considered, what does a loss of publicity mean? I shall try to show that the loss of publicity is effectuated in the digital world in two ways: first by means of targeted political campaign, which produces a fragmented version of publicity, second by remoteness. The remote mode challenges the traditional understanding of the functioning of democracy.

### *Targeted political communication*

It is well known that Internet and the new media rely heavily on tracking technologies that spy on user's browsing history and individual preferences, collecting and interconnecting behavioural data that lead to the construction of a profile of each Internet user.<sup>34</sup> The creation of such a profile entails a certain amount of intrusion, whereas digital surveillance restricts the behavioral freedom of the individual and freedom from self-censorship.<sup>35</sup> This profile was initially basically a consumer's profile used for targeted advertising of various goods and products. This is why, very famously, Shoshana Zuboff has spoken of the Surveillance Capitalism to grasp this phenomenon.<sup>36</sup>

However, I think that, after the lesson learnt from the Cambridge Analytica

33. Vassiliki Christou, "Λογοκρισία στο διαδίκτυο" [Internet Censorship], in Pinelopi Petsini, Dimitris Christopoulos (eds.), *Λεξικό Λογοκρισίας στην Ελλάδα* [Encyclopedia for censorship in Greece] (Athens: Kastaniotis, 2018), 269-278.

34. Claude Castelluccia, "Behavioural Tracking on the Internet: A Technical Perspective", in Serge Gutwirth, Ronald Leenes, Paul De Hert, Yves Poulet (eds.), *European Data Protection: In Good Health?* (Dordrecht/Heidelberg/London/New York: Springer, 2012), 21-33; Fr. H. Cate, "Government Data Mining: The Need for a Legal Framework", *Harvard Civil Rights - Civil Liberties Law Review* 43 (2008): 435-489.

35. Christou, *Το δικαίωμα στην προστασία*.

36. Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (New York: Public Affairs, 2019); Eitan D. Hersh, *Hacking the Electorate: How Campaigns Perceive Voters* (Cambridge: Cambridge University Press, 2015); Daniel Kreiss, *Prototype Politics: Technology-Intensive Campaigning and the Data of Democracy* (Oxford: Oxford University Press, 2016).

case, we may potentially speak of Surveillance in Political Campaigning.<sup>37</sup> In other words, tracking technologies can or are possibly used to build the political profile of a person, who may then receive targeted political advertisement, customized to her preferences.<sup>38</sup> This situation not only creates a certain “echoing effect”<sup>39</sup> and isolates Internet users to views they only like to hear, at the expense of pluralism, it also entails a serious lack of publicity. Political messages displayed on the computer screen, as part of a targeted political campaign, are visible to the user of the particular screen only. They address the particular user directly, and in a way not visible to others.

By addressing citizens directly, politicians may tend to send messages each one is more prone or akin to. Of course, politicians have always tried to flatter their audiences. But it is a very different thing to flatter a group of people than to flatter someone individually and secretly from others. When you try to flatter a group of people, some sort of principled abstraction will be necessary and will take place. On the contrary, targeted, namely individualized political campaign builds a new form of clientele relationship between a constituent and a political candidate, that is a private relationship oriented to the individual interest of both sides than to the common good. In this new type of direct relationship, former intermediate bodies have been replaced by new, allegedly neutral intermediaries, the “gatekeepers”.<sup>40</sup> However, these new intermediaries, albeit less apparent than a former publisher of a newspaper or a party leader, also

37. The European Data Protection Board has issued Guidelines 8/2020 on the targeting of social media users. The EDPB acknowledges that targeting services make it possible for natural or legal persons (“targeters”) to communicate specific messages to the users of social media in order to advance not only commercial, but also political, or other interests. It also acknowledges that “a distinguishing characteristic of targeting is the perceived fit between the person or group being targeted and the message that is being delivered. The underlying assumption is that the better the fit, the higher the reception rate (conversion) and thus the more effective the targeting campaign (return on investment)”. See [https://edpb.europa.eu/sites/default/files/consultation/edpb\\_guidelines\\_202008\\_onthetargetingofsocialmediausers\\_en.pdf](https://edpb.europa.eu/sites/default/files/consultation/edpb_guidelines_202008_onthetargetingofsocialmediausers_en.pdf), accessed 4 March 2023.

38. Ulrich Kelber, Nils Leopold, “Personalisierung durch Profiling, Scoring, Microtargeting und mögliche Folgen für Demokratie – Funktionsweisen und Risiken aus datenschutzrechtlicher Sicht”, in Indra Spiecker geb. Döhmman, Michael Westland, Ricardo Campos (eds.), *Demokratie und Öffentlichkeit im 21. Jahrhundert – zur Macht des Digitalen*, Frankfurter Studien zum Datenschutz, 64 (Baden Baden: Nomos, 2022), 149-175.

39. Patrick Weber, Frank Mangold, Thomas Koch, Matthias Hofer (eds.), *Meinungsbildung in der Netzöffentlichkeit* (Baden Baden: Nomos, 2019).

40. On the liability of “gatekeepers”, see András Koltay, *New Media and Freedom of Expression. Rethinking the Constitutional Foundations of the Public Sphere* (Oxford/London/New York/New Delhi/Sydney: Hart, 2019), 65-102.

have their filtering and ranking rules, regarding which transparency should be achieved by public policy tools.<sup>41</sup>

Last but not least, campaigning in a way visible only to the screen user makes political communication a private or a secret issue. This loss of publicity goes hand in hand with a certain loss of accountability.

### *Remoteness and the pandemic*

Digitalization encourages the function of democracy from the remote, and in fact, this new ability has been utilized extensively during the pandemic, possibly with long term effects on the operation of collective bodies also in the times of “normality”. During the pandemic all deliberative fora, Courts, municipal councils, the Cabinet, even Parliaments went online and remote. It has been a great success of the Greek Parliament and of other Parliaments around the world that during the pandemic they did not suspend their real space sessions, and that the procedure in the Plenum Hall, albeit with fewer MPs, remained the centre of the parliamentary debate. Of course, MPs not present could connect from the remote.<sup>42</sup> However, it is important for our democracy that the legitimizing scenery of the Parliament was not abandoned.

This is so, because the remote mode undermines the condition of publicity as a matrix of democratic discourse. Again, my point is counter intuitive. How may anyone suggest that the remote and online function of deliberative institutions entails a loss of publicity, with all of these cameras all over the place? I believe that the remote mode leads to some limited awareness of a public duty and statesmanship or stateswomanship. Leaving the comfort and protection

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41. Therefore, the European Commission has submitted a proposal for a regulation on the transparency and targeting of political advertising. Brussels, 25.11.2021, COM(2021) 731 final, 2021/0381(COD). The preamble to the proposal (para 5) points out: “Targeting or amplification techniques should be understood as techniques that are used either to address a tailored political advertisement only to a specific person or group of persons or to increase the circulation, reach or visibility of a political advertisement. Given the power and the potential for the misuse of personal data of targeting, including through microtargeting and other advanced techniques, such techniques may present particular threats to legitimate public interests, such as fairness, equal opportunities and transparency in the electoral process and the fundamental right to be informed in an objective, transparent and pluralistic way”.

42. As regards the Greek Parliament, see Constantine Tassoulas, President of the Greek Parliament, “Η Βουλή στην περίοδο της πανδημίας. Πώς εξασφαλιστηκε η λειτουργία του Κοινοβουλίου παρά τους περιορισμούς” [The Parliament during the pandemic. How the function of the Parliament was ensured despite the restrictions], *Kathimerini*, 2 January 2021, available at <https://www.kathimerini.gr/politics/parliament/561213646/k-tasoylas-i-voyli-stin-periodo-tis-pandimias/>, accessed 4 March 2023.

of the household makes a private person a citizen. Entering the Plenum Hall of the Parliament or a Court Hall or a Party Congress arena makes one realize in full his or her public role and enhances a sense of accountability. In that respect, the abandonment of a formality, to which physical presence is pertinent, may imply abandonment of some part of the essence, too. As Hannah Arendt has supported, for different reasons and under different circumstances, in her book of 1958, *The Human Condition*; *vita activa*, the political sphere, the public realm entails “presence” and “appearance” and it simply dissolves as people go apart.<sup>43</sup>

One could state, with a tone of dramatization, that democracy is born physically, in the physical space by the uprising of a people, naming itself a constitutive or constituent power and claiming for itself a constitution. In other words, a nation exists and demonstrates itself in a bodily way and, as a constitutive power, gives (its) flesh and blood to the Constitution. However, even after the constitutive moment, after the founding of the polity, the ideal of a nation, pictured now – as a constituted power – by its Representatives, has always been, under the influence of British constitutionalism or the French Revolutionary Conventions, that of an assembly convening face to face, body to body, and debating lively. The lively debate in the physical space is essential for the quality and sincerity of the public debate itself. The physical assembly of the MPs in the Parliament’s premises and atmosphere ensures, to the greatest extent feasible, that the MPs are dedicated to the process taking place, uninterrupted by their home, family or other private affairs. A certain degree of “*methexis*” (μέθεξις) is required, meaning the participation to a process as a whole person – in mind, body, and spirit – which may rather be achieved in the real space than in the remote mode.

In this respect, the reaction of Winston Churchill was plausible, when he had the chance to rebuild and expand the Commons Chamber, after it had been completely destroyed by fire as it was hit by a bomb during the Second World War (May 10, 1941).<sup>44</sup> It is well known that the Commons Chamber is very small relatively to the number of MPs to be hosted. The MPs are 650, whereas the Chamber provides seating for an estimated 437 MPs, including seating in

43. Hannah Arendt, *The Human Condition* (Chicago & London: The University of Chicago Press, 1958).

44. *The Palace of Westminster. Official Guide* (UK Houses of Parliament, 2018), 55-58. See also Winston Churchill, *Β' Παγκόσμιος Πόλεμος* [Second world War] (1st ed. 1959), vol. I, trans. Giannis Kastanaras (Athens: Govostis, 2010), 473-490.

the galleries. This is why British MPs often attend the sessions standing up or sitting on the stairs. In fact, a very expressive image, resembling that of a spontaneous assembly of people in an open space, an Agora, sitting next to each other to be able to hear properly everything said, is being captured this way. Therefore, Winston Churchill chose not to expand the Commons Chamber, as he wanted everyone present to be close enough to be able to see and hear what was going on. Some inconvenience is also part of “being” there. In other words, expanding the Chamber would mean risk losing or compromising the atmosphere of lively debate in a more convenient room. How would Churchill have reacted at the image of MPs debating from the convenience of their home?

### **Conclusion**

In what ways digitalization has promoted democracy is obvious. Digitalization has multiplied available communication and participation channels, across borders and beyond space or time limitations. In a way, it has expanded human abilities. However, in a less obvious way, it has brought about a transformation of the public sphere that may, if not regulated properly, disturb the function of democracy. First, digitalization may not be left to lead to a “privatization” of democracy, to participation of the people in the public affairs more as private persons than as citizens. Contrary to that, digital tools should be used to enhance participation within the context of traditional (like parties) or new associations and deliberative fora. Second, digital tools, algorithms and tracking technologies, if not regulated properly, may lead to each citizen accessing a fragmented and possibly quite narrow part of the public discourse. Last but not least, remote tools should not be used to replace real space discourse concerning serious issues of public interest. Remoteness may pose serious risks to the sincerity of the debate, to the authenticity of expression and of the vote itself. A high degree of awareness regarding these risks is demanded.



# HAS TECHNOLOGY WEAKENED PARLIAMENTARY LEGITIMACY?

*Panagiotis Doudonis*



## **Technology, growth and democracy**

Speaking about the relationship between technology and parliamentary legitimacy, I should start by referring to some key elements regarding the former. Technology has often been accused of various things and its problematic relationship with democracy has been stressed primarily in political and not academic fora. But I think we should first consider the wider role technology has for our societies. American economist Robert Solow supported back in 1956 that economic growth is a result of population growth, capital accumulation and technological progress.<sup>1</sup> In other words, technology is one of the three major parameters leading to growth. This has been put as the “Solow model of economic growth”.

It is hard to stress how important growth is for representative democracies. We should keep in mind that the major totalitarianisms of the twentieth century flourished in the 1930s, within the conditions of the “Great Depression”. There is a very close relationship between recession and anti-parliamentarian, as well as anti-democratic movements. We can thus speak of a sustainable level of growth as a precondition for a well-functioning representative democracy. Therefore, technological process, which in turn has been proven by Solow as a precondition for growth, is not something a priori bad for democracy but, on the contrary, it is a *conditio sine qua non* for its functioning.

It is also important to stress that the relationship between technology, growth and democracy is bidirectional. This happens because democratic institutions foster innovation, which is of paramount importance for technological advancements. Competition and freedom of entry are particularly associated with those sectors of the economy which focus on technology. We should keep

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1. Robert M. Solow, “A Contribution to the Theory of Economic Growth”, *Quarterly Journal of Economics* 70/1 (1956): 65-94; Daron Acemoglu, “The Solow Growth Model”, in *Introduction to Modern Economic Growth* (Princeton, N.J.: Princeton University Press, 2009), 26 et seq.



in mind that democratic institutions bring with them freedom of expression, stability of institutions and political as well as economic freedom, creating an environment in which innovation is not only accepted but also pursued.<sup>2</sup>

If democracy is a precondition for technological innovation and technology is a precondition for growth which is associated with democratic prosperity, then the position that technology may weaken democratic institutions and, among them, parliamentary legitimacy seems an *absurdum*. Nevertheless, as I will show in this paper it is not. The whole discussion is about some particular aspects of technological growth that can threaten democracy. It will be very useful to think of technology as a means, not an end: it is generally beneficial, but in the wrong hands it can prove a deadly weapon against democracy.

### Defining democracy

But what about democracy? How should we view this phenomenon and how important is parliamentary legitimacy to it? A year ago, I have written a book about our modern democracies, which characterizes representative democracy “the polity of coexistence”.<sup>3</sup> By that, I mean that the distinguishing characteristic of representative democracy is the ability as well as obligation of political opponents to coexist, mutually recognizing their political and ethical status. Unlike the fusion of responsibility and the divisive character of direct democracy, representative democracy is based on the existence of responsible politicians, who are held into account by the Parliament and the electorate.

In my view, the central case of this coexistence is Parliament and its legitimacy. Of course, we know Parliament as the *forum* for the voting of legislation and holding government into account. Especially for the so-called parliamentary democracies, like Greece or the United Kingdom, government itself is legitimized as “a committee of the Parliament”, as Walter Bagehot has first put it.<sup>4</sup> But Parliament is also a place for deliberation, the most important *forum* that representative democracies have.

If we view the principle of the separation of powers not only as a preventive

2. Philippe Aghion, Alberto Alesina and Francesco Trebbi, *Democracy, Technology and Growth* (NBER Working Papers, Cambridge, MA: National Bureau of Economic Research, 2007), 10.

3. Panagiotis Doudonis, *Το πολίτευμα της συνύπαρξης* [The polity of coexistence] (Athens: Armos, 2021).

4. Walter Bagehot, *The English Constitution* (Oxford: Oxford University Press, 1928 – 1st ed. 1867), 48.

measure against tyranny but also as an efficiency principle,<sup>5</sup> legislative power is vested to Parliaments because of their ability to act as a *forum* of deliberation, based on the great number of their members and the variety of viewpoints and backgrounds that this entails. Finally, the ritual of the confrontation of government and opposition<sup>6</sup> in the Parliament is in my view, the most important legitimizing parameter. The ability of political opponents to speak to each other and be members of the same collective body, while disagreeing, is the cornerstone of the obligation for political coexistence.

### **Procedural and content-based repercussions of technology – The procedural repercussions**

How does technology threaten to alter these fundamental elements of democracy, if at all? Let's start with a basic delineation of the repercussions technology has on parliamentary legitimacy and, through that, on representative democracy itself. I think we should distinguish between procedure-based and content-based repercussions of technology. In other words, we should draw a line between those threats caused by the technological procedures used and those which are associated with the message technology conveys.

But what type of technology should be put under our investigation? We saw in the very beginning that technology is a *conditio sine qua non* of progress and growth. In this discussion, I will not refer to technology in the sense of a catalyst of progress in the means of production, but to the more specific sense of technology in the social sphere, as an accelerator of human communication. In this sense, the rise in prominence of the Internet and through that of social media during the last years has caused a number of important consequences for the legitimacy of the most important representative institution, namely the Parliament. It is to these repercussions of technology that I will focus my attention.

I will start from a fundamental procedural repercussion of the expansion of the modern, technologically advanced means of communication; until recently, the legitimacy of Parliament as the main representative institution has been based to a large extent on the so-called second-best arguments for representa-

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5. Nicholas W. Barber, *The Principles of Constitutionalism* (Oxford: Oxford University Press, 2018), 51 et seq.

6. Harold J. Hanham, *The Nineteenth Century Constitution 1815-1914: Documents and Commentary* (Cambridge: Cambridge University Press, 1969), 110.

tive democracy. The key point of these arguments that have been mainstream for decades is that direct democracy is much preferable than representative democracy, but unfortunately it is not feasible, due to the scale of population and territory of modern states, being several times bigger than ancient Greek city-states.<sup>7</sup>

With the current state of technology this argument is no longer valid. Modern Internet platforms, as well as social media enable human communication, interaction and voting in great numbers and even from the remotest places of the territory of a state. Thus, Parliament is no more legitimized as an assembly of representatives of the people who cannot for practical reasons be present, vote and decide themselves. People can now virtually assemble in a digital platform, get informed and vote on the central issues of the state.

The answer to this procedural delegitimizing effect of technology can be two-fold. I will start with the most common response and then state the one which I personally prefer. So, someone could say that the most important thing in the ancient Athenian *ecclesia* was not the ability of all the citizens to vote but their simultaneous presence in the assembly of the Pnyx as well the “*τις ἀγορεύειν βούλεται;*” (who wants to speak) question;<sup>8</sup> in other words, the ability of every citizen to speak in front of his co-citizens on any issue under discussion. Both these two elements are absent from modern digital platforms.

But let's now move to my preferred response. As I have already stated, in my view, representative democracy is not just the second-best alternative to direct democracy.<sup>9</sup> Its quality as the “polity of coexistence” is based on a first-best argument, which remains intact and becomes even more important with the progress of modern technology: unlike direct democracy, representative democracy creates an obligation for political actors to coexist. This virtue of representative democracy is particularly important in times of polarization of political views. It is also valid regardless of the feasibility of direct democratic institutions and even more important when representative democracies are compared to direct ones not at the level of feasibility but at that of preferability.

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7. Geoffrey Brennan and Alan Hamlin, *Democratic Devices and Desires* (Cambridge: Cambridge University Press, 2000), 159 et seq.

8. Arlene W. Saxonhouse, *Free Speech and Democracy in Ancient Athens* (Cambridge: Cambridge University Press, 2010), 209.

9. Cf. Bernard Manin, *The Principles of Representative Government* (Cambridge: Cambridge University Press, 1997).

## Content-based repercussions

Moving on to the content of the message conveyed by technology, we should keep in mind that the rise in prominence of social media platforms has been associated with the movements of the early 2010s named the Arab Spring. Then, the mobilisation of great numbers of citizens against autocratic regimes had been accomplished for the first time through technology and particularly through means like Facebook and Twitter.<sup>10</sup>

We now know that the political outcome of the Arab Spring did not meet the initial expectations. But beyond that, we also witnessed the European interpretation of the whole “mobilization through internet movement”, with the so-called “Indignados” movement in Spain and the Indignant Citizens Movement in Greece. Beyond their anti-austerity character, these movements also demonstrated their strong disagreement with Parliaments’ decisions and asked for direct democracy.

The Indignant Citizens Movements in European countries facing austerity measures are in my view the central case of technology against parliamentary legitimacy: at a moment when Parliaments voted for the memoranda, social media platforms seemed to create a space for citizens’ decision-making. Thus, the populist message was clear: there is no need for the filtering of political passions through Parliament, the people themselves should stand up and take the decisions. This was not only a matter of the organization of movements; it also affected their political aims: Indignant citizens asked for the replacement of “oligarchic” Parliaments by institutions of direct democracy.

As is now obvious, this did not go well: it rather ended in the simultaneous presence in the very same squares of right-wing and left-wing extremes. But the illusions regarding austerity measures in Member States of the EU were not the end but only the beginning of an era where the Internet offers simplistic and populist solutions to problems.

The wider problem lies in the fact that social networks like Facebook and Twitter are based on a wrong business model and no one, neither them nor State authorities, has proved eager to change that.<sup>11</sup> In order to augment their advertising share, corporations owning social media have focused on personal

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10. Gilad Lotan, Erhardt Graeff, Mike Ananny, Devin Francis Gaffney, Ian Pearce and Danah Boyd, “The Revolutions were Tweeted: Information Flows during the 2011 Tunisian and Egyptian Revolutions”, *International Journal of Communication* 5/5 (2011): 1375-1405.

11. David Runciman, *How Democracy Ends* (London: Profile Books, 2018), 158.

profiling of their users to offer custom-made content as well as on the clicks the relevant posts take, in an effort to increase their use.

Both these elements, clicks and profiling, have been approached on a completely apolitical way, which assimilates politics with any commercial activity. It is common knowledge that technology companies collect data for commercial purposes in order to personalize, customize and advertise products for their users.<sup>12</sup> This is the “Google model” and social media corporations follow the same path. But politics is not like anything else, and the Parliament is not just another corporation. To assimilate politics with commerce equals firstly ignoring the impact that its content can have and secondly awarding it to the highest bidder. Furthermore, expressing your political view or reading such a view online is not just another form of entertainment.

In order to increase the number of clicks, social media have acted as the catalyst for the polarization of political views and war-like conditions in political debate. Clicks are much more when the opponents are in a harsh fight than when civilized, parliament-like dialogue is taking place. Thus, radical hate speech is covertly boosted by the algorithms of social media, while center-politics are left behind as conventional and “boring” for their users. At the same time, the algorithms of social media seem to create bubbles, reproducing in users’ timelines opinions that they tend to like to see. But democracy is based on the exchange of different views, not the reproduction of already formed opinions in all different versions.

Modern representative democracies have been based for all the post war years on the coexistence in Parliament of center-left and center-right parties and serial power sharing. This is no more the case; in many two-party systems, at least one of the two major poles is an anti-establishment movement, often associated with nationalist, populist and often even racist views. One of the actors that have led to this result is the war-like confrontation in the social media. Their users as well as political campaigns themselves do not focus on arguments but on discrediting the opponent, annihilating her political and ethical status.

At this point, the second element of social media business model comes into play: targeted advertising, focused on profiling of users based on what they post and what they like. If you are in a war-like confrontation and you happen

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12. This is one of Shoshana Zuboff’s main points in her book on “surveillance capitalism”. Cf. Shoshana Zuboff, *The Age of Surveillance Capitalism: the Fight for the Future at the New Frontier of Power* (London: Profile Books, 2019), Chapter 3.

to know the sensitivities of a group of users, it is almost certain than you will target them applying to these very sensitivities in order to influence their vote. Facebook itself has stated that it has heavily influenced 2015 UK elections by enabling through its tools the Conservative party to reach 80,65% of Facebook users in key marginal seats.<sup>13</sup>

This is the point when Cambridge Analytica comes into play,<sup>14</sup> a name that can hardly be avoided when speaking about technology as discrediting democracy. The term used by the company itself to refer to its target groups, “universes”, is indicative of the way it views key groups it has purported to target: separate categories of “persuadable” people who are focused on a particular issue and can be approached through customized ads.<sup>15</sup> What is most worrying is that Cambridge Analytica is only one of several companies offering the relevant services and through them influencing electoral procedures worldwide; and if I had to make a prediction, I would say that their number is going to rise in the future and politicians will be persuaded that winning an election is almost impossible without them. In this way, the basic scheme of political communication seems to be reversed: instead of a known sender and an unknown number of receivers, in social media political advertising we end up with a very well-known and targeted receiver of the message and an unknown (to him) sender.

But let me now focus a bit on Brexit: at the end of the day Brexit was about the UK “regaining sovereignty” but equally about imposing the decision to exit the European Union on a House of Commons, which at that time supported Remain. In this way, the referendum itself as well as its result had, in my view, a major delegitimizing effect on the British Parliament.<sup>16</sup> Indicative of this confrontation is the fact that the two Supreme Court decisions on Brexit had to do with Parliament. In *Miller I* the Supreme Court found that the government may not invoke the Crown’s foreign affairs prerogative in order to trigger Art 50 TEU for exiting the European Union without the permission of the Parliament

13. Damian Tambini, Sharif Labo, Emma Goodman and Martin Moore, *The New Political Campaigning* (LSE Media Policy Project Series 19, 2017).

14. Fereniki Panagopoulou-Koutnatzi, *Τεχνητή νοημοσύνη: Ο δρόμος προς έναν ψηφιακό συνταγματισμό. Μια ηθικο-συνταγματική θεώρηση* [Artificial intelligence: The road to a digital constitutionalism. An ethical-constitutional approach] (Athens: Papazisis, 2023).

15. Jamie Bartlett, *The People vs Tech: How the Internet is Killing Democracy (and How we Save It)* (London: Penguin, 2018), 74.

16. Meg Russell, “Why a Rhetoric of ‘Parliament versus the people’ is both Dishonest and Dangerous”, in <https://ukandeu.ac.uk/why-a-rhetoric-of-parliament-versus-people-is-both-dishonest-and-dangerous/>, accessed 10 October 2022; Agnes Alexandre-Collie, “Brexit and Anti-Parliament Discourses among Conservative MPs (2016–2019)”, *Parliamentary Affairs* 75 (2022): 239.

through an Act of Parliament.<sup>17</sup> In *Cherry/Miller* (or *Miller II*) the Supreme Court found that the government's use of the royal prerogative to prorogue the Parliament was unlawful, since it violated the ability of the Parliament to carry out its constitutional functions.<sup>18</sup>

With that into mind, let me bring into attention one more parameter: the whole Brexit campaign was almost entirely a digital one. "Vote leave" spent almost all their money in digital communications, according to their director.<sup>19</sup> And ultimately, they won. As Trump won later that same year, 2016, in the US. This has also been the case with many other national populists throughout the world.

### **Super-rich and foreign states influencing elections**

Who are those who try to influence elections, using Facebook, Twitter and other social media as a means for spreading fake news, targeting sensitive groups and using bots who use hate speech? The most threatening answer for the legitimacy of Parliament and thus for political coexistence is the super-rich and foreign states.

Regarding the super-rich, during the last years, the rise of intra-state inequalities as well as technology itself have produced many more of them. Their desire to accumulate political power and/or to support their preferred radical cause is translated into immense amounts of money being invested into digital advertising and propaganda.

The same goes for foreign autocratic regimes. Putin's Russia is an illuminating example. It has attempted and achieved to influence key elections throughout the world, with the most prominent example being the 2016 US presidential election. What has been Putin's aim? To attack liberal, representative democracies, to discredit Parliaments and to promote political extremes.<sup>20</sup> What was the method used? Of course, new technologies, Internet platforms and social media. The level of political discourse has fallen to an unprecedented low and

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17. *R (Miller) v Secretary of State for Exiting the European Union*, [2017] UKSC 5, 148.

18. *R (on the application of Miller) v Prime Minister; Cherry v Advocate General for Scotland* [2019] UKSC 41; [2019] 3 W.L.R., 589.

19. "Dominic Cummings: how the Brexit referendum has won", *The Spectator*, 9 January 2017.

20. Martin Moore, *Democracy Hacked: Political Turmoil and Information Warfare in the Digital Age* (London: Oneworld, 2018), 100.

fake cannot be distinguished from real. It has been estimated that 1 out of 7 political tweets in the 2016 US elections came from bots.<sup>21</sup>

The war in Ukraine, which is an overt attack to a liberal democracy by an autocratic regime, brings out strategies that the Russian Federation has conducted before in a covert way. This is a great opportunity for us: there is no more hiding behind bots, fake accounts and fake news. The attack on representative democracies is now de-digitalized, it is analog and thus much easier to detect. In this way, the Ukrainian war is a wake-up call.

### **The value of responsibility**

Speaking about detecting threats to democracy we should remember that Facebook, Twitter and other social media platforms as well as modern means of technology and communication in general did not actually purport to attack parliamentary legitimacy, representative democracy or centrist politics. This is the result of the algorithms they use and the data they process. Thus, it is of utmost importance to keep in mind a notion that is associated with Parliaments and representative democracy: accountability.<sup>22</sup> If you can hold someone into account, you can check the quality of her actions and thus have a clear idea of what she is doing. The problem with algorithms and technology is that in many cases they are impersonal and thus no one is responsible for their actions. Accountability and responsibility are therefore the two key notions associated with Parliaments that we should always keep in mind when speaking about technology and its repercussions.

The very same goes for artificial intelligence in general. Algorithms can be a way of accumulating power for those who build them, and artificial intelligence is not always intelligent. If something goes wrong, there should be someone, namely a *person*, to hold into account.<sup>23</sup> It is almost sure that AI will make significant progress in the future becoming the dominant technology and creating superintelligent machines.<sup>24</sup> But no matter how intelligent a machine is, it can neither replace political judgement of electors when voting nor MPs speeches

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21. *Ibid.*, 101.

22. Mark Elliott and Robert Thomas, *Public Law* (2nd ed., Oxford: Oxford University Press, 2014), 356.

23. Bartlett, *The People vs Tech*, 212.

24. Stuart Russell, *Human Compatible: AI and the Problem of Control* (London: Allen Lane, 2019), ix.



inside Parliament. At the end of the day, behind each AI algorithm, there are people in technology labs who have created it as well as companies who have marketed it. Each business venture conveys with it a certain amount of risk as well as liability for 'defective products'. The same goes for AI. It is thus important to regulate the relevant fields now, based on the principle of (human) responsibility, before the problem goes out of democratic control. Unelected as well as unchecked power is not a good idea for democracy.

## **Conclusion**

Technology is not *a priori* a delegitimizing factor for democracy. On the contrary, it is a prerequisite for growth and thus can help democracy flourish. Nevertheless, when we speak about democracy we mean representative democracy which is based on a very specific set of values, with the most important being that of coexistence of political actors who are held responsible for their actions. Parliament is the cornerstone of this representative democracy system.

Internet, social media and digital platforms in general are the products of modern technological advancements which have caused a revolution in human communication. They have also played an important part in a couple of real-world revolutions, like the Arab Spring. Nevertheless, they have severe repercussions for representative democracies and their functioning. Technology threatens to alter the fundamental elements of democracy both through the procedure it uses and the message it conveys.

Since modern technologies and platforms enable the virtual presence of a great number of citizens in a digital platform, we should keep in mind that representative democracy is not only more feasible but also preferable to direct democracy, since it is a polity where political opponents are obliged to coexist and dangerous divisions in the society are avoided. This element is particularly important as a response to populist movements who are organized through social media and ask for the replacement of Parliaments by direct democracy and its "assemblies".

At the same time, social media platforms are based on a wrong business model, focused on the increase of their use as well as targeted custom-made advertising, which has given rise to polarization of political views. It is thus of paramount importance to regulate the relevant areas before it is late for our democracies and their representative institutions. The legal framework should focus on the accountability of Internet and social media giants to regulatory authorities as well as responsibility for their policies.

At the end of the day, we should always keep in mind that Max Weber in his famous “*Politik als Beruf*” (Politics as a Vocation) draws a distinction between the ethics of responsibility and the ethics of conviction.<sup>25</sup> According to the ethics of conviction, a view is expressed based on absolute ends and regardless of the consequences of the action proposed. Public debate in social media (even if it is not a product of foreign intervention or of the profiling of users) is overly influenced by the discourse of conviction, without taking into consideration the repercussions the implementation of certain views has on real life. The only way to change that is through bringing out this parameter in public discourse as well as underlying the importance of the responsibility values associated with our representative democracy.

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25. Max Weber, “Politics as a Vocation”, in Hans Gerth and C. Wright Mills (eds.), *From Max Weber: Essays in Sociology* (London: Routledge, 1991): 77 et seq.



# THE CONCEPT OF REPRESENTATION AND THE NEW MEDIA

Costas Stratilatis



## A highly complex concept and the democratic need for (some) clarity

We ordinarily presume that democratic legitimacy depends upon the quality of the relationship between our political representatives and us, the represented, who are often their constituents.<sup>1</sup> From the standpoint of political theory, this seems to be just one of the factors that define democracy.<sup>2</sup> However, many of these factors (e.g., consent, participation, pluralism, responsiveness, accountability, transparency, information, public deliberation, reflexivity, proximity, public interest) can be viewed as aspects or elements of political representation, while other ones (e.g., protection of fundamental rights, separation of powers) set limits upon, and in this way constitute and empower, representative institutions.<sup>3</sup> Thus, the concept of representation is pivotal for political life –one could even say: for life in general.<sup>4</sup> This is a first reason why representation is a “highly complex” concept, as Hanna Pitkin observed back in 1967.<sup>5</sup>

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1. For the concept of constituency, in relation to representation and democratic legitimacy, see Andrew Rehfeld, *The Concept of Constituency: Political Representation, Democratic Legitimacy, and Institutional Design* (New York: Cambridge University Press, 2005).

2. For the other factors see, *inter alia*, H el ene Landemore, *Open Democracy: Reinventing Popular Rule for the Twenty-First Century* (Princeton, NJ: Princeton University Press, 2020); Nadia Urbinati, *Democracy Disfigured: Opinion, Truth, and the People* (Cambridge, MA: Harvard University Press, 2014); Pierre Rosanvallon, *La l egitimit e d emocratique: Impartialit e, r eflexivit e, proximit e* (Paris: Seuil, 2008); John Rawls, *Political Liberalism* (exp. ed. New York: Columbia University Press, 2005); J urgen Habermas, *Faktizit at und Geltung: Beitr age zur Diskurstheorie des Rechts und des demokratischen Rechtsstaats* (Frankfurt a.Main: Suhrkamp, 1992).

3. For the idea that limits constitute and empower what they restrict, see Stephen Holmes, *Pas- sions and Constraint: On the Theory of Liberal Democracy* (Chicago and London: The University of Chicago Press, 1995).

4. One of the sharpest minds of the French Revolution, Abb e Siey es, believed that, in modernity, representation is the essence of social life. Having others do things for us makes possible the division of labour from which industry and productivity stems, both in the economy and in politics. See P. Pasquino, *Siey es et l’invention de la constitution en France* (Paris: Odile Jacob, 1998), 43.

5. Hanna F. Pitkin, *The Concept of Representation* (Berkeley/Los Angeles/London: University of California Press, 1967), 8.

Another reason is the difficulty to disentangle the concept from arguments about what representation should, or should not, be.<sup>6</sup> Such arguments usually comprise accounts of the political thought of many thinkers of the past<sup>7</sup> and, at some point, assign primacy to some meaning(s) of representation over other ones, on the basis of broader theories of democracy. The normative orientation and the historical depth of the debates surrounding the concept of representation intensify its complexity. Also consider the use of the concept in various contexts other than politics and law, as, e.g., history and literature,<sup>8</sup> art,<sup>9</sup> semiotics,<sup>10</sup> architecture,<sup>11</sup> theology. Such extensive use is owed to the origins of the concept. As Pitkin reminds us, the Latin term “*repraesentare*” did not originally indicate agency, i.e., the idea of persons acting for other persons, nor was it related to political institutions, but it had to do with acts involving inanimate objects.<sup>12</sup> *Repraesentare* meant “to make present or to manifest or to present again”; “to bring something to one’s presence” or “the making present of an abstraction through or in an object, as when a virtue seems embodied in the image of a certain face”.<sup>13</sup> The notion of embodiment was also present in the context of Christianity, as “when the Pope and the cardinals [were] often said to represent the persons of Christ and the Apostles”,<sup>14</sup> and later on, when kings were mystically identified with the realm, finally with the nation.<sup>15</sup> In fourteenth century, the term in English meant “to symbolize or embody concretely”.<sup>16</sup> The modern political meanings of representation emerged in correspondence with the development of political institutions. Thus, it was only in the first half of the seventeenth century that the term in England came to

6. A good example is Pitkin, *The Concept*, another is Nadia Urbinati, *Representative Democracy: Principles and Genealogy* (Chicago: The University of Chicago Press, 2006).

7. Apart from Urbinati, *Representative Democracy*, and from Pitkin, *The Concept*, see also Pierre Rosanvallon, *Le Peuple introuvable: Histoire de la représentation démocratique en France* (Paris: Gallimard, 1998); Bernard Manin, *The Principles of Representative Democracy* (Cambridge: Cambridge University Press, 1997).

8. Frank Ankersmit, *Historical Representation* (Stanford: Stanford University Press, 2001).

9. Roman Frigg and Matthew C. Hunter (eds.), *Beyond Mimesis and Convention: Representation in Art and Science* (Dordrecht: Springer, 2010).

10. Gusti Ayu Made Suartika, Julie Nichols (eds.), *Reframing the Vernacular: Politics, Semiotics, and Representation* (Springer, 2020).

11. Dalibor Vesely, *Architecture in the Age of Divided Representation: The Question of Creativity in the Shadow of Production* (Cambridge, Mass.: The MIT Press, 2004).

12. Pitkin, *The Concept*, 3, 241.

13. *Ibid.*, 241.

14. *Ibid.*

15. *Ibid.*, 246.

16. *Ibid.*, 243.

indicate first the Parliament as a whole, or the Commons as a group, and then individual representatives.<sup>17</sup> This meaning supplemented but did not replace the earlier notions of symbolization and of embodiment. The earlier notions survive to date; indeed, they thrive, not least in the realm of politics. The dualism between the more recent conception of representation as acting for another and the earlier notions, which take representation as “standing for” someone or something, renders the task of arriving at a stable definition even more difficult.

Notwithstanding these difficulties, the importance of representation for democracy necessitates conceptual clarification. This essay is premised on the belief that, before embarking upon normative theorization or historical investigations, we should take a step back and ask how we conceive political representation today; what do we mean when we say that an individual or a collective agent represents us in the realm of politics. Conceptual clarity here is not a target to be achieved once and for all, as the verb “arriving at” in a previous sentence might have suggested. The attempts to define representation are rather a process of problematization, which may, or may not, provide *some* clarity of understanding. The compulsion to arrive at authoritative definitions can help but may also harm this process. For one thing, the relative ambiguity of political concepts is owed to ideological differences, and these are essential to democracy. Ambiguity is not a necessary evil of democratic life, but a constructive element thereof. It makes possible the coupling of political antagonism with the agon of different, sometimes contradictory, often complementary, meanings that are articulated through political concepts. On the other hand, disambiguation, categorization of multiple meanings and other concept-formation activities are also integral part of politics, of democracy *qua* epistemic process. Clarity of understanding is a democratic good at least as much as agonistic problematization is.

Concepts are mediated from the outset. Their meanings are constantly reformulated by means of various instruments, information and communication technologies being one amongst them. The aim of this essay is to explore the influence of such technologies upon the meanings of representation, both the ones that stay dormant in the minds of citizens and the ones that become explicit, even dominant, in public discourse. The term “New Media” indicates all technologies of processing and of disseminating information through computers in combination with the Internet and with smartphones. Such technologies

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17. *Ibid.*, 248-250.

have been used by parliaments and by governments since the late 1990s<sup>18</sup> and include now websites, including web-archives and databases empowered by search engines; social media like Facebook and Twitter; video sharing platforms, like YouTube, web tv, live streaming and other means of “virtual broadcasting”, so to speak; news portals, RSS feeds and other means of disseminating selected news stories; online opinion polls, discussion forums and other forms of e-deliberation; e-mails, electronic communication forms and other means of individualized interaction between the representatives and the represented, etc. I use the term “New Media” instead of other terms, like “digital media” or “Information and Communication Technologies” (ICTs), because I wish to emphasize the sense of innovation that permeates the use of such technologies<sup>19</sup> – a sense which is an integral feature of them, next to other basic features: digital, interactive, hypertextual, virtual, networked, and simulated, according to one account;<sup>20</sup> manipulable, networkable, dense, compressible and impartial, according to another account.<sup>21</sup> New Media shall be considered in accordance with these features, also in the social and cultural context of their use, which is often termed “the Information Society”.

In part 2 of this essay, I shall present the classic analysis of the concept of representation by Hanna Pitkin together with the more recent analysis of Jane Mansbridge.<sup>22</sup> Despite criticism,<sup>23</sup> the conceptual work of these scholars remains outstanding. Thus, in part 3, I shall use the conceptual categories of Pitkin and of Mansbridge in order to systematise my observations on the impact of the New Media upon the concept(s) of representation. I shall first assess the relevance of information, communication, dialogue, and deliberation in each

18. See the articles in *Parliamentary Affairs* 52/3 (1999). More recent studies include Liam D. G. McLoughlin, “How Social Media is Changing Political Representation in the United Kingdom”, unpublished PhD Thesis, University of Salford, 2019; Andrew Blick, *Electrified Democracy: The Internet and the United Kingdom Parliament in History* (Cambridge: Cambridge University Press, 2021).

19. See Martin Lister, Jon Dovey, Seth Giddings, Ian Grant and Kieran Kelly, *New Media: A Critical Introduction* (Abingdon: Routledge, 2009), 11.

20. *Ibid.*, 13-43.

21. Terry Flew and Richard Smith, *New Media: An Introduction* (Ontario: Oxford University Press, 2018), 5.

22. Jane Mansbridge, “Rethinking Representation”, *The American Political Science Review* 97/4 (2003): 515-528.

23. Michael Saward, *The Representative Claim* (New York: Oxford University Press, 2010), 8-34; Andrew Rehfeld, “Representation Rethought: On Trustees, Delegates, and Gyroscopes in the Study of Political Representation and Democracy”, *The American Political Science Review* 103/2 (2009): 214-320; Andrew Rehfeld, “On Representing”, *The Journal of Political Philosophy* 26/2 (2018): 216-239.

concept. Then, I shall expound some more general observations concerning these four elements in the Information Society. This shall prepare the ground for my analysis of the influence of the New Media upon the concept(s) of representation in the last section of this part. The major theme of my observations shall be the resilience of symbolic representation in the information age, in apparent contradiction to the promise of the New Media for more dialogic forms of political communication. In part 4, I shall expound some brief thoughts about the importance of conceptual work and about the possible role of parliaments as sites of counter-power which could countervail the dominance of symbolic representation.

### **A conceptual map (Hanna Fenichel Pitkin, Jane Mansbridge)**

#### *Formalistic representation (authorization, accountability)*

Pitkin developed a fourpartite categorization of the meanings of representation, with reference to theorists of representation,<sup>24</sup> but also “attend[ing] carefully to the way in which we ordinarily use words when we are not philosophizing or wondering about their meaning”.<sup>25</sup> The first category, *formalistic representation*, includes two views, the *authorization* view, and the *accountability* view. Both focus on the institutional arrangements of political representation, i.e., elections, but they view them in a very different way.

The authorization view defines representing “in terms of a transaction that takes place at the outset, before the actual representing begins. To the extent that he has been authorized, within the limits of his authority, anything that a man does is representing”,<sup>26</sup> meaning that his action binds the represented. The ultimate concern of many authorization theorists (Hobbes being the pioneer here) is “political authority, authority over others, the right to command”.<sup>27</sup> But “[i]f representing means merely acting with special rights, or acting with someone else bearing the consequences, then there can be no such thing as representing well or badly”.<sup>28</sup> This is also the case with the diametrically opposite view, the accountability view, for which “a representative is someone who is to

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24. Pitkin, *The Concept*, 11.

25. *Ibid.*, 6 (with reference to the school of ordinary language philosophy that is associated with J. L. Austin).

26. *Ibid.*, 39.

27. *Ibid.*, 53.

28. *Ibid.*, 55.



be held to account, who will have to answer to another for what he does”.<sup>29</sup> For Pitkin, this is a formalist definition too. “Where the one sees representation as initiated in a certain way, the other sees it as terminated in a certain way. Neither can tell us anything about what goes on *during* representation, how a representative ought to act or what he is expected to do, how to tell whether he has represented well or badly”.<sup>30</sup>

Pitkin underestimates the fact that accountability means giving reasons for one’s activity. Reasons cannot be separated from the contents and the evaluation of this activity. Elections are the sanctioning mechanism of the evaluative process. They are also the culmination point of an electoral period during which the main activity of the representative is to communicate with the represented, often giving reasons for his activities in view of what he had promised. And if promises constitute a salient material of the communication between electors and candidates, then authorization can also be viewed as a substantive-communicative process. Promises are the vehicles of the political substance of the legal authority that is granted to the representative, and they become then a standard for the evaluation of his activity. In observing the limits of the authorization, the representative is politically bound to fulfil certain substantive objectives regarding the policies that he votes or the government that he supports. Although the consequences of not fulfilling the objectives are political, this process overall is a legal-constitutional element of electoral authorization, hence a formal aspect of representation.

### *Promissory representation*

These observations point towards the first category of Mansbridge’s analysis, *promissory representation*. This concept can be regarded as the meeting point of authorization with accountability. Promissory representation obeys to the logic of the principal-agent relation. It constitutes a forward-looking, linear power relationship whereby the will of the voter intentionally exercises influence upon the representative in a relatively unmediated manner.<sup>31</sup> Promissory representation “comes closer than any other model to an ideal in which the simple imprint of the voter’s will is transmitted through institutions to an equal exertion of power on the final policy”.<sup>32</sup>

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29. Ibid.

30. Ibid., 58.

31. Mansbridge, “Rethinking Representation”, 516.

32. Ibid.

*Anticipatory representation*

The temporal dynamic of this model changes in *anticipatory representation*. Here, the power relationship works not retrospectively but prospectively, since the representative's action is influenced by his beliefs about the preferences of the voters in the future, at the time of next elections.<sup>33</sup> Naturally, the representative will wish to influence those preferences by communicating with the represented. Besides, "the voters can be 'educated' not only by the representative, who seeks and prepares 'explanations' of his votes ..., but also—critical for the practice of democracy—by parties, interest groups, media, opposition candidates, and other citizens".<sup>34</sup> Hence the importance of the systemic parameters of representation *qua* political communication.

*Descriptive representation*

The second category of Pitkin's analysis is *descriptive representation*. This type shifts emphasis from the notion of representation as "acting for" to the notion of "standing for". Hence, a representative body "is distinguished by an accurate correspondence or resemblance to what it represents, by reflecting without distortion".<sup>35</sup> Resemblance might refer to more personal characteristics, like sex and colour, and/or to political orientations, most importantly affiliation with political parties. This view is naturally favoured by proponents of proportional representation electoral systems. It focuses on having all opinions and interests represented, and it views the parliament more as a site of deliberation and less as a governing body.<sup>36</sup> Besides, a descriptively representative body need not be elected; it can be formed through some sort of sampling, including random selection, choice by lot, so as to have the parliament reflect the various traits found in a population.<sup>37</sup>

This view is more suitable for describing the activity of giving information, of "making representations", leaving out a good part of "the creative activities of a representative legislature, the forging of consensus, the formulating of policy, the activity we roughly designate by 'governing' [...] there is no room within such a concept of political representation for leadership, initiative, or creative

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33. *Ibid.*, 517.

34. *Ibid.*

35. Pitkin, *The Concept*, 60.

36. *Ibid.*, 62-63.

37. *Ibid.*, 73-74.

action”.<sup>38</sup> Besides, “characteristics, representativeness, may not be whole measure of how well an assembly represents”.<sup>39</sup> Another problem, which Pitkin mentions in passing, but which we find interesting for the purposes of this essay, is that in general, “representation seems to require a certain distance or difference as well as resemblance or correspondence”.<sup>40</sup> Simply put, sometimes we will not vote for representatives who are like us, but for ones who are (as we believe) better than us in determining the public interest and/or in pursuing the satisfaction thereof. Distance may also take the form of a breathing space out of the asphyxiating information and communication flows. Such space would regularly be necessary for *judgment* on the part of the representative, and judgment is required for fruitful, innovative deliberation. Or, as Urbinati observes, “[t]he tension between the representative and the people is a sign of a healthy polity; such a polity should be measured by the *distance* that exists between the inside and the outside, not the abolition of that distance”.<sup>41</sup>

### *Surrogate representation*

Descriptive representation can support what Mansbridge calls “*surrogate representation*”; that is, “representation by representative with whom one has no electoral relationship”,<sup>42</sup> as in the case of a representative who is active in issues relevant with the LGBTQ community, satisfying the interests of the members of that community who reside in another constituency. Surrogate representation may pass through contributions to electoral campaigns. Other than this, no accountability and no significant power relationship exists in this kind of representation.<sup>43</sup> There is of course the possibility of contributing not money but volunteer time, even information, expertise, or simply moral approbation.<sup>44</sup> From this point of view, surrogate representation helps us realize that, although “the deliberative aims of democracy require that the perspectives most relevant to a decision be represented in key decisions”, “[s]uch perspectives do not necessarily need to be presented by a number of legislators proportional to

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38. *Ibid.*, 90.

39. *Ibid.*, 76.

40. *Ibid.*, 68.

41. Nadia Urbinati, *Me the People: How Populism Transforms Democracy* (Cambridge, MA: Harvard University Press, 2019), 164.

42. Mansbridge, “Rethinking Representation”, 522.

43. *Ibid.*, 523.

44. *Ibid.*, 524.

the number of citizens who hold those perspectives”.<sup>45</sup> Nevertheless, numbers matter on deeply conflictual issues that are decided on the basis of cemented interests. “The normative question for surrogate representation [...] is whether, in the aggregate, each conflicting interest has proportional adversary representation in a legislative body ... and each important perspective has adequate deliberative representation”.<sup>46</sup>

### *Symbolic representation*

In symbolic representation, the third category of Pitkin’s analysis, “a political representative is to be understood on the model of a flag representing the nation, or an emblem representing a cult”.<sup>47</sup> Although symbols convey information, they are not signs. They are vehicles of what is symbolized. This “can never be exhaustively stated in words”.<sup>48</sup> Vagueness and the mystical element of symbolization help suggest and at the same time imply; evoke feelings not requiring any particular explanation or justification. “A symbol is considered to have a meaning beyond itself, not because of its actual resemblance to the referent, not because of any real connection, but just because it is so considered. In this sense, symbolic representation either exists or does not exist in any particular case. If someone believes (or believed), it exists; if no one believes, it does not exist [...] it is ‘existential’, present or absent in people’s beliefs”.<sup>49</sup>

Crucially, symbolic representation rests “on emotional, affective, irrational psychological responses rather than on rationally justifiable criteria [...] symbol-making is not a process of rational persuasion, but of manipulating affective responses and forming habits”.<sup>50</sup> This incentivises the representatives to work on the minds of the represented in order to foster satisfaction with and loyalty to them. The point of political marketing in symbolic representation is to make everyone feel that the representative is a leader, that *he* embodies the hopes and the interests of the people. Personalistic politics is, of course, a major trait of authoritarianism, as Pitkin does not fail to notice.<sup>51</sup>

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45. Ibid.

46. Ibid.

47. Pitkin, *The Concept*, 92.

48. Ibid., 97.

49. Ibid., 100.

50. Ibid., 100-101.

51. Ibid., 107-108.

*Gyroscopic representation*

In gyroscopic representation, the representatives are internally motivated by their principles without considering the claims of their constituents. “[T]he voters affect political outcomes not by affecting the behavior of the representative (‘inducing preferences,’ as in promissory or anticipatory representation), but by selecting and placing in the political system representatives whose behavior is to some degree predictable in advance based on their observable characteristics [...] The voters thus have power not over the representative but over the system”.<sup>52</sup> Hence, the significance of the quality of systemwide deliberation and the irrelevance of communication between the representative and his voters, which is important in traditional accountability models – “in the gyroscopic model the deeper accountability of the representatives is to themselves or (particularly in electoral systems outside the United States) to the political party to which they identify. They are not expected to relate to their constituents as agents to principals”.<sup>53</sup> Good deliberation requires that representatives “not intentionally deceive the public as to their future behavior”, while voters may also consider the “commonality of interest” between them and their representatives.<sup>54</sup>

*Substantive representation, and Pitkin’s final definition*

The fourth category of Pitkin’s analysis, substantive representation, encompasses all the ways in which representatives *act for* their constituents. Pitkin first enumerates the different adverbial expressions which we use to describe such action: acting in or on behalf of others, in the place or instead of others, on their authority, in their name, for their sake, in their interest, in accord with their desires, or needs, or interests etc.<sup>55</sup> She then points out the analogies that are used by literature to illuminate the activity of representatives. “The representative has been variously likened to or defined as an actor, an agent, an ambassador, an attorney, a commissioner, a delegate, a deputy, an emissary, an envoy, a factor, a guardian, a lieutenant, a proctor, a procurator, a proxy, a steward, a substitute, a trustee, a tutor, and a vicar”.<sup>56</sup> Discussing these analogies, Pitkin argues that the connection between the representative and the represented

52. Mansbridge, “Rethinking Representation”, 521.

53. *Ibid.*, 522.

54. *Ibid.*

55. Pitkin, *The Concept*, 118.

56. *Ibid.*

cannot be too remote, “like that between a corporation and an independent contractor hired to do a job”.<sup>57</sup> When serving the interests of the represented, the representative cannot act in the same manner as a teacher, a parent, a doctor, or a guardian, leaving the represented helpless, subordinate, taking them as incapable to look after their interest. This would not be representation. Nor can the representative be too subordinate to the wishes of the represented, for this would render him “a mere tool in the hands of others with no independence ... like the subordinate employee of a corporation—too subordinate to serve (or be thought of) as a substitute for the corporation itself”.<sup>58</sup> The representative should have some independence of judgment while determining the interests of the represented, but the same independence should be accorded to the represented, meaning that the views of the latter must be “potentially there and [be] potentially relevant”.<sup>59</sup> Conflicts between the views of the representative and the wishes of the represented would arise, yet they should not occur too often, since “normally a man’s wishes and what is good for him will coincide”.<sup>60</sup> When conflicts arise, an explanation on the part of the representative is called for.<sup>61</sup> “He must not be found persistently at odds with the wishes of represented without good reason in terms of their interest, without a good explanation of why their wishes are not in accord with their interest”.<sup>62</sup> Thus, the crucial elements are *interests* and *responsiveness*: “representing here means acting in the interest of the represented, in a manner responsive to them”.<sup>63</sup>

### **The concept(s) of representation in the Information Society**

#### *The relevance of information, communication, dialogue, and deliberation*

The main functions of the Media are related to information and to communication. When it comes to the New Media, one may also speak of online political discussion, dialogue, even deliberation, although most citizens would not say that they deliberate if asked about what they do when discussing online. All

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57. *Ibid.*, 140.

58. *Ibid.*, 140-141.

59. *Ibid.*, 155.

60. *Ibid.*, 156. Pitkin’s argument is based on a critique of the Burkean notion of objective, unattached interests. Endorsing the liberal view of interests, Pitkin argues that those should normally be determinable by their subjects. *Ibid.*, 168-208.

61. *Ibid.* 209.

62. *Ibid.*, 209-210.

63. *Ibid.*, 209.

these processes are generally important for representation, but the importance of each one for each type/concept of representation varies.

Thus, in its pure form, formalistic representation, understood as electoral authorization, can materialize even under conditions of minimal information and communication, without dialogue and deliberation. Of course, the quality of information is important for the political quality of the authorization, but from the legal point of view, which is the focal point of formalistic representation, the election of representatives is not problematic even if the constituents are massively misinformed. On the other hand, information and communication are central to traditional accountability, when representatives give answers for their performance and renew certain promises, while constituents check whether past promises were kept. Whether this interaction will include dialogue depends upon the contingency but is likely.

Descriptive representation requires only basic information about the characteristics of representatives, including their affiliation with political parties. Communication, dialogue, or deliberation between citizens and representatives could be irrelevant –though deliberation within the representative body is certainly important. In addition to basic information, surrogate representation could involve communication, as in the case of persons contributing money, who will expectedly communicate their concerns and demands to the representative.

Anticipatory representation requires that representatives be equipped with a good deal of information in the form of statistical data, to be retrieved, e.g., from opinion polls and surveys, in order to predict the voter's future preference. This type of representation may also include communication, perhaps even dialogue with the voters, if the representative wants to influence their future preferences. Symbolic representation can be achieved only by means of communicating the public image of the representative. His public appearances will naturally include speech, including slogans, but the contents of speech are not so important unless they harm the notion that the representative embodies the values, the wishes or the interests of the people.

If we look only at the relationship between the individual representative and his constituents, gyrosopic representation requires only basic information about the principles, the beliefs, and the personal traits of the former. Principles may indeed be derived from the political platform of the party to which the representative belongs, while the personal traits and particular beliefs can become known to the voter through information available in the public sphere.

Interaction between the voters and representatives is not so relevant, but this form of representation cannot survive without general public discussion on the positions of the representatives and of their political parties on certain issues. Finally, substantive representation, as per Pitkin's definition, requires information and some communication between the representatives and the represented, especially when their views are in conflict, in which case representation would also require some sort of dialogue, perhaps even deliberation.

The following table summarizes the conceptual map of the previous section together with my views about the relevance of information, communication, dialogue, and deliberation in each concept/type of representation.

Concept/Type	Basic Factors	Relevance of Information	Relevance of Communication	Relevance of Dialogue	Relevance of Deliberation
<b>Pitkin</b>					
Formalistic (authorization)	Elections, law	Low	Low	None	None
Formalistic (accountability)	Elections, giving account	High	Medium	Low	Low
Descriptive	Resemblance	Medium	None	None	None
Symbolic	Public image, embodiment, charisma	Low	High	None	None
Substantive	Responsiveness	High	High	Medium	Medium
<b>Mansbridge</b>					
Promissory	Promises, giving account	High	High	Low	Low
Anticipatory	Future preferences	High	Medium (potentially)	Medium (potentially)	Low (potentially)
Gyroscopic	Ideology	High	High (system-wide)	High (system-wide)	High (system-wide)
Surrogate	Commonality of interests, activism	Medium	Medium (potentially)	Low (potentially)	Low (potentially)

Table 1: Relevance of information, communication, dialogue and deliberation in concepts/types of representation

This table could be used to inquire the impact of the media upon *types* of representation, as the latter takes place in reality (objective dimension). This is still different from exploring the impact of the media upon the *concept(s)* of representation, i.e., upon how ordinary citizens perceive and potentially conceive it (subjective dimension). The strengthening of some types may correspond to a strengthening of the corresponding perception or conception in the minds of individuals, but this shall not be always (or even, often) the case, for



the discrepancy between the objective and the subjective dimension of political reality is a natural element of the latter. Besides, citizens may declare that a type of representation fits better their understanding of democratic politics, and still preserve in their minds and promote in their action other types/concepts, perhaps being unaware of their influence upon their understanding (the normative orientations of their environment may also play a crucial role). On the other hand, the thought and action of individuals cannot easily overcome the objective dimension of the *relevance* of the four elements in each type.

These are just some of the difficulties that empirical research in this field would face. The topic certainly deserves such research, but this is unavailable here. Thus, in the remainder of this essay I shall expose my personal observations, based on the foregoing table, by assuming that types grossly correspond to concepts. I shall first make some observations regarding the four elements (information, communication, dialogue, deliberation) in the Information Society. I shall do so with the help of recent literature, but also relying on the older insights of Scott Lash, one of the keenest theorists of Information Society. This analysis shall serve as an explanatory ground for an analysis of the influence of the New Media upon the concept(s) of representation.

#### *The four elements in the Information Society*

The New Media open new avenues for information, thus making citizens believe that they are better informed. However, the low –in many cases, very low– level of trust in the Media, old and new alike,<sup>64</sup> shows that citizens are also aware of the fact that the Media misinform, often disinform, and are used as tools of online propaganda,<sup>65</sup> with the help of computational bots,<sup>66</sup> trolls, cyber-warriors and other species of the Internet ecosystem. Besides, “[t]he constant bombardment by signals, the ads of consumer culture and the like does not constitute information. It is chaos, noise. It only becomes information when meaning is attached to it”.<sup>67</sup> In older times, this would require time and

64. See, e.g., the findings of the 2022 Digital News Report of Reuters Institute/University of Oxford, at <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/dnr-executive-summary>.

65. For a comprehensive review of relevant research, see Andrew M. Guess and Benjamin A. Lyons, “Misinformation, Disinformation, and Online Propaganda”, in Nathaniel Persily and Joshua A. Tucker (eds.), *Social Media and Democracy: The State of the Field, Prospects for Reform* (Cambridge: Cambridge University Press, 2020), 10-33.

66. Samuel C. Woolley, “Bots and Computational Propaganda: Automation for Communication and Control”, in Persily and Tucker (eds.), *Social Media*, 89-110.

67. Scott Lash, *Critique of Information* (London: Sage, 2002), 18.

some reflection, the interiority of a subject with certain capabilities: reason, imagination, judgment. In the Information Society “sense-making loses its interiority”, its depth, and becomes “sense-making ... *for others*”, communication.<sup>68</sup> “Sense-making or knowledge is the glossing, the account-giving of everyday activities that is inseparable from those activities. Reflexivity in the technological culture is not a separate process of reflection. There is no time, no space for such reflection. There is fusion of words and things, of thought and practice [...] In the technological culture, reflexivity becomes practice; it becomes communication”.<sup>69</sup> The New Media promised more and better information, but what they mainly delivered was communication networks.

The New Media also promised a more participatory *qua* dialogic democracy, and many citizens may feel that the promise was (at least partially) fulfilled.<sup>70</sup> However, in the “eco chambers” and the “epistemic bubbles” of the Internet,<sup>71</sup> dialogue is often little more than a combination of instantaneous emotional reactions with the mutual reinforcement of pre-existing opinions, including false or partial accounts of the political reality and demonization of the other. Online polarization<sup>72</sup> leaves little room for interaction between different political opinions.<sup>73</sup> Digital exclusion<sup>74</sup> and silence<sup>75</sup> deprive online public spheres of the voices of the ones who might most urgently need new political perspectives, or a real vindication of the old ones. Our continuous online presence seems to have a negative effect upon offline political conversation,<sup>76</sup> although there is

68. *Ibid.*, 17.

69. *Ibid.*, 18.

70. For a careful account, beyond optimism and pessimism, see Joshua Cohen and Archon Fung, “Democracy and the Digital Public Sphere”, in Lucy Bernholz, Hélène Landemore and Rob Reich (eds.), *Digital Technology and Democratic Theory* (Chicago and London: The University of Chicago Press, 2021), 23-61.

71. One of the first scholars who tracked and analysed these phenomena was a constitutional theorist, Cass R. Sunstein. See his *Republic.com* (Princeton, NJ: Princeton University Press, rev. ed. 2001). More recent analysis includes C. Thi Nguyen, “Echo Chambers and Epistemic Bubbles”, *Episteme* 17/2 (2020): 141-161; Pablo Barberá, “Social Media, Echo Chambers, and Political Polarization”, in Persily and Tucker (eds.), *Social Media*, 34-55.

72. Cass R. Sunstein, *#Republic: Divided Democracy in the Age of Social Media* (Princeton NJ: Princeton University Press, 2017); Barberá, “Social Media”.

73. Cf. Ignacio-Jesús Serrano-Contreras, Javier García-Marín and Óscar G. Luengo, “Measuring Online Political Dialogue: Does Polarization Trigger More Deliberation?”, *Media and Communication* 8/4 (2020): 63-72.

74. Seeta Peña Gangadharan, “Digital Exclusion: A Politics of Refusal”, in Bernholz, Landemore and Reich (eds.), *Digital Technology*, 113-140.

75. Mike Ananny, “Presence of Absence: Exploring the Democratic Significance of Silence”, in Bernholz, Landemore and Reich (eds.), *Digital Technology*, 141-166.

76. Keith N. Hampton, Inyoung Shin and Weixu Lu, “Social Media and Political Discussion:

reason to believe that online political myths and mimesis reinforce civic engagement.<sup>77</sup> However, myths and mimesis also contribute to the petrification of political choices and to the neutralization of rational deliberation.

Perhaps the latter is not compatible with the technological forms of life of the information age.<sup>78</sup> The most crucial condition of possibility for deliberation, the dualism between the thinking ego and objective reality, may have already given its place to the immanent plane of communicative networks. With smartphones locked in our hands, the Media have literally become the extensions of our sensorium, as per the prophetic insight of McLuhan,<sup>79</sup> with us becoming information hubs. Deliberation is also hampered by compression, which transforms “linear units of meaning, such as narrative and discourse”, into “abbreviated, non-linear non-extended and non-linear forms of meaning”.<sup>80</sup> Hyper-textuality is the synonym of non-linearity. Meaning in communication networks becomes nomadic. Thus, it cannot easily frame a common horizon, which is vital for deliberation. The New Media created spaces for discussion, but only enclaves for dialogue, and dispersed instances of deliberation, for the most part between experts who are anyway forced to suspend their judgment and critical thought in favour of their function as information hubs.

These enclaves, dispersed instances and uncritical expertise are still a significant contribution to democracy. “Theory can no longer be the representation, occupying another ontological level of critique. Theory can only be supplementary. As supplement it is only an additive to the immanent assemblage global networks. Such an additive can however contribute to reconfigure the entire assemblage”.<sup>81</sup>

### *The influence of the New Media upon the concept(s) of representation*

These observations may provide some explanation for the endurance of the less “rational”, so to speak, more archaic type/concept of political representation: symbolic representation. The rise of populism and of populist leaders,

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When Online Presence Silences Offline Conversation”, *Information, Communication & Society* 20/7 (2017): 1090-1107.

77. Sarah Brenne, “Political Discussion on Social Media and the Public Sphere”, *Sociology and Anthropology* 4/4 (2016): 270-275.

78. Lash, *Critique of Information*.

79. *Ibid.*, 176-181.

80. *Ibid.*, 18.

81. *Ibid.*, 181.

who are often very successful in exploiting the New Media,<sup>82</sup> is only a symptom of the resilience of symbolic representation, but a telling one.<sup>83</sup> Symbolism has changed, but only to a certain extent. In classic terms, political symbolism presupposes the tension between the feeling of affinity with the leader and the distance from him in reality. This is a condition of possibility for the mystical element of political symbolization. At the same time, this a structural feature of the audiovisual Media. These remain important in the Information Society – consider YouTube which constantly supplies news portals and the social media with content, which is then commented upon, processed and disseminated further etc. To be sure, symbols are trivialized today more easily, the distance of voters from leaders shrinks, while the way in which we relate to political reality also changes –we are no longer only the spectators and the readers, but we *may also* engage with our political leaders directly, perhaps in a dialogic, interactive manner.<sup>84</sup> This *possibility* is there, embedded in the New Media and in our expectations from, and our habitual understanding of, politics. The impact of symbolism is in many cases ephemeral, though no less powerful. Having said this, classic symbolism and mysticism remain a good part of (geo-)political reality –not to forget Trump or the very real, radical effects of the swastika up to date. Mysticism is fed by the religious aura of the “new” technologies.<sup>85</sup> Scott Lash argues that “the logic of flows disrupts and partly fragments the symbolic both on a national and individual level”.<sup>86</sup> However, it might as well be the case that the symbolic becomes flowing without losing its initial subsistence and power. The symbolic flows from the Internet through smartphones into our bodies, undermining the other meaningful activities of the mind.

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82. For social media and populism, see the special issues of *Information, Communication & Society* 20/9 (2017): 1279-1444; and *Media, Culture & Society* 40/5 (2018): 742-791. See also Toril Aalberg, Frank Esser, Carsten Reinemann, Jesper Stromback and Claes De Vreese (eds.), *Populist Political Communication in Europe* (New York: Routledge, 2018); Benjamin Moffitt, “Populism and Media in Western Europe”, in Carlos de la Torre (ed.), *Routledge Handbook of Global Populism* (New York: Routledge, 2019), 235-248. From the viewpoint of general theory on populism, see Andrew Arato and Jean L. Cohen, *Populism and Civil Society: The Challenge to Constitutional Democracy* (New York: Oxford University Press, 2022), 48-52; Urbinati, *Me the People*, 177-189.

83. For populism and representation as embodiment, with reference to Pitkin’s analysis of symbolic representation, see Urbinati, *Me the People*, 113-117, 125-127.

84. Cf. Lash, *Critique of Information*, 174.

85. See Philippe Breton, *Le culte de l’Internet: Une menace pour le lien social?* (Paris: La Découverte, 2000); Giulia Evolvi, “Religion and the Internet: Digital Religion, (Hyper)mediated Spaces, and Materiality”, *Zeitschrift für Religion, Gesellschaft und Politik* 6 (2022): 9-25.

86. Lash, *Critique of Information*, 112.

Another enduring meaning/type of representation is the one associated with authorization and elections, i.e., formalistic representation. Again, populism provides a good showcase. Its authoritarian tendencies are well documented,<sup>87</sup> but, as even critics hasten to add, authoritarian populism uses extensively and in some cases thrives on elections, and it has its own constitutional politics<sup>88</sup> –hence terms such as competitive or stealth authoritarianism.<sup>89</sup> If elections cannot stop authoritarian practices, if constitutionalism can become abusive and still survive,<sup>90</sup> if the façades of representative democracy remain intact while democratic infrastructures and values are dismantled from within, then it seems that the combination of formalistic with symbolic representation, a defining trait of populism, is sufficient for the resilience of Leviathan –a regime of embodiment and of command.<sup>91</sup> Hobbesian sovereignty and classic *raison d’État* are alive and well, in only apparent contradiction to the conditions of the global village, and of globalisation. In this regard, formalistic representation is subservient to symbolic representation. Political authority in the form of reason-less command is favoured by the indifference of networked communication to reasons and to discourse. Elections become a supplement of political life producing only noise with little if any import for the justification of political decisions.

On the other hand, resistance using the New Media is also a structural feature of the Information Society. Examples abound on every level of political action. The Arab Spring, the Black Lives Matter movement in the US, or the recent mobilization of women in Iran are just some prominent cases. Reason survives in protests supported by the New Media and in online demonstrations. This is often taken as the response of the people to the deficiencies of responsive representation. Governments and parliaments may also respond or fail to do so. This interaction is a type of dialogue embedded both in the techno-political condi-

87. See Arato and Cohen, *Populism*; Pippa Norris and Ronald Inglehart, *Cultural Backlash: Trump, Brexit, and Authoritarian Populism* (New York: Cambridge University Press, 2019); Bojan Bugarič, “Central Europe’s Descent into Autocracy: A Constitutional Analysis of Authoritarian Populism”, *International Journal of Constitutional Law* 17/2 (2019): 597-616; Federico Finchelstein, *From Fascism to Populism in History* (Oakland, California: University of California Press, 2017).

88. See, e.g., Arato and Cohen, *Populism*, 9-11.

89. Ozan O. Varol, “Stealth Authoritarianism”, *Iowa Law Review* 100 (2015): 1673-1742.

90. For abusive constitutionalism, see Rosalind Dixon and David Landau, *Abusive Constitutional Borrowing: Legal Globalization and the Subversion of Liberal Democracy* (New York: Oxford University Press, 2021).

91. It is not by chance that the most powerful reactionary thinker of the twentieth century, Carl Schmitt, chose to focus on the symbolic aspects of Hobbes’ *Leviathan*. See Carl Schmitt, *The Leviathan in the State Theory of Thomas Hobbes: Meaning and Failure of a Political Symbol*, trans. George Schwab and Erna Hilfstein (Chicago: The University of Chicago Press, 2008[1938]).

tions of the Information Age and in our conception of political representation. Doubt on the ability of the latter to provide adequate responses to social needs is confronted either with the invocation of electoral authorization on the part of the representatives (which is often the case, and which is a quasi-authoritarian behaviour that highlights the dead-ends of the dialogic promise, opening the way to violence) or with more discussion presenting real responses: ones addressing the substance of the grievances. In either case, it seems that responsiveness in the Information Age can be initiated from both sides equally well. This is a reason for optimism, but if interactive responsiveness does not bring results, it may also become a vehicle for disillusionment, for the fetishization of communication technologies, for quasi-religious fanaticism fed by this fetishism, and for the vicious circle of violent (or not violent) demonstrations that are met with violent (and, more often than not, disproportionate) police reactions. This is also an interaction, but an unproductive one for democracy.

The New Media favour surrogate representation. Monetary contributions, translated into targeted political advertising, become more effective. The value of the work of volunteers on the domain of the Media increases. The voice of segments of the electorate that are not formally represented can reach representatives more easily, and their concerns can become important for all voters. The import of the New Media for descriptive representation is less obvious. With the help of journalism, the New Media make possible for the constituents to check the importance of resemblance in practice, by checking whether the acts of the representatives are really consonant with their traits, which voters considered important at the elections, including the affiliation of representatives with political parties and with intraparty ideological camps. On the other hand, the notion that individual representatives resemble us, ordinary people, has been repeated so much through targeted political advertising (which the New Media made possible) that it became mundane, if not indifferent. The inability to deliver results again reinforces the power of symbolic representation. Somewhat paradoxically, the latter is not facilitated only by the distance between the voters and the leaders in reality. Descriptive representation seems to have been realized in practice, diminishing the distance or the perceived difference between the representative and the represented. All the same, symbolism seems to be strengthened. The crucial factor lies elsewhere: other types of representation are emptied from the substance of politics. This is what strengthens symbolism. The concurrent prevalence of descriptive representation in practice does not do much to countervail this tendency.

The New Media make also easier to check whether promises have been kept, by making the relevant communicative material readily available whenever the opportunity of such a check emerges. However, the notion that promises should be kept goes hand in hand with the understanding that promises could never fully be, and are not usually, kept. Videos featuring first the promise and then a contradictory policy or statement can be easily made and be disseminated. Such videos abound in online news stories. Disillusionment regarding the ability of politicians to keep their promises translates into the sense that promissory representation is irrelevant. This sense has become a standard element of online political experience, and it harms the notion of accountability. On the other hand, another effect of online experience, the suppression of time, makes the experiencing of the periods of electoral representation longer both for the representatives and the represented. This opens space for anticipatory representation, which may include good portions of responsiveness and of attempts to explain why past promises were broken. From this viewpoint, the New Media seem to favour the substitution of anticipatory representation for promissory representation.

The kind of representation which could most forcefully countervail symbolic representation is gyroscopic representation. This type seems to reverse the logic of symbolism from within, putting principles and beliefs in the place of symbols. Gyroscopic representation fits well the fact that rationality in the Information Society is preserved in the form of circulating ideas.<sup>92</sup> Irrespective of whether they disinform, ideas tend to have meaning, and may be attached to representatives as such. But ideas in the Information Society are also things; indeed, things which are especially susceptible to reification and commodification. Hence the fact that gyroscopic representation is often reduced to marketing, pure and simple, deprived of dialogue, reflection, deliberation, creating space only for the expression of support on the part of the represented and for dogfights on the part of the representatives. The absence of meaningful communication between representatives and their constituents characterizes gyroscopic representation even in its ideal form. Mansbridge admits as much when she writes that in this

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92. See Lash, *Critique of Information*, 154. Lash aptly observes that “the very materiality of capitalism has led to the domination of its opposite, the idea. Here the process of accumulation led to its opposite: the impossibility of accumulation and the predominance of circulation (and networks) and dispersion of all accumulations [...] Things don’t accumulate in networks. They accumulate in reserves, in heaps. Things circulate in networks. But the core is the idea”. These are not ideas classically understood, but ideas immanent to things.

model, “[w]e may envision the candidates vying for election as a set of self-propelled and self-directed thinking, feeling and acting machines, from which the voter selects one to place in the system. After the selection, the self-propelled machine need not have no subsequent relation to the voter”<sup>93</sup>

The figure of a representative who is propelled only by his own principles and who is not being related to his constituents might be attractive for those scholars who disapprove of the notion of political mandates when speaking of representation. However, if generalized, this condition may also result in the neutralization of all types and meanings of representation that presuppose communication, dialogue and deliberation between the representatives and the represented. This would in turn favour symbolic representation. The said scholars would certainly not like these effects. As critics of political mandates, they are also critics of populism, and as we saw, the latter relies heavily on symbolic representation. In general, the notion of representatives as machines and the notion of elections as a black box could mean the end of political representation as such. Representation would become nominal and in this sense “symbolic”. If gyroscopic representation is to countervail symbolic representation –and I believe that it can–, it must always be supplemented by some kind of substantive representation, identical or similar to the one favoured by Pitkin. This is perhaps a realistic expectation.

### **Concluding thoughts**

In the last three decades, many political and constitutional theorists have invested (heavily) in the idea of deliberative democracy. This idea today animates the work of many critics of populism. Without underestimating the constructive role of the elements of deliberative democracy (public reason, pluralism, inclusive debates, informed choices, equality of the participants in the dialogue, overlapping consensus over the rules of the game etc.) for the purposes of theorization, one may still question the sufficiency of the idea of deliberation both as an analytical tool and as a normative orientation which might help face what is often termed as crisis of representative government. Conceptual work is fruitful here. It brings to the fore types of representation that are not based on deliberation, but which are not inimical to it either. More generally, the conceptual work helps avoid fundamentalism in the sense of pinning our theoretical constructions to one idea alone.

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93. Mansbridge, “Rethinking Representation”, 521.



Of course, conceptual work can hardly be separated from normative orientations. This essay is a good example. The reader will already have tracked an antipathy towards symbolic representation and a preference for the other, more “rational”, so to speak, concepts/types of representation. An additional remark is thus due: Notwithstanding its pernicious effects, symbolic representation is indispensable for democracy, for political societies as such. Without political symbolism we can have neither a people who constitutes and sustains their political co-existence,<sup>94</sup> nor the communicative space that enables radical critique and constitutional imagination, the dream of collectively building a better future, which is a constitutive feature of any society.<sup>95</sup> The problem is not symbolic representation as such, but its excesses in the form of embodiment and personalistic politics, which tend to lead to regimes of authoritarian commandeering. Whether and how we can throw away the dirty water without dispensing of the baby is as always a difficult question.

Let me close this essay by noticing that if parliaments are to play any role in countervailing the authoritarian tendencies that symbolic representation feeds, they must emerge as sites of counter-power.<sup>96</sup> In order to see this happening, parliaments must become protagonists, even pioneers of online political communication. The designers of their web-platforms should abandon the complacency of officialdom and should create generous tools to reach the citizens, offering them the opportunity to be (really) heard in the (real) parliament. The citizens will surely support such initiatives, but there is another crucial condition to avoid their indifference: parliaments should cease to be the long hand of governments and should become a stronghold of protestation and contestation, of real parliamentary control. If communication is to be political, it cannot be *only* a vessel or a surface (or a symbol). It must have depth. This requires strength, critique and opposition, fruitful public policies and voices, the substance of politics. I am afraid that this is the crucial failure of politics in our times. And it is one in which everyone participates, though not equally.

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94. Martin Loughlin, “The Concept of Constituent Power”, *European Journal of Political Theory* 13/2 (2014): 218-237; Margaret Canovan, *The People* (Cambridge: Polity Press, 2005); Kevin Olson, *Imagined Sovereignities: The Power of the People and other Myths of the Modern Age* (Cambridge: Cambridge University Press, 2016).

95. Hans Lindahl, “Democracy and the Symbolic Constitution of Society”, *Ratio Juris* 11/1 (1998): 12-37 (drawing from Lefort).

96. For this concept, see Pierre Rosanvallon, *La Contre-Démocratie: La politique à l'âge de la défiance* (Paris: Seuil, 2006).

# LEARNING FROM THUCYDIDES: A CHECK-UP OF THE ECOSYSTEM OF DEMOCRACY IN TIMES OF DIGITAL TRANSFORMATION

*Franck Debié*



One usually defines democracy by rules and roles, institutions and processes, checks and balances in the political sphere. The impact of the digital transformation on these has been well covered during our very inspiring debate in this cradle of the modern Hellenic democracy. But democracy also defines itself by the type of society it is associated with and which it contributes to shape. Since the collapse of the totalitarian states in Europe, we have been used to associate the liberal democratic experience with the norms and values of the “open society”. Already in the antiquity, democracy was associated with – and even considered as responsible for – a special social ecosystem. Who would not wish to recall within these walls the ecosystem of Athenian democracy as defined by Thucydides in the so-called “*oratio* of Pericles” pronounced in the honour of the first victims of the Peloponese War?<sup>1</sup>

[In the Athenian democracy] All men are on equality for the settlement of their private disputes ... One is preferred for public honours not because he belongs to a particular class but because of personal merits. No one is barred from a public career because of the obscurity of his rank if he has it in him to do the state a service. Not only in public life, we are liberal but also when it regards our freedom from suspicion of one another in the pursuit of private life [...] In our public life, we are restrained from lawlessness chiefly through the reverent fear, for we render obedience to those in authority and to the laws, and especially to those laws which are ordained for the succour of the oppressed and those which, although unwritten, bring upon the transgressor a disgrace which all men recognize.

The *oratio* provides an extraordinarily concise checklist of the features of the social ecosystem that are associated with and derive from Athenian democracy. They include:

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1. Thucydides, *History of the Peloponese War*, edited by C.F. Smith Book II, XXXVIII, (Cambridge, MA 1928); the translation was selected by the Hellenic Parliament for its special issue of the *Oratio*, Athens 1998.

- a. equal treatment of all (? no, just men) citizens;
- b. meritocracy;
- c. equal access to public participation;
- d. respect for privacy;
- e. social responsibility;
- d. self-regulation of society based on common ethics.

For the sake of our debate today, I would propose to also double check what the impact of digital transformation is on these features of democracy. Does digital transformation of the capitalist economy change, reinforce or hinder the above-mentioned social features implicitly expected from a democracy, still nowadays?

For instance, one could make the case that (peer) pressure through social media and the impact attributed to whistle-blowers help in principle to denounce unequal treatment, discrimination or abuses against minorities and/or the “oppressed”. This may develop in society a wider awareness of social responsibility and increase the demand for more social laws.

In addition, one could see the various attempts by the digital at local level to promote more participative democracy as a way to enlarge access to participation in public affairs and to identify new talents able to contribute to the community.

At the same time, one may worry of the impact of digital transformation on the respect for privacy, and the potential development of a surveillance society in which central control replaces common ethics and where social conformism becomes omnipresent, where individuals or minority groups do not have a right to dissent.

One can debate whether social media has really opened the closed doors of the political sphere –including its usual stakeholders, notably the political parties, the media tycoons and the high levels of administration– or whether it has just created an illusion of influence and participation for thousands of bloggers.

There is even a legitimate fear that new “political entrepreneurs” able to invest in successful campaigns using sophisticated analytics, social media, and slanders on the net against their competitors may kidnap the public debate, capture for a lasting period a large share of the public opinion, and destroy meritocracy in public offices in favour of their affiliates.

We do not have the time at this conference to go through a detailed assessment of the digital transformation on all of the social features of democracy

identified by Thucydides. However, my plea remains that we do not forget to also go through such a checklist whenever we discuss the future of democracy in the digital age.

What already seems obvious at this stage is that the potential of the digital transformation to have a positive impact on the social ecosystem of democracy will not be fully unlocked if there is not a new push for education, on the one hand, and a continued fight against corruption and clientelism, on the other hand.



PART II

THE NEED FOR ADJUSTMENT



# DEMAGOGUERY, TECHNOLOGY, AND COGNITION: ADDRESSING THE THREATS TO DEMOCRACY

Stephan Lewandowsky\*



Numerous indicators suggest that democracy is under threat,<sup>1</sup> including in Europe. In 2020, *The Economist's* democracy index determined that one EU member state, Hungary, was no longer a democracy.<sup>2</sup> Throughout Europe, populist movements – mainly, but not exclusively, on the political right– have pitted “the people” against a presumed “elite” that is variously constructed as including mainstream media, politicians, experts, scientists, and academics.<sup>3</sup> The COVID-19 pandemic has put further pressure on societies by requiring restrictions on social behaviours to control the pandemic that are unprecedented in democracies and that may facilitate autocratization.

Although symptoms and causes of these trends are intertwined and difficult to tease apart, there is little doubt that wilful disregard of evidence and expertise,<sup>4</sup> accompanied by a flood of misinformation –on social media, in hyper-partisan news sites, and in political discourse– are at the heart of the challenge to democracies.<sup>5</sup> Misinformation matters: Exposure has been shown to make a

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1. Freedom House, *Freedom in the World 2020: A leaderless struggle for democracy* (Tech. Rep. 2020), at [https://freedomhouse.org/sites/default/files/2020-02/FIW\\_2020\\_REPORT\\_BOOKLET\\_Final.pdf](https://freedomhouse.org/sites/default/files/2020-02/FIW_2020_REPORT_BOOKLET_Final.pdf), accessed 7 March 2023; Anna Lührmann, Seraphine F. Maerz, Sandra Grahn, Nazifa Alizada, Lisa Gastaldi, Sebastian Hellmeier, Garry Hindle and Staffan I. Lindberg, *Autocratization Surges – Resistance Grows. Democracy Report 2020* (Tech. Rep.) (Gothenburg: V-Dem Institute, 2020).

2. Economist Intelligence Unit, *Democracy Index 2019: A Year of Democratic Setbacks and Popular Protest* (Tech. Rep.) (The Economist, 2020).

3. Silvio Waisbord, “The Elective Affinity between Post-truth Communication and Populist Politics”, *Communication Research and Practice* 4 (2018): 17-34 [doi: 10.1080/22041451.2018.1428928].

4. Taner Edis, “A Revolt against Expertise: Pseudoscience, Right-wing Populism, and Post-truth Politics”, *Disputatio* 9 (2020).

5. Stephan Lewandowsky, “Wilful Construction of Ignorance: A Tale of Two Ontologies”, in



causal contribution to populist voting in Italy,<sup>6</sup> to triggering ethnic hate crimes in Germany and Russia,<sup>7</sup> and it has been shown to set political agendas.<sup>8</sup> Misinformation is particularly problematic because it has longer-term consequences: false information lingers in memory even if people acknowledge, believe, and try to adhere to a correction.<sup>9</sup> Lingering misinformation, in turn, can be politically consequential, for example when corrections of politicians' falsehoods do not affect people's feeling about the politician or their voting intention.<sup>10</sup>

Misinformation, however, does not exist in a vacuum: misinformation is disseminated (sometimes intentionally, in which case it is best referred to as *disinformation*) and it is consumed and shared by the public.<sup>11</sup> To understand the effects of misinformation on democracy thus requires an understanding of the processes of dissemination and consumption. In this chapter, I focus on two important drivers of misinformation spread and how they interact with human

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Ralph Hertwig and Christoph Engel (eds.), *Deliberate Ignorance: Choosing Not To Know* (Cambridge, MA: MIT Press, 2020), 101-117; Silvio Waisbord, "Why Populism is Troubling for Democratic Communication", *Communication, Culture and Critique* 11 (2018): 21-34 [doi: 10.1093/ccc/tcx005].

6. Michele Cantarella, Nicolò Fraccaroli and Roberto Geno Volpe, "Does Fake News Affect Voting Behaviour?", *SSRN Electronic Journal* (2020) [doi: 10.2139/ssrn.3629666].

7. Leonardo Bursztyjn, Georgy Egorov, Ruben Enikolopov & Maria Petrova, *Social Media and Xenophobia: Evidence from Russia* (National Bureau of Economic Research, 2019); Karsten Müller and Carlo Schwarz, "Fanning the Flames of Hate: Social Media and Hate Crime", *SSRN Electronic Journal* (2019) [doi: 10.2139/ssrn.3082972].

8. Chris J. Vargo, Lei Guo, and Michelle A. Amazeen, "The Agenda-setting Power of Fake News: A Big Data Analysis of the Online Media Landscape from 2014 to 2016", *New Media & Society* 20/5 (2018), 2028-2049 [doi:10.1177/1461444817712086].

9. Ullrich K. H. Ecker, Briony Swire and Stephan Lewandowsky, "Correcting Misinformation: A Challenge for Education and Cognitive Science", in David N. Rapp and Jason Braasch (eds.), *Processing Inaccurate Information: Theoretical and Applied Perspectives from Cognitive Science and the Educational Sciences* (Cambridge, MA: MIT Press, 2014), 13-38; Stephan Lewandowsky, Ullrich K. H. Ecker, Colleen M. Seifert, Norbert Schwarz, and John Cook, "Misinformation and its Correction: Continued Influence and Successful Debiasing", *Psychological Science in the Public Interest* 13 (2012): 106-131 [doi: 10.1177/1529100612451018]; Stephan Lewandowsky, Ullrich K. H. Ecker, and John Cook, "Beyond Misinformation: Understanding and Coping with the 'Post-truth' Era", *Journal of Applied Research in Memory and Cognition* 6 (2017): 353-369 [doi: 10.1016/j.jar-mac.2017.07.008].

10. Briony Swire, Adam J. Berinsky, Stephan Lewandowsky, and Ullrich K. H. Ecker, "Processing Political Misinformation: Comprehending the Trump Phenomenon", *Royal Society Open Science* 4/3 (2017): 160802 [doi: 10.1098/rsos.160802]; Briony Swire-Thompson, Ullrich K. H. Ecker, Stephan Lewandowsky, and Adam J. Berinsky, "They Might Be a Liar but They're My Liar: Source Evaluation and the Prevalence of Misinformation", *Political Psychology* 41/1 (2020): 21-34 [doi: 10.1111/pops.12586].

11. Stephan Lewandowsky, "Fake News and Participatory Propaganda", in Rüdiger F. Pohl (ed.), *Cognitive Illusions: Intriguing Phenomena in Thinking, Judgment, and Memory* (London: Routledge, 2022), 324-340 [doi: 10.4324/9781003154730-23].

cognition: First, I examine the role of demagogues; that is, political leaders who rely on false claims and promises, and emotive exploitation of people's prejudices, in order to gain power. How do they exercise power, and why do people accept demagoguery? Second, I examine the role of social media, focusing in particular on the role of algorithms. How does social media capture human attention? Why do people participate in sharing of misinformation?

### **21st century demagogues: divide and divert using social media**

Demagoguery has been a looming threat to democracy since ancient Greece. Demagogues exploit a fundamental weakness of democracy: because ultimate power is held by voters, ruthless politicians can appeal to voters not through reason, as is the idealized democratic norm, but through emotion and simplistic appeals to the "people" and against a presumed "elite".<sup>12</sup> Some of the most horrific events in human history –such as the Nazi genocide– have resulted from the mobilization of large segments of the public by demagogues in pursuit of violent conflict.<sup>13</sup> The social-media technology available in the 21st century has given demagogues powerful new tools with which to reach the public and set the agenda on a scale never seen before.

This can be a positive development: Leaders can explain their actions and policy proposals, and they can engage in meaningful ways with the public. During the early stages of the pandemic, many political leaders used social media to keep the public informed and up-to-date about COVID-19-related developments and restrictions.<sup>14</sup> However, leaders have also used social media for less benevolent purposes. For example, former US president Donald Trump has used Twitter to spread disinformation and to divide American society by insulting nearly 500 people, places, and things within two years of taking office.<sup>15</sup>

12. Marnie Lawler McDonough, "The Evolution of Demagoguery: An Updated Understanding of Demagogic Rhetoric as Interactive and Ongoing", *Communication Quarterly* 66/2 (2018): 138-156 [doi: 10.1080/01463373.2018.1438486].

13. Michael Bang Petersen, "The Evolutionary Psychology of Mass Mobilization: How Disinformation and Demagogues Coordinate Rather Than Manipulate", *Current Opinion in Psychology* 35 (2020) [doi: 10.1016/j.copsyc.2020.02.003].

14. Michael Haman, "The Use of Twitter by State Leaders and its Impact on the Public during the COVID-19 Pandemic", *Heliyon* 6 (2020), e05540 [doi: 10.1016/j.heliyon.2020.e05540]; M. Rev-eilhac, "The Deployment of Social Media by Political Authorities and Health Experts to Enhance Public Information during the COVID-19 Pandemic", *SSM - Population Health* 19 (2022), 101165 [doi: 10.1016/j.ssmph.2022.101165].

15. Jasmine C. Lee and Kevin Quealy, "The 598 People, Places and Things Donald Trump Has

Donald Trump has also demonstrably used Twitter to affect political agenda setting and to divert public attention from issues that were politically harmful to him. To illustrate, when the cast of the “Hamilton” Broadway play pleaded for a diverse America at the end of a performance attended by Vice-President elect Pence in late 2016, Donald Trump tweeted vigorously and critically and demanded an apology from the actors. The Twitter activity coincided with the publication of a \$25 million settlement of a lawsuit involving the defunct “Trump University”, which included a \$1 million penalty payment to the State of New York.<sup>16</sup> The politically damaging news about the settlement appeared to be largely drowned out by the Hamilton controversy. A Google Trends analysis revealed that the court settlement was of considerably less interest to the public than the Twitter event arising from Hamilton.<sup>17</sup>

The Hamilton affair is merely anecdotal. Systematic empirical evidence that Donald Trump used social media to divert attention from politically-inconvenient issues was provided by Lewandowsky, Jetter, and Ecker.<sup>18</sup> They explicitly tested the hypothesis that President Trump’s tweets diverted media attention away from news that can be assumed to be politically harmful to him. Politically-harmful news was operationalized as coverage in the main media (New York Times [NYT] and ABC News) of the Mueller investigation into potential collusion between the Trump campaign with Russia during the 2016 election. Lewandowsky and colleagues hypothesized that the more the ABC and NYT reported on the Mueller investigation, the more Trump’s tweets would mention keywords such as “jobs” or “China” that represented his political strengths. If that diversion to different issues were successful, then subsequent coverage of the Mueller investigation by ABC and NYT should be reduced. This pattern is precisely what was found by Lewandowsky and colleagues. Each additional ABC headline relating to the Mueller investigation was associated with 0.2 additional mentions of one of the keywords in Trump’s tweets. In turn, each ad-

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Insulted on Twitter: a Complete List” (2019), at <https://www.nytimes.com/interactive/2016/01/28/upshot/donald-trump-twitter-insults.html>, accessed 15 April 2023.

16. May Bulman, “Donald Trump ‘Using Hamilton Controversy to Distract from \$25m Fraud Settlement and Other Scandals’”, at <http://www.independent.co.uk/news/world/americas/donald-trump-hamilton-settlement-university-fraud-mike-pence-scandals-a7429316.html>, accessed 4 April 2023.

17. Lewandowsky et. al., “Beyond Misinformation”.

18. Stephan Lewandowsky, Michael Jetter, and Ullrich K. H. Ecker, “Using the President’s Tweets to Understand Political Diversion in the Age of Social Media”, *Nature Communications* 11 (2020): 5764 [doi: 10.1038/s41467-020-19644-6].

ditional mention of one of the keywords in a Trump tweet was associated with 0.4 fewer occurrences of the Mueller investigation in the following day's New York Times. This pattern did not emerge with placebo topics that presented no threat to the president, for example non-political issues such as football or gardening or other political topics such as Brexit.

Lewandowsky and colleagues thus presented empirical evidence in support of the hypothesis that President Trump's used Twitter to systematically divert attention away from a topic that is potentially harmful to him, which in turn appeared to suppress media coverage of that topic. It remains unclear whether Trump engaged in this behaviour intentionally or whether it reflected an intuition. It is clear, however, that Donald Trump was able to set the political agenda, contrary to the conventional wisdom that it is primarily the media, not politicians, that determine the agenda of public discourse in liberal democracies.<sup>19</sup>

Beyond affecting media coverage, Trump's misleading or false tweets, also tended to trigger supportive information cascades on social media propagated by his millions of followers. During the 2016 election campaign, Trump's tweets on average elicited three times as many retweets and likes as those by his opponent, Hillary Clinton.<sup>20</sup> Trump's ability to leverage social media in his support culminated in the violent insurrection on 6 January 2021. The armed assault on the Capitol was motivated by Trump's fabricated claim that his reelection had been "stolen" from him. Although this claim was shown to be false by virtually all mainstream media in the US and thoroughly dismissed by the courts, it was able to gather pace on social media.<sup>21</sup> In the 5 months following the 6 January insurrection, across 23 surveys, an average of 78% of Trump voters denied that President Biden was the legitimate winner of the election.<sup>22</sup>

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19. Gary King, Benjamin Schneer and Ariel White, "How the News Media Activate Public Expression and Influence National Agendas", *Science* 358 (2017): 776-780 [doi: 10.1126/science.aao1100]; Maxwell McCombs, "A Look at Agenda-setting: Past, Present and Future", *Journalism Studies* 6 (2005): 543-557 [doi: 10.1080/14616700500250438].

20. Jayeon Lee and Weiai Xu, "The More Attacks, the More Retweets: Trump's and Clinton's Agenda Setting on Twitter", *Public Relations Review* 44 (2018): 201-213 [doi: 10.1016/j.pubrev.2017.10.002].

21. Rita Kirk and Dan Schill, "Sophisticated Hate Stratagems: Unpacking the Era of Distrust", *American Behavioral Scientist* (2021) [doi: 10.1177/00027642211005002]; Luke Munn, "More than a Mob: Parler as Preparatory Media for the U.S. Capitol Storming", *First Monday* 26/3 (2021) [doi: 10.5210/fm.v26i3.11574].

22. Gary C. Jacobson, "Driven to Extremes: Donald Trump's Extraordinary Impact on the 2020 Elections", *Presidential Studies Quarterly* 51 (2021): 492-521 [doi: 10.1111/psq.12724].

Donald Trump is not the only politician to use social media to his advantage. A recent analysis of millions of tweets by members of both houses of the US Congress revealed a striking political asymmetry.<sup>23</sup> Republicans were found to share links to untrustworthy websites on Twitter 9 times more often than Democrats between January 2016 and March 2022. Superimposed on that absolute difference is a temporal trend of increasingly greater divergence between Republicans and Democrats. Whereas information quality shared by Democrats has remained stable (and very high), the proportion of untrustworthy sites shared by Republicans doubled between 2016-2018 and 2020-2022. This behavior of the political leadership may help explain why several big-data analyses of the American public's news diets have found Republicans (especially extreme conservatives) to be far more exposed to misinformation and far more willing to share false information on social media.<sup>24</sup> The behaviour of the political leadership can contribute to the observed asymmetry among the public in at least two ways: first, by directly providing misinformation to Republican partisans and, second, by legitimizing the sharing of untrustworthy information more generally.<sup>25</sup>

Politicians clearly exercise considerable power through social media. But politicians' social media behavior constitutes only one side of the equation: supplying diversion, divisive information, and disinformation can only be effective and politically useful if there are consumers who are willing to accept and, ideally, share the information. Why, then, do people willfully consume disinformation? Or are people simply being duped, and they are passive victims of politicians' misinformation? It turns out that there is evidence for both of those processes.

Consider first partisans' willingness to accept information as true that is unequivocally and visibly false. Within 24 hours of Donald Trump taking office, White House officials falsely claimed that more people attended Trump's

23. Jana Lasser, Segun Taofeek Aroyehun, Almog Simchon, Fabio Carrella, David Garcia and Stephan Lewandowsky, "Social Media Sharing of Low Quality News Sources by Political Elites", *PNAS Nexus* 1 (2022), pgac186 [doi: 10.1093/pnasnexus/pgac186].

24. Nir Grinberg, Kenneth Joseph, Lisa Friedland, Briony Swire-Thompson and David Lazer, "Fake News on Twitter during the 2016 U.S. Presidential Election", *Science* 363 (2019): 374-378 [doi: 10.1126/science.aau2706]; Andrew M. Guess, Jonathan Nagler and Joshua Tucker, "Less Than You Think: Prevalence and Predictors of Fake News Dissemination on Facebook", *Science Advances* 5 (2019), eaau4586 [doi: 10.1126/sciadv.aau4586]; Andrew M. Guess, Brendan Nyhan and Jason Reifler, "Exposure to Untrustworthy Websites in the 2016 U.S. election", *Nature Human Behavior* 4 (2020): 472-480 [doi: 10.1038/s41562-020-0833-x].

25. Lasser, Aroyehun et. al. "Social Media Sharing of Low Quality News Sources by Political Elites".

inauguration than any other previously. This claim was readily falsifiable by a range of evidence, including public transport data (Metro ridership) and photographs of the crowds on the National Mall during the inauguration. The false claim by the White House almost immediately became a prominent and polarizing issue. Schaffner and Luks conducted a study within two days of the controversy erupting that explored the impact of the administration's claim.<sup>26</sup> Participants were presented with two side-by-side photographs of the inaugurations of Barack Obama and Donald Trump, and had to identify the photo with more people in it. The difference in crowd size was so unambiguous that it was virtually impossible for good-faith responses to be incorrect. Indeed, only 3% of non-voters chose the incorrect picture. Among Trump voters, by contrast, this proportion was 15%. Given that the photos were unequivocal and the task trivial, Schaffner and Luks interpreted these results as revealing “expressive responding” of partisans. Instead of genuinely believing a misconception, partisans effectively chose to set aside unambiguous perceptual evidence and instead promulgated a politically-concordant falsehood –even if in this instance the “audience” was only an unknown experimenter. The proportion of people who were willing to do this meshes well with the proportion of people who have been observed to knowingly share false headlines.<sup>27</sup>

However, not all consumers of disinformation are willing participants in propaganda. Many people are exposed to disinformation and misinformation without actively seeking it out, but because content-curation algorithms are forcing the content on users.

### **Social media: attention and algorithms**

Journalists have long known that “if it bleeds, it leads.” People seek out news that is predominantly negative<sup>28</sup> or awe inspiring.<sup>29</sup> Online, users tend to share

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26. Brian F. Schaffner and Samantha Luks, “Misinformation or Expressive Responding? What an Inauguration Crowd Can Tell Us about the Source of Political Misinformation in Surveys”, *Public Opinion Quarterly* 82/1 (2018): 135-147 [doi: 10.1093/poq/nfx042].

27. Gordon Pennycook, Ziv Epstein, Mohsen Mosleh, Antonio A. Arechar, Dean Eckles and David G. Rand, “Shifting Attention to Accuracy Can Reduce Misinformation Online”, *Nature* 592 (2021): 590-595 [doi: 10.1038/s41586-021-03344-2].

28. Stuart Soroka, Patrick Fournier, and Lilach Nir, “Cross-national Evidence of a Negativity Bias in Psychophysiological Reactions to News”, *Proceedings of the National Academy of Sciences of the United States of America* 116 (2019): 18888-18892 [doi: 10.1073/pnas.1908369116].

29. Jonah Berger and Katherine L. Milkman, “What Makes Online Content Viral?”, *Journal of Marketing Research* 49 (2012): 192-205 [doi: 10.1509/jmr.10.0353].

messages that are couched in moral-emotional language.<sup>30</sup> By their very nature, digital media seem to amplify the role of emotion: the degree of moral outrage that is elicited by content online is considerably greater than for encounters in person or content in conventional media.<sup>31</sup>

This attentional bias is leveraged by social media platforms which exist only because our attention online has been commodified.<sup>32</sup> As a rule of thumb, when you use a “free” product online, *you* are the product. The more time users spend watching YouTube videos or checking their Facebook newsfeeds, the more advertising revenue is generated for the platforms. For the platforms, dwell time is the one and only currency that matters because it directly translates into advertising revenue. Platforms will seek to enhance dwell time by any means possible short of actually paying people to hang around.

It is unsurprising, therefore, that “fake news” and misinformation has become so prevalent online because false content –which by definition is freed from factual constraints– can exploit the human propensity to consume emotive and outrage-provoking content: misinformation on Facebook during the 2016 US presidential campaign was particularly likely to provoke voter outrage<sup>33</sup> and fake news titles have been found to be substantially more negative in tone, and display more negative emotions such as disgust and anger, than real news titles.<sup>34</sup> The platform’s algorithms are trained to be sensitive to negative emotions: a former Facebook employee and whistleblower, Frances Haugen, revealed to the public in 2021 how the newsfeed curation algorithm favoured material that made people angry over material that elicited a “like” by a factor of 5.<sup>35</sup> Facebook thus “systematically amped up some of the worst of its platform, making it more prominent in users’ feeds and spreading it to a much wider audience”.<sup>36</sup>

30. William J. Brady, Julian A. Wills, John T. Jost, Joshua A. Tucker, Jay J. Van Bavel, “Emotion Shapes the Diffusion of Moralized Content in Social Networks”, *Proceedings of the National Academy of Sciences of the United States of America* 114 (2017): 7313-7318 [doi: 10.1073/pnas.1618923114].

31. Molly J. Crockett, “Moral Outrage in the Digital Age”, *Nature Human Behaviour* 1 (2017): 769-771 [doi: 10.1038/s41562-017-0213-3].

32. Tim Wu, *The Attention Merchants* (London: Atlantic Books, 2017).

33. Vian Bakir and Andrew McStay, “Fake News and the Economy of Emotions”, *Digital Journalism* 6 (2018): 154-175 [doi: 10.1080/21670811.2017.1345645].

34. Jeannette Paschen, “Investigating the Emotional Appeal of Fake News Using Artificial Intelligence and Human Contributions”, *Journal of Product & Brand Management* 29/2 (2020): 223-233 [doi: 10.1108/jpbm-12-2018-2179].

35. Pekka Kallioniemi, “Facebook’s Dark Pattern Design, Public Relations and Internal Work Culture”, *Journal of Digital Media & Interaction* 5 (2022): 38-54 [doi: 10.34624/JDMI.V5I12.28378].

36. Jeremy B. Merrill and Will Oremus, *Five Points for Anger, One for a “Like”: How Facebook’s*

On YouTube, the recommender system is particularly important because by default, YouTube continues to play videos and present them to the user without an explicit request. There is now evidence suggesting that YouTube algorithms have actively contributed to the rise and consolidation of right-wing extremists in the US<sup>37</sup> and Germany.<sup>38</sup> A recent systematic review revealed that 14 out of 23 eligible studies implicated the YouTube recommender system in facilitating access to problematic content (e.g., extremist material), 7 produced mixed results, and only two did not implicate the recommender system.<sup>39</sup>

An over-arching difficulty in understanding algorithms and their effect on democracy is the lack of transparency and accountability. The delegation of choice from humans to algorithms under conditions of opacity and complexity raises questions about responsibility and accountability.<sup>40</sup> Who is responsible for a misinformation cascade? The human being who triggers it or the algorithm that is amplifying it in pursuit of user dwell time? This question is difficult to resolve unambiguously because the manufacturer or designer of the algorithm cannot predict its future behaviour in all circumstances. A designer may choose to weight anger during preceding engagements 5 times more than “likes” but that does not mean the designer knowingly facilitated misinformation cascades. It is therefore easy to claim that designers cannot be held morally or legally liable for the behaviour of their algorithms. This diffuse link between designers’ intention and the actual behaviour of an algorithm creates a “responsibility gap” that is difficult to bridge with traditional notions of responsibility.<sup>41</sup>

The responsibility gap is amplified by the lack of transparency: Algorithms make decisions without public oversight, regulation, or a widespread under-

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*Formula Fostered Rage and Misinformation* (2021), at <https://www.washingtonpost.com/technology/2021/10/26/facebook-angry-emoji-algorithm/>, accessed 4 April 2023.

37. Jonas Kaiser and Adrian Rauchfleisch, “Unite the Right? How YouTube’s Recommendation Algorithm Connects the U.S. Far-right” (2018), at <https://medium.com/@MediaManipulation/unite-the-right-how-youtubes-recommendation-algorithm-connects-the-u-s-far-right-9f1387c-fabd>, accessed 4 April 2023.

38. Adrian Rauchfleisch and Jonas Kaiser, “YouTubes Algorithmen sorgen dafür, dass AfD-Fans unter sich bleiben” (2017), at <https://www.vice.com/de/article/59d98n/youtubes-algorithmen-sorgen-dafur-dass-afd-fans-unter-sich-bleiben>, accessed 4 April 2023.

39. Muhsin Yesilada and Stephan Lewandowsky, “Systematic Review: YouTube Recommendations and Problematic Content”, *Internet Policy Review* 11 (2022) [doi: 10.14763/2022.1.1652].

40. Nicholas Diakopoulos, “Algorithmic Accountability”, *Digital Journalism* 3/3 (2015): 398-415 [doi: 10.1080/21670811.2014.976411].

41. Andreas Matthias, “The Responsibility Gap: Ascribing Responsibility for the Actions of Learning Automata”, *Ethics and Information Technology* 6 (2004): 175-183 [doi: 10.1007/s10676-004-3422-1].



standing of the mechanisms underlying the resulting decisions. Facebook's reliance on anger over likes would never have become public knowledge without a whistleblower. At present, algorithms are considered proprietary trade secrets and operate as black boxes where neither individual users nor society in general know why information in search engines or social media feeds is ordered in a particular way.<sup>42</sup> The problem is compounded by the inherent opacity and complexity of machine-learning algorithms,<sup>43</sup> such that even creators or owners of algorithms may not be fully aware of their functioning. For example, YouTube's recommender system learns approximately one billion parameters and is trained on hundreds of billions of cases.<sup>44</sup> Predicting the response of the system in any particular situation is thus far beyond human capacity.

At present, knowledge about an algorithm can only be obtained by "reverse engineering";<sup>45</sup> that is, by seeking to infer an algorithm's design based upon its observable behaviour. Reverse engineering can range from the relatively simple (e.g., examining which words are excluded from auto-correct on the iPhone)<sup>46</sup> to the highly complex (e.g., an analysis of how political ads are delivered on Facebook).<sup>47</sup> Reverse engineering has uncovered several problematic aspects of algorithms, such as discriminatory advertising practices and stereotypical representations of Black Americans in Google Search,<sup>48</sup> and in the autocomplete suggestions that Google provides when entering search terms.<sup>49</sup>

42. Frank Pasquale, *The Black Box Society* (Cambridge, MA: Harvard University Press, 2015).

43. Pau B. de Laat, "Algorithmic Decision-making Based on Machine Learning from Big Data: Can Transparency Restore Accountability?", *Philosophy & Technology* 31 (2018): 525-541 [doi: 10.1007/s13347-017-0293-Z].

44. Paul Covington, Jay Adams and Emre Sargin, "Deep Neural Networks for YouTube Recommendations", in *Proceedings of the 10th ACM conference on recommender systems - RecSys '16* (2016): 191-198 [doi: 10.1145/2959100.2959190].

45. Diakopoulos, "Algorithmic Accountability".

46. Michael Keller, "The Apple 'Kill List': What Your iPhone Doesn't Want you to Type" (2013), at <https://www.thedailybeast.com/the-apple-kill-list-what-your-iphone-doesnt-want-you-to-type>, accessed 4 April 2023.

47. Muhammad Ali, Piotr Sapiezynski, Aleksandra Korolova, Alan Mislove and Aaron Rieke, *Ad Delivery Algorithms: The Hidden Arbiters of Political Messaging* (Tech. Rep. 2019), at <https://arxiv.org/pdf/1912.04255.pdf>, accessed 4 April 2023.

48. Latanya Sweeney, "Discrimination in Online Ad Delivery", *Queue* 11 (2013): 1-19 [doi: 10.1145/2460276.2460278]; Safiya Umoja Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism* (New York: New York University Press, 2018).

49. Paul Baker and Amanda Potts, "'Why Do White People Have Thin Lips?' Google and the Perpetuation of Stereotypes via Auto-complete Search Forms", *Critical Discourse Studies* 10/2 (2013): 187-204 [doi: 10.1080/17405904.2012.744320].

In summary, much of the content consumed by the public is foisted upon them by opaque algorithms that are not subject to public scrutiny or accountability. What little we know about algorithms was obtained through painstaking reverse engineering or resulted from whistleblowing by former employees. That limited knowledge, however, should give rise to considerable concern and should stimulate action towards greater accountability. One step in this direction is the European Union's recent Digital Services Act, which came into force in October 2022, and which, among many other measures, requires large platforms to make available data to independent researchers to permit assessment of the risks and possible harms brought about by the platform's systems and to examine the accuracy, functioning, and testing of algorithms.<sup>50</sup>

### **Concluding comments**

There is little doubt that democracy worldwide is under threat. Even countries whose democracies had appeared stable for decades if not centuries, such as the United States, have experienced recent episodes of political upheaval with a distinctly undemocratic character. There are many reasons for these developments that are difficult to disentangle. Here I identified two contributing factors: first, the ability of political leaders to exploit social media to divert attention from politically-inconvenient events and to spread disinformation. Second, the pernicious interaction between human attention and content-curation algorithms employed by the platforms to maximize user engagement.

Identifying solutions to these trends is beyond the scope of this chapter, although it is not impossible to envisage an Internet that is compatible with democracy rather than at least partially antagonistic to it. At the scholarly level, Lewandowsky and Pomerantsev provide a sketch of what that Internet for democracy might look like and how it might empower users rather than exploit them through a web of opaque algorithms.<sup>51</sup> At the policy level, the EU's recent Digital Services Act provides a pointer towards the regulation necessary to rein in the toxic power currently held by democratically unaccountable platforms.

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50. Brandie Nonnecke and Camille Carlton, "EU and US Legislation Seek to Open Up Digital Platform Data", *Science* 375 (2022): 610-612 [doi: 10.1126/science.abl8537].

51. Stephan Lewandowsky and Peter Pomerantsev, "Technology and Democracy: A Paradox Wrapped in a Contradiction Inside an Irony", *Memory, Mind & Media* 1 (2022) [doi: 10.1017/mem.2021.7].



# POPULISM, POLARIZATION AND HUMAN RIGHTS: DOES THE FIGHT AGAINST POPULISM THREATEN LIBERAL DEMOCRACY ITSELF?

*Christos Papastylianos*



The rise of populist<sup>1</sup> political movements and parties challenges some of the key characteristics of democratic regimes and of liberal constitutional discourse. However, the response to these challenges may sometimes constitute a challenge to democratic regimes and liberal constitutional discourse too. The fight against populism might take the form of militant democracy or of severe restrictions upon rights which are considered cornerstones of liberal democracy.

Thus, the issue of the reaction against populism is not a simple one. The fight against populism is trapped between the paradoxes of self-destruction and self-injury of democracy.<sup>2</sup> Self-destruction occurs when some of the main components of liberal democracy such as freedom of speech and freedom of association can be used by political forces in a way that destroys democracy from within. Self-injury occurs when attempts to protect democracy lead to the elimination of some basic components of liberal democracy for the sake of democracy. The fight against populism results to the adoption of some measures which might turn a liberal political regime to an illiberal democracy. Fighting

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1. A clarification on the term populism is necessary. When I use the term populism I refer not to the rhetoric of political actors, but to populism as a form of political organization and action that prioritizes systemic changes through constitutional amendment or replacement, that dismantles the essential elements and values of liberal democracy. On the issue of the so-called structural populism and its differences from political populism which uses populist rhetoric but still engages in politics within the basic structure of constitutional democracy, see Stephen Gardbaum, "The Counter-Playbook: Resisting the Populist Assault on Separation of Powers", *Columbia Journal of Transnational Law* 59/1 (2020): 1-64 (3-4). Nevertheless, the distinction between the two forms of populism does not imply that political populism is not a threat to democracy. It only implies that the characteristics of such threat are different.

2. On this issue, see among others, Christóbal Rovira Kaltwasser, "Militant Democracy versus Populism", in Anthonoula Malkopoulou and Alexander S. Kirshner (eds.), *Militant Democracy and its Critics: Populism, Parties, Extremism* (Edinburgh: Edinburgh University Press, 2019), 72-91 (77-82).

“fire” with “fire”<sup>3</sup> may end up with the transformation of liberal democratic regimes to regimes that share some of the main characteristics of those ones who threaten liberal democratic rule.<sup>4</sup> Populists do not reject democracy per se. They reject only the components of democracy which act as barriers to the will of the people and make accountable those actors who represent such will in its purest form. Populism is not at odds with popular sovereignty and majority rule, but with liberal democracy as a form of governance that presupposes check and balances and limits upon popular sovereignty itself.<sup>5</sup>

Yet, populism should not be considered a mere rejection of some procedural aspects of liberal democracy. Populist perceptions of democracy undermine some of the intrinsic characteristics of liberal democracy, such as equal liberty among political actors “in a context of pluralism and dissent”.<sup>6</sup> The populist discourse, which favors unity instead of plurality of the people, may not influence the rights of participation to elections and referenda as such, but the equal conditions of opportunity to participate and affect the outcome of elections or referenda.<sup>7</sup>

As Claude Lefort indicated, elections prioritize the anonymity of people instead of presence. According to Lefort, the place of power in democracy is symbolically open, since it does not belong to anyone in particular.<sup>8</sup> Power claims in a democracy are not fixed, and they are always open to re-evaluation by those who are symbolically considered the subjects of democracy.<sup>9</sup> However, a necessary ingredient of such vision about democracy is the rejection of truth as a transcendental concept and the embracing of relativism as a means to allowing minorities to challenge the majority.<sup>10</sup>

3. Karl Loewenstein, “Militant Democracy and Fundamental Rights II”, *American Political Science Review* 31/4 (1937): 638-658 (656).

4. On the main characteristics of militant democracy as a means to defend democracy against its enemies, see Loewenstein, “Militant Democracy and Fundamental Rights II”, 655-658; Jan Werner Müller, “Protecting Popular Self-government from the People? New Normative Perspectives on Militant Democracy”, *Annual Review of Political Science* 19 (2016): 249-265.

5. Kaltwasser, “Militant Democracy versus Populism”, 84.

6. Maria Paula Saffon and Nadia Urbinati, “Procedural Democracy, the Bulwark of Equal Liberty”, *Political Theory* 41/3, (2013): 441-482, (442).

7. Saffon and Urbinati, “Procedural Democracy, the Bulwark of Equal Liberty”, 442.

8. Claude Lefort, “The Question of Democracy”, in Claude Lefort (ed.), *Democracy and Political Theory* (Minneapolis: University of Minnesota Press, 1988), 9-21 (18-19).

9. Luigi Corrias, “Populism in a Constitutional Key: Constituent Power, Popular Sovereignty and Constitutional Identity”, *European Constitutional Law Review* 12 (2016): 6-26 (21); Hans Kelsen, “On the Essence and Value of Democracy”, in Arthur Jacobson and Bernhard Schlink (eds.), *Weimar: A Jurisprudence in Crisis* (University of California Press, 2002), 84-110 (84).

10. Corrias, “Populism in a Constitutional Key: Constituent Power...”, 25.

In this context, the role of individual rights (such as freedom of speech or association) is very crucial, since their implementation enables people to affect and constantly re-evaluate decisions, which are the outcome of procedures that constitute the essence of the rights to political participation (such as the right to vote in elections or referenda). The protection of minorities gives them the opportunity to voice their perception about the ingredients that constitute the identity of people. The political unity of people is not a fixed and predetermined concept. It is always an open-ended issue. Thus, the effective implementation of individual rights makes the truth-to-be-built, and not necessarily the existing one, the foundation of any democratic polity.<sup>11</sup>

An objection that might be raised is that the above-mentioned conception of democracy is too procedural and lacks a substantive core. However, the procedural aspects of such conception are interlinked to substantive ends. A procedural conception of democracy, at least in the form portrayed above, is based upon the principle of equal liberty. Equal liberty secures not only the participation of all individuals in the decision-making process but also their equal opportunities to affect the outcome of the process. Individual rights are considered not only in terms of negative freedom (abstention of state intervention), but also as the means to an equal distribution of political power among individuals.<sup>12</sup> Political power is the power of individuals to decide on collective matters and to simultaneously contest their decisions. Procedural democracy reads truth as a contestable concept but also brings in the dimension of temporality, as far as the probable mistakes are concerned, since any decision can be revised through the relevant procedures. Participation in decision-making is important but the effective protection of rights and the establishment of an institutional framework, which allows the dissent voices to influence the outcome of the decision-making process and its potential re-evaluation in future, are of equal importance.<sup>13</sup> However, procedural democracy is not free of substance or free of any sense on “correctness”. The democratic procedures of making decisions cannot violate the rights that make possible the equal distribution of political power among individuals. Further on, the mechanisms, which are in charge of checking such violations and act as a “corrective” factor, are not part of democratic process and majority rule.<sup>14</sup> In liberal democratic regimes, the

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11. *Ibid.*, 25.

12. Saffon and Urbinati, “Procedural Democracy, the Bulwark of Equal Liberty”, 460.

13. *Ibid.*, 461.

14. On the role of such mechanisms, see Jon Elster, *Ulysses Unbound: Studies in Rationality, Precommitment, and Constraints* (Cambridge: Cambridge University Press, 2000), 94-95, 99-100.

operation of democracy is framed by such institutions, which are entitled to assess the quality of the outcomes, through a review that secures that the enabling condition of democracy (rights) remain intact from the purely procedural and majoritarian aspects of democracy.

Nevertheless, a weak point of the procedural approach is that by attributing a vital role to the process itself, a clear solution to the fact that such processes might lead to the seizure of power by anti-democratic political entities is still not provided.<sup>15</sup> Since the procedural conception of democracy is value-neutral and the decision-making process that it favors is based upon majority rule, it is not clear what the means of defense could be in case a populist majority gains control of the Parliament and other key institutions, or even opts to change the rules of the game through an amendment of the Constitution that lies within the limits of legality prescribed by the Constitution itself.

### **How does populism threaten liberal democracy?**

Populism, as already mentioned, is not against the popular component of democratic governance. It does, however, prioritize popular will over the Constitution as a means of limiting political power through a system of check and balances. The populist perception of Constitutions favours the pure procedural aspect of democracy but not the substantive counterparts of the processes. Let us think of the way that the Hungarian and Polish governments managed to alter the composition of the Constitutional and Supreme Court respectively.<sup>16</sup>

The deconstruction of courts targets directly the perception of democracy as a symbolically open place of power. The main component of such perception is that each individual voice should have an opportunity to be expressed and heard. Judicial review does not only fulfill the role of a watchdog. Judicial review also secures a right to “voice a grievance”, a right of someone whose rights have been violated to revoke the violation.<sup>17</sup> Thus, the dismantling of

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15. Sujit Choudry, “Transnational Constitutionalism and a Limited Doctrine of Unconstitutional Constitutional Amendments: A Reply to Rosalin Dixon and David Landau”, *ICON* 15/3 (2017): 826-832 (828).

16. The technique of packing supreme or constitutional courts has also been followed by other populist regimes, such as Turkey, Venezuela. See David Landau, “Populist Constitutions”, *University of Chicago Law Review* 85/2 (2018): 521-544 (535); Kim Lane Scheppele, “Autocratic Legalism”, *University of Chicago Law Review* 85/2 (2018): 545-584 (548-552).

17. Yuval Eylon and Alon Harel, “The Right to Judicial Review”, *Virginia Law Review* 92 (2006): 991-1022.

courts entails that any component of democracy should be subject to majority rule. As the example of court dismantling indicates, the flawed aspect of the populist perception of democracy is not the emphasis on majority rule per se, but the perception that majority rule should not be an open-ended project which allows for the formation of different majorities during its time span. In the liberal democratic model, majorities are always temporal and not fixed or predetermined. The whole constitutional design aims to keep the channels of replacing the current majority with a new one open.<sup>18</sup> On the contrary, populist discourse considers its own majority final and complete.<sup>19</sup> This is why the traditional approach of Constitutions as barriers to political power is not very popular among populists.

However, it is worth noting that popular sovereignty is not the sole issue on which populist discourse differentiates itself from the liberal democratic discourse about the role of Constitutions. Populist discourse offers a particular reading of constituent power and of constitutional identity as well.<sup>20</sup> Constituent power as a form of an unlimited power of the people fits into the populist discourse about the primacy of the people over procedures. The populist perception of constituent power emphasizes the immense presence of people on which its limitless character relies. Since constituent power stems from the people, it can take any form, as long as it is the outcome of popular will and can make decisions on any matter and not solely on the substance of the Constitution. As David Landau indicates, constituent assemblies often exercise “ancillary” powers, such as legislating, and formulating new institutions or annulling old ones, in order to stabilize a new regime.<sup>21</sup>

For instance, in Hungary, the founding of a new Constitution was made possible not through the election of a Constituent Assembly but through the use of the amending formula of the Hungarian Constitution.<sup>22</sup> According to the

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18. Nadia Urbinati, *Me the People: How Populism Transforms Democracy* (Cambridge Massachusetts, Harvard University Press, 2019), 91.

19. According to populists, populist movements and parties always represent the majority of the people even if they are in opposition, because what counts is not the plurality of the people which makes the unity of the people an open-ended project but a predetermined and fixed unity, which determines as “true” majority only the majority that expresses such unity. *Ibid.*, 92. As Jan Werner Müller indicates, populists are not against representation and election as means of ruling; they are mainly against plurality and disagreement. Müller, “Protecting Popular Self-government”, 262.

20. Corrias, “Populism in a Constitutional Key: Constituent Power...”, 9.

21. Quoted by Yaniv Roznai, in Yaniv Roznai, “The Sovereign is He who Holds the Constituent Power?”, *Etica & Politica / Ethics & Politics*, XXIII / 3, (2021): 247-260, (250).

22. Nevertheless, there is a difference between Hungary and Poland, although both are usually



Hungarian Constitution which was valid during the 2010 election, in which FIDESZ (the ruling party in Hungary since 2010) received 53 per cent of the popular vote and 68 per cent of the seats in the Parliament, the Constitution could be amended by a two-thirds majority. However, the Constitution also provided for the replacement of the entire Constitution by a four-fifths majority of the Parliament. FIDESZ used its two-thirds majority in the Parliament to amend the provision for the four-fifths majority that was necessary for drafting a new Constitution, and switched the threshold for the replacement of the constitution to a two-thirds majority. Thus, the amendment of the Constitution that was valid at the time and the drafting of a new one could be completed by the same majority. Since, according to the populist discourse, the majority is equated with the totality of people, the winner takes it all.

The above-mentioned process blurs the line between amendment and constituent power by decreasing the popular support that is necessary for a total constitutional change. In the name of constituent power, the constitution-making process keeps its unlimited character but not the totality of people's representation for which its exercise is asserted. In fact, it transforms the limited-amendment process to an unlimited one. The Parliament elected as a Parliament that during the elections had only acquired legislative and amendment competences, also acquired constituent power after the amendment of the four-fifths formula. The new Constitution was drafted by the FIDESZ majority through a fast-tracked parliamentary procedure that does not presuppose any public consultation. The only public consultation that took place was the distribution of a questionnaire to the public, which was composed of eight questions. Even though some of the main changes to governmental organization were not included to the questionnaire, the results were due only after the adoption of the new Constitution. Thus, a majority of 53 per cent of the voters became

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considered to be two examples of abusive constitutionalism. In Hungary, the changes that undermined the liberal democratic order were made possible due to the ruling party acquiring through elections the majority to change the Constitution. In the Polish case, the ruling party did not gain the required majority to change the Constitution, and the transformation of the previous constitutional order was made by ordinary laws, enacted by parliament through the mere numerical majority. Most of these laws lead to the disempowerment of the Constitutional Court, turning it into a government's enabler which does not exercise any kind of effective constitutional scrutiny. Such practice is a clear abuse of the Constitution, since the newly enacted laws degrade the Constitution. Thus, the term *abused* instead of *abusive* constitutionalism matches the Polish case better. On this issue, see Grazyna Skąpska, "Abuse of the Constitutions as a means of Political Change: Sociological Reflections on the Crisis of Constitutionalism in Poland", *Polish Sociological Review* 208 (2019): 421-438 (424-430).

eligible to change the entire constitution. However, as Colon Rios indicates, the exercise of constituent power does not imply an absolute “jurisdiction to transform any will to law”. The exercise of constituent power which does not constitute a violent break to the existing constituted order, “always take[s] place based on a commission”.<sup>23</sup>

This commission is to draft a new Constitution. Yet, there should be a delegation by people on such commission. Otherwise, elections can act as a plebiscite, which in advance attributes a free mandate to the elected body to do whatever it wishes, without any prior knowledge of the people who have voted, about the content of the mandate.<sup>24</sup> A prior knowledge of people on what is going to be represented is crucial. This is important, because there should be a minimum responsiveness between the representatives and the voters, but responsiveness presupposes that people’s interests are receptive to representation.<sup>25</sup> Representation does not take place in a vacuum. An abstract will for a new Constitution expressed via elections does not offer any clue about the content of such Constitution. Representation refers to the role of the representative as an agent of his/her constituencies.<sup>26</sup> Even if we consider the exercise of constituent power to be an empirical matter that links the validity of the new Constitution to the “roughly consensual circumstances”<sup>27</sup> on which its founding process relies, constituent power should be a manifestation of “we the people” instead of “oui” the people.<sup>28</sup> Thus, the plurality of the people’s composition should be reflected

23. Joel Colón Ríos, *Constituent Power and the Law* (Oxford: Oxford University Press, 2020), 263.

24. In fact, as Nadia Urbinati indicates, for populists, peoples’ opinion is important only during elections. Any victory during national elections is considered a source of free and unmediated delegation for the future. Urbinati, *Me the People*, 131-132.

25. Hanna F. Pitkin, *The Concept of Representation* (Berkeley/Los Angeles/London: University of California Press, 1967), 152-153.

26. The response to the question what representation stands for, does not only refer to the subject of representation. Of course, the subject of representation is the people. However, the responsiveness between the representatives and the represented is feasible only when the subject matter of representation is defined to a certain extent, before the commencement of the Constitution-making process.

27. The measurement of consensus is not an easy task. Yet, any measurement presupposes at least a point of reference regarding what is countable through measurement. For instance, when the issue at stake is the mandate of a Constituent Assembly, do we measure the consent of the people to a vaguely proclaimed will for the total change of a constitution or to a change whose subject matter is known to the people before the election of the Constituent Assembly and the commencement of the Constitution-making process?

28. Yaniv Roznai, “‘We the People’, ‘Oui, the People’ and the Collective Body: Perceptions of Constituent Power”, in Gary Jacobsohn, Miguel Schor (eds.), *Comparative Constitutional Theory* (Cheltenham: Edward Elgar, 2018), 295-317.

both in the process of Constitution-making and the substance of the new Constitution. Neither the elimination of the people's consent to a mere yes or no vote, nor, even worse, their implied consensus through the transformation of a Parliament elected to operate as a legislative or amendment body to a Constituent Assembly, comply with the exercise of constituent power as a manifestation of a plural popular will.

Another aspect of the perception that Constituent Assemblies act in accordance with a commission is that the commission determines the authority of the constituent body. The constituent body can draft and enact a Constitution that is completely different from the existing one in terms of the distribution of power among different organs, but cannot "exercise the executive, judicial, legislative powers itself".<sup>29</sup> However, this is not always the case. The cases of Venezuela in 1999, Peru in 1993, and Ecuador in 2008 show a pattern that extends the competences of Constituent Assemblies beyond the drafting of a new Constitution, to the dissolution and shutting down of institutions (Parliament, Supreme Court, Attorney General), which remained in the hands of the opposition and could have probably acted as a barrier to the absolute power of the Constituent Assembly. The assemblies also assumed legislative power.<sup>30</sup> It is, therefore, quite difficult to consider these cases as examples of a constitution-making process that is based roughly upon consensus.

The third element relevant to the populist discourse about Constitutions is that of constitutional identity.<sup>31</sup> Populists favor a perception of constitutional identity as sameness. The identity is considered a pre-given. The boundaries of "we" are fixed. The understanding of constitutional identity also affects the populist perception about rights.<sup>32</sup> In contrast to the liberal democratic dis-

29. Colon Ríos, *Constituent Power*, 263.

30. David Landau, "Constituent Power and Constitution Making in Latin America", in David Landau and Hanna Lerner (eds.), *Comparative Constitution Making* (Cheltenham: Edward Elgar, 2019), 567-589 (580). In Hungary, key institutions such as the Constitutional Court, the election committee, the media-supervising bodies, which were not under the control of FIDESZ were deconstructed and captured by FIDESZ supporters. The dismantling of these bodies was the outcome of 12 constitutional amendments, the enactment of which took place between 2010 and 2011, that is to say, before the drafting of the new Constitution. Thus, during the drafting of the new Constitution, the majority, which had resulted from the 2010 elections, had all the key institutions that could act as eliminating factors to its unlimited power under control. In fact, through these changes the majority transformed its power to an absolute one.

31. Corrias, "Populism in a Constitutional Key: Constituent Power...", 24.

32. The elimination of the competences of institutions that act as barriers to the absolute power of the majority affects the protection of human rights. However, the populist perception of democracy affects the protection of human rights in various ways.

course, the rights of minorities or opponents are not crucial, since the primal function of rights, that is to grant minorities the possibility to challenge any fixation of the collective identity, is not compatible to the notion of identity as sameness. The exercise of rights which “undermine” the identity as sameness is considered to be a threat to the populist understanding of democracy. At the same time, the ambivalent relation between populism and rights extends to several issues, such as the role of international actors in the protection of human rights or the degree of tolerance towards the opponents that the populist reading of democracy enables.

The perception of collective identity as sameness indulges in specific readings of human rights. The exercise of human rights should be compatible to the collective identity. Hence, constitutions as a reflection of the collective identity should be oriented to the protection of rights that are compatible to such identity. The new Hungarian Constitution, for instance, protects marriage as a union between a man and a woman, encourages the commitment to have children, and recognizes the role of Christianity in preserving the nation. Further on, since according to article 1 paragraph 3 fundamental rights can be restricted in the interest of protecting the values that the Constitution entails, the role of Christianity operates as a blanket of restriction on rights.<sup>33</sup>

The elimination of the protection of rights does not occur only through the change of constitutional provisions. The enactment of laws which broaden restriction of rights is a favorite practice too. The cardinal law on religious institutions in Hungary and the law on public assemblies in Poland are examples of this practice.<sup>34</sup> In addition to such tactics, populists in power often abuse the restrictions of rights that the Constitution or international treaties allow. The recent jurisprudence of the European Court of Human Rights (ECtHR) on Article 18 of the European Convention of Human Rights (ECHR), which prohibits the abusive use of the restrictions that the ECHR provides for,<sup>35</sup> shows an increase of the application of such practices by populist/authoritarian regimes against

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33. Gabor Halmai, “Rights Revolution and Counter-revolution: Democratic Backsliding and Human Rights in Hungary”, *Law and Ethics of Human Rights* 10/2 (2020): 97-123. In Russia, too, recent constitutional amendments provide for the protection of “historical truth” and for the definition of marriage as a union between a man and a woman.

34. See Kim Lee Schepelee, “Autocratic Legalism”; Wojciech Sadurski, “Populism and Human Rights in Poland”, in Gerarld L. Neuman (ed.), *Human Rights in a Time of Populism: Challenges and Responses* (Cambridge: Cambridge University Press, 2020), 60-81.

35. “The restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed.”

their opponents.<sup>36</sup> The Court in such cases reviews the purpose of the imposed restriction (whether or not it acts as a means for suppressing and silencing opposition) by taking into account the state's initial action. Thus, a violation of article 18 by the ECtHR is a clear indication that state action falls within the abusive use of rights limitations based upon the hostility of a political regime against its opponents.<sup>37</sup>

Another crucial issue related to the understanding of human rights by populists is the role of international actors as agents for their protection. Populists reject international treaty obligations for the protection of human rights when this protection confronts national sovereignty.<sup>38</sup> The denouncement of the American Convention on Human Rights by the government of Hugo Chavez, and the amendment of the Russian Constitution in 2020 in order to establish that decisions of international organizations adopted according to international treaties would not be enforceable in Russia if they were inconsistent with the Russian Constitution, are two indicative cases.<sup>39</sup> Another case is that of Turkey, which follows the pattern of authoritarian populism through a combination of mechanisms that severely eliminate the protection of human rights and the impact of international organizations regarding their protection. In Turkey, after the recent constitutional amendments and the declaration of a state of emergency, there has been a de facto Presidential system with no checks and balances. A partisan President is exercising the authority of the Prime Minister, and is ruling by decree in a continuous state of emergency. It is worth noting that Turkey is one of the countries which, according to the jurisprudence of the ECtHR, have violated Article 18 of the ECHR through the use of penal proceed-

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36. Corina Heri, "Loyalty, Subsidiarity, and Article 18 ECHR: How the ECtHR Deals with Mala Fide Limitation of Rights?", *European Convention on Human Rights Law Review* (2020), at [https://brill.com/view/journals/eclr/1/1/article-p25\\_25.xml](https://brill.com/view/journals/eclr/1/1/article-p25_25.xml), accessed 4 March 2023. See also, Guide on Article 18 of the European Convention on Human Rights, available at [https://inhak.adalet.gov.tr/Resimler/Dokuman/2432020134852Guide\\_Art\\_18\\_ENG.pdf](https://inhak.adalet.gov.tr/Resimler/Dokuman/2432020134852Guide_Art_18_ENG.pdf), accessed, 4 March 2023.

37. Selective criminal proceedings against the opponents constitute an indication about the abusive purpose of the imposed restriction.

38. Hungary, for instance, violated the EU asylum *acquis* and refused to recognize the primacy of EU law in this domain by claiming that control over migration is part of its constitutional identity.

39. As President Putin stated, "Russia can be and can remain Russia only as a sovereign state. Our nation's sovereignty must be unconditional". Thus, "requirements of international law and treaties as well as decisions of international bodies can be valid on the Russian territory only to the point that they do not restrict the rights and freedoms of our peoples and citizens and do not contradict our Constitution". Presidential Address to the Federal Assembly, 15.1.2020, at <http://en.kremlin.ru>, accessed 4 March 2023. Poland also attacked the independence of the judiciary, claiming that such matters fall within the exclusive bounds of its authority.

ings which target political opponents. Turkey is also under the scrutiny of the Council of Europe for the non-execution of the ECtHRs' rulings referring to the abusive use of penal proceedings against the opponents of AKP (the ruling party in Turkey since 2002) (see, *Kavala v. Türkiye* [GC] - 28749/18 24.7.2022).<sup>40</sup>

Populist understandings of rights are heavily affected by populist perceptions of popular sovereignty. Popular sovereignty can only express what already exists. Thus, any reading of rights that do not match such perception is not acceptable. Their strategy about human rights shares the main characteristic of their strategy regarding the structure of governance; they do not set aside unambiguously all the relevant guarantees. Instead, they blur the limits between constitutional and ordinary politics in two interrelated ways. Elements of the liberal constitutional order that are relatively immutable become changeable and fluid through constitutional amendments or replacement of Constitutions and through the elimination of intermediate institutions that provide for check and balances. At the same time, through constitutional amendments or the enactment of new Constitutions, elements of the populist discourse turn to constitutional provisions and become relatively –or even absolutely–immutable.<sup>41</sup>

The crucial question, then, is the following: to what extent do such practices constitute a real threat for liberal democracy, and what could be the possible reactions that do not undermine liberal democracy?

### **The defence of liberal democracy against the populist challenge**

Structural populism undermines liberal democracy in two interrelated ways. First, the checks on elected leaders are eliminated through the dismantling of courts and other key institutions that fulfill the relevant tasks. Dismantling takes the form either of changing the composition of these institutions or ex-

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40. Another noteworthy characteristic of the Turkish case is the extensive use of insult laws, which heavily affect public speech, as a strategy for the personalization of power. Defne Över, "Insult, Charisma, and Legitimacy: Turkey's transition to Personalist Rule", *Social and Legal Studies* 31/5 (2022): 773-795 (779-781). Yet, according to the jurisprudence of the ECtHR, the provision which criminalizes the insult of the President is incompatible to the ECHR. ECtHR in *Vedat Şörlü v. Turkey* on 19 October 2021, stated that provisions such as Article 299 of the Turkish Criminal Code, which provides higher protection to head of state than other individuals, are incompatible with the spirit of the Convention. In this context, the ECtHR concluded that the aim of protecting the reputation of heads of state does not justify the protection of these people by special regulations.

41. Urbinati, *Me the People*, 133.

tinguishing their competences, or a combination of both. Second, the protection of rights under populist rule, as already noted earlier, is under stress due to the populist perception on identity. Even if there is no formal change of the constitutional provisions which protect rights, the outcome of populist rule is an elimination of the protection of rights. Rights cannot act as enabling conditions for democracy anymore, since the populist understanding of democracy does not favor such a performance of rights. The crucial question then is what the possible ways of defence could be.

Militant democracy cannot be among those ways for various reasons. Militant democracy attributes to democracy a substantive value that political actors should abide to. If political actors do not respect the substantively conceived principles of democracy, then their political action should be suppressed and restricted. However, contemporary threats towards democracy do not always come from political agents that reject all those principles which form the basic components of democracy. For instance, populist regimes do not officially break with essential elements of democracy such as the participation of people to decision-making processes through free elections and referenda. Procedures and institutions associated with democracy remain formally intact and the restrictions imposed upon rights do not take the form of a total suspension. Populists usually adopt the form of broadening the scope of existing restrictions or of favoring national concerns regarding the implementation of rights against the so-called internationalization of human rights. Furthermore, populist regimes often use the vocabulary of militant democracy to combat their opponents. Since there are no clear indicators to measure democracy, then the question turns on the substantive values of democracy and their significance as a possible foundation of militant democracy. Such a question is interrelated with two other questions: a) what is the relation between substance and process? Should the substance of democratic values be considered fixed in advance or the possible outcome of an open-ended process? b) who is going to decide upon the measures which will protect democracy from populists?

However, the rise of populist parties or movements shows that the prerequisites upon which democratic regimes hinge do not have a core meaning shared by the very subject of democratic politics, namely the people.<sup>42</sup> We should also take into account the fact that according to the procedural approach of democracy, indeterminacy is one of the key components of democratic politics. Thus,

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42. Kaltwasser, "Militant Democracy versus Populism", 82-85.

conceptions of politics that do not deny democracy a priori or criticize the failures of representation are not in principle beyond the spectrum of procedural democracy. Populists offer a reading of democracy that is at odds with liberal democracy but do not reject democracy per se –at least not its procedural aspect– while their criticism relies on some existing weaknesses of democratic politics. The issues they raise through their political programmes are not outside the range of democratic politics, though their responses to the deficiencies of democratic politics do not further democracy. Further on, when banning the majority party is the only way to preserve democracy, then liberal democracy is not viable, as one of the prerequisites of liberal democracy is a shared commitment on its sustainment by the wide majority of the people and not an imposed commitment. When the biggest or some of the biggest electoral players have a thin commitment to liberal democracy and the opposition or the rest of the electoral players are too weak in terms of political power, then there is a deadlock which cannot be solved by respecting the basic rules of procedural democracy. The electoral players with a thin commitment to liberal democracy should either be blocked from gaining the power or be given the opportunity to gain the power and obtain the means to eliminate liberal democracy. There is a “democratic” deadlock. No solution is possible unless some of the procedural or substantive guarantees of democracy are jeopardized. Majority rule cannot operate as a vital element of the procedural aspect of democracy, if majority is excluded by the decision-making process. On the other hand, an abusive use of majority rule eliminates basic components of democratic rule –especially the substantive ones– and should be prevented.

The crucial issue then is how to confront the populist challenge to liberal democracy without subverting liberal democracy. In order to respond to such dilemma, we should first have a look at the factors which facilitate populist discourse to subvert liberal democracy. The first factor is the rise of emotional politics, in which facts are replaced by what someone believes to be true. Emotions and feelings tend to be the decisive motives of political action. Opinion and personal experience overcome factual reality.<sup>43</sup>

The second factor is the fact that populism projects an anti-establishment discourse which targets the mediating institutions of constitutional democracy,

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43. Matthew Loveless, “Fake News as emotional weapons”, in Serena Giusti and Elisa Piras (eds.), *Democracy and Fake News: Information, Manipulation and Post-Truth Politics* (London: Routledge, 2021), 64-77 (67).



such as political parties, mass media, the press, and unions, but not the core institution of democracy, namely, the elections.<sup>44</sup> According to populist discourse, the mediating institutions twist the true will of the people and contribute to the prevalence of the establishment over the people, although people still formally hold the supreme power in a constitutional democracy. That is why a populist movement through its leader attempts to re-establish the “authentic” relationship between people and democracy as a relationship in which the representatives of people do not act for the people but stand for them against the establishment.<sup>45</sup> Thus, unmediated politics prevail at the expense of representative democracy. Directness and immediacy are the main characteristics of the populist political discourse, because both make plausible the populists’ claim for authenticity in terms of peoples’ representation.<sup>46</sup>

Instantaneous democracy turns the issue of responsiveness into a matter of time instead of quality. The multistage process of constitutional governance collapses because it is too extended and time-consuming. Populism does not simply favor the mobilization of people instead of passivity. It favors mobilization as directness and immediacy. What populism rejects is not the unformed public mobilization but its interplay with formal powers and their structural articulation within the context of constitutional democracy.<sup>47</sup> Formal powers eliminate the unmediated relation between the populist movements and people, which is the only antidote to the dominance of elites over “common” people. Thus, formal powers should be subverted by the “true” representatives of the unformed public. Yet, if unformed public mobilization becomes an end in itself, it loses sight of its role as a critical oversight on formal institutions. It turns to a disruptive force.<sup>48</sup> Constitutional governance does not change in form. However, the context within which the institutions of constitutional governance function alters to serve the main goals of the populist agenda. By turning unformed public mobilization into an end in itself, the need to fulfill such end with processes arises. Immediacy and directness displace representation and the checks-and-balances structure of governance. Even if representative institutions and institutions which empower the check-and-balances structure

44. On populist appeal to an anti-establishment discourse, see Robert R. Barr, “Populists, Outsiders and Anti-Establishment Politics”, *Party Politics* 15/1 (2009): 29-48 (31).

45. Ming Sung Kuo, “Against Instantaneous Democracy”, *ICON* 17/1 (2019): 554-575 (557-558).

46. Kuo, “Against Instantaneous Democracy”, 561.

47. Pierre Rosanvallon, *Good Government: Democracy beyond Elections* (Cambridge Massachusetts: Harvard University Press, 2018), 265.

48. Kuo, “Against Instantaneous Democracy”, 567.

of governance remain formally intact, they are always under pressure by those who consider themselves to be the authentic expression of people's will.

Any proposal which aims to cope with the defence of constitutional democracy against populist challenge should deal with these characteristics of populist politics. Yet, as already mentioned, such proposals should not undermine the basic components of constitutional democracy. For instance, any attempt to eliminate the spread of populist discourse through banning populist speech<sup>49</sup> or non-violent political action of populist movements, falls into the category of democracy's self-defeat. When restrictions imposed on speech refer to its content, then they target the speaker. However, the new forms of distributing news use speech as a weapon for controlling speech. Thus, freedom of speech does not aim to protect the speakers from the government but the listeners from the speakers.<sup>50</sup> The abundance of speech and the velocity of its distribution make speech a weapon targeting the opposite opinions and the speakers who express them.<sup>51</sup> It is necessary, then, to face freedom of speech not only as a negative right but also as a right that creates some duties for state action to protect the channels of political speech. Protecting channels of public debate through the means of law is not equivalent to perfecting the quality of speech.<sup>52</sup> Further, a state might abstain from restricting some forms of speech in its coercive capacity due to the right on freedom of speech, but it can restrict them in its expressive capacity.<sup>53</sup> The state in its expressive capacity can promote demo-

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49. As far as the new communicative environment that contributes to the demands of directness and immediacy is concerned, the crucial issue is not a lack of speech but the scarcity of attention of listeners, or even worse, the bullying of speakers. Tim Wu, "Is the First Amendment Obsolete?", *Michigan Law Review* 117 (2018): 547-581 (554-558).

50. *Ibid.*, 548.

51. Since anonymity of users is very common, the use of speech as a weapon against opponents might come from the government itself and not from an individual who disagrees with the person whose speech aims to silence his/her own speech.

52. *Ibid.*, 572. The means of law should not be the same for each category of speech. For instance, intimidation or threats of violence should be removed or blocked the soonest. The victim of defamatory comments should be able to respond without delay and ask for the removal of the comments after the examination of the case by an independent body. False statements of facts are a more complicated issue. There are false statements of fact that can cause imminent damage to some people, such as the denial of a massive assassination, which causes hurt to the relatives of those who were killed, and there are false statements of fact that may lead people to make a wrong decision, such as the denial of coronavirus. In the latter case, a prohibition of false statements of facts touches upon the issue of paternalism as a possible ground for restrictions imposed on free speech and its compatibility to liberal democracy.

53. Corey Brettschneider, *When the State Speaks, What Should it Say?* (Princeton, Princeton University Press: 2012), 3.

cratic values through measures that discourage (not prohibit) some forms of speech.<sup>54</sup> Such measures can be the suspension of parties' funding, or the public broadcast of the parliamentary activities of a party but not the activities of its members or extra parliamentary events, when such activities or events support criminal action.<sup>55</sup> It should also be noted that literally speaking, such restrictions do not prohibit forms of speech but only their broadcasting to a wider audience. They do not affect the procedural aspect of democracy, which is linked to the neutrality of the state towards the content of political speech. Abstention from restriction is not equivalent to the support of broadcasting any kind of speech through public media (radio and television frequencies are considered public goods).

The maintenance of the procedural aspects of democracy is crucial, if its protection does not end up to its self-defeat. That is why the banning of political parties should be excluded from the array of the measures that aim to fight populism. Since the underlying reasoning for banning a party is that its function constitutes a real threat to democracy, the biggest the party and its influence, the biggest the threat to democracy. If we allow the banning of a party to depend on its size, then parties are considered solely as a means to promoting democracy and not as entities that allow citizens to express their values and interests regardless of the quality of such values and interests. The procedural aspects of democracy, which safeguard equal representation, do not allow for a distinction among values and interests when they do not lead to unlawful actions. On the other hand, the procedural dimension of democracy does not exclude in advance any measure against populist actors. Measures that are not based upon the evaluation of the ideological content of the views that supporters of a political entity hold, are not beyond the scope of liberal democracy.<sup>56</sup> Such measures could be the exclusion of candidates, who have been convicted for certain crimes, from the parliamentary elections, the exclusion of a party from parliamentary talks, or voting as a penalty for provocative incidents, since

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54. Müller, "Protecting Popular Self-government", 257.

55. Such restrictions do not target the speech due of its content but because they aim at the prevention of regular crimes, which is a neutral goal in terms of the anti-democratic content of the speech; see Anthonoula Malkopoulou, "Greece: A Procedural Defense of Democracy against the Golden Dawn", *European Constitutional Law Review* 17/2 (2021): 177-201 (197). It should be noted that "Golden Dawn" is a Neo-Nazi political entity and not a populist party or movement. However, its treatment by Greek authorities can be included to the model of a procedural defence of democracy that can be used against populist movements.

56. Malkopoulou, "Greece: A Procedural Defense of Democracy...", 195.

non-violent contact is a prerequisite for the function of the Parliament.<sup>57</sup> All the afore-mentioned measures can be included in the form of an “individual militant democracy” which targets actors for their actions and not opinions or political ideas as much as repulsive might be.<sup>58</sup>

The non-registration of a party (not banning) for parliamentary elections is more trivial, since it does not constitute a banning of a party but at the same time excludes a party from the major form of political participation in a democratic regime. Thus, it is not compatible to a process-based defence of liberal democracy. Although non-registration limits only one form of a party’s participation in public affairs, namely the participation in parliamentary elections, such an activity is not marginal compared to the other activities of the party. On the contrary, it is essential for the existence of a political party. Thus, even if non-registration is based upon neutral criteria, such as the conviction of its leading figures for certain crimes, it does not avoid the instrumentalization of parties as vehicles for serving a substantive core of democracy instead of the expression of peoples’ values and interests regardless if being rational or not.<sup>59</sup>

However, the suggested measures aim to marginalize the attitudes of political actors that constitute an actual threat to liberal democracy. They do not change the conditions which make the spread of populist discourse popular among people. As already mentioned, one vital condition is the popular demand for directness and immediacy encouraged by the new communicative environment. It is necessary, therefore, to encourage a deceleration of politics.<sup>60</sup> The role of courts in the achievement of such a goal is vital. Given that under the prevalence of populist politics most of the changes affecting constitutional democracy are part of an incremental process which does not alter formally the institutional structure of governance but ends up depriving constitutional democracy from its vital components, the responses should target the factors which make such development feasible.

The courts’ role is crucial to the defence of constitutional democracy against populist politics, especially when populists come to power and are able to

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57. Ibid., 198; Kari Palonen, *The Politics of Parliamentary Procedure: The Formation of the Westminster Procedure as a Parliamentary Ideal Type* (Verlag Barbara Budrich, 2014), 80-81. Impeachment of certain office holders can be included in such measures.

58. Jan Werner Müller, “Individual Militant Democracy”, in Malkopoulou and Kirshner, *Militant Democracy and its Critics: Populism, Parties, Extremism*, 13-37.

59. Ibid., 259.

60. Kuo, “Against Instantaneous Democracy”, 570.

implement their agenda through the institutions of constitutional democracy. Courts can put a brake on populist politics not because they are entitled to set aside a contested policy, but because they are able to improve the learning aspects of democracy. They can fulfill this goal in two distinct ways.

As suggested above, populist politics conflate efficacy and velocity. In contrast, courts are not designed to react instantly. Even when they are entitled to act fast through temporary restraining orders, they do not arrive to a final result. The judicial injunction may block the instant implementation of a controversial measure, but, at the same time, it makes room for interaction among the unformed public opinion and formal institutions.<sup>61</sup> It “freezes” the need for instant responsiveness and opens up new paths for self-reflection. At the same time, courts are eligible to evaluate the aggregative impact of legislation or constitutional amendments upon rights or the structure of governance.<sup>62</sup> They can examine the effects of changes in specific areas and evaluate their total impact upon rights or the structure of governance.<sup>63</sup> Courts can shed light to the full effect of incremental changes and provide opponents with more opportunities to object to it in a reflective way. In a communicative environment which promotes directness and immediacy, incremental changes fit well since they frame public debate on narrow issues. Yet, there should be channels which allow the public to have an image of the overall effect of such changes, and institutions which are able to act as a brake when the aggregative effect of the changes threatens liberal democracy.

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61. *Ibid.*, 573.

62. On the issue of the aggregative effect of some pieces of legislation as a means of violation of rights, Brandon L. Garret, “Aggregation and Constitutional Rights”, *Notre Dame Law Review* 88/2 (2012): 593-648 (641-648). On the aggregative effect of some minor changes on the governmental structure through amendments or legislation, see Yaniv Roznai and Tamar Hostovsky Brandes, “Democratic Erosion, Populist Constitutionalism, and the Unconstitutional Constitutional Amendments Doctrine”, *Law and Ethics of Human Rights* 10/2 (2020): 19-49 (42-43).

63. A good example is the Jurisprudence of the Greek Council of State on the constitutionality of cuts on salaries and pensions due to the fiscal crisis of Greece. In the first stage, the cuts were considered compatible to the Constitution. Nevertheless, later on the Court considered the continuous cuts imposed upon salaries and pensions as a violation of the principle of equality, especially of the principle of equal contribution on public burdens (article 4, paragraph 5 of the Greek Constitution) because the aggregative effect of the measures imposed a disproportionate burden upon the property of specific groups of the population.

**Concluding Remarks**

Populism constitutes a special type of threat against liberal democracy. It does not disrespect the democratic components of a liberal democracy. Yet, populism instrumentalizes such components by perceiving unformed publics and people as ends in themselves. Thus, the power of the people should act in an unmediated way and any form of mediation between people and the formal powers of the system of governance is considered as an obstacle to such power. The liberal aspects of democracy which make liberal democracy a form of limited government should be eliminated or should be subverted by the populists' agenda. It is necessary then for liberal democracies to react. However, their reaction should take into account two issues: a) protection of liberal democracy should not lead to the self-defeat of its liberal aspects, such as pluralism and self-reflection b) the populist threat on liberal democracy is not similar to the threat that an authoritative regime constitutes. Populist regimes are authoritative in the making. The changes they promote are not always per se against liberal democracy. They also use (and not annul) the institutions of liberal democracy in order to promote their agenda. Thus, the reaction of liberal democracies should be compatible to the peculiarities of the populist threat.



# PARLIAMENTS' RESPONSE TO NOVEL TECHNOLOGICAL DEVELOPMENTS

*Ismini Kriari*



## Introduction

In the dictionaries, technology is the translation of the Greek word *technologia* (τεχνολογία), deriving from the Greek words *techne* (τέχνη: art and/or craft) and *logia* (λογία: saying) or *logos* (λόγος: idea, study). Technology refers to the application of science to industrial use, but also it may refer to systems, methods of organization and techniques (i.e. space technology, nanotechnology, or state-of-the art technology).<sup>1</sup>

It is common knowledge that new technological and medical-biological developments pose many challenges to our society, to legislative bodies, to the environment and to our legal order.

Members of the American Congress realized mainly in the 1960s that scientific and technological innovations should be subject to democratic control accompanied by participatory processes, involving the public. The procedure by which parliaments could cope with the inflation of information procured by the governments and/or by the lobbies was labeled as “technology assessment” (TA) a term coined by the Congressman Emilio Daddario, Chairman of the Subcommittee on Science, Research and Development of the House Science and Astronautics Committee of the US Congress.

Upon his proposal the US Congress decided to set up a specialized internal agency, the Office of Technology Assessment (hereinafter: OTA), stating that “the basic function of the Office shall be to provide early indications on the probable beneficial and adverse impacts of the applications of technology and to develop other coordinate information which may assist Congress” (92nd Congress, 13 October 1972, Public Law 92-484).<sup>2</sup>

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1. Virginia S. Thatcher, Alexander McQueen (eds.), *The New Webster Dictionary of the English Language* (New York: Grolier, 1969); David Banta, “What is Technology Assessment?”, *International Journal of Technology Assessment in Health Care* 25, Supplement 1 (2009): 7-9.

2. Bruce Bimber, *The Politics of Expertise in Congress: The Rise and Fall of Technology Assessment* (Albany: State University of New York Press, 1996).



OTA was governed by a twelve-member Technology Assessment Board, made of six senators and six representatives with equal representation from each political party. The Chairmanship rotated every two years from the Senate to the House of Representatives. The Board appointed OTA's Director for a six-year term. An Advisory Council of ten eminent citizens from industry, academia and elsewhere outside the federal government were appointed by the Board to advise the Agency.

When the OTA closed on 29 September 1995 it had produced about 750 studies on a variety of topics, i.e. Effectiveness and Costs of Osteoporosis, Screening and Hormone Replacement Therapy, Vol. I and II; Telecommunication Technologies and Native Americans-Opportunities and Challenges; Biologically Based Technologies for Pest Control; Education and Technology: Future Visions, all in 1995. Many authors support the view that it is of utmost importance in today's great technological challenges to have it open again.<sup>3</sup>

The OTA model, its way of operation and the high quality of its reports were met with enthusiasm in Europe and elsewhere (i.e. Japan), as it was realized that policy makers needed a method of expert policy-analysis, focusing on providing "unbiased" scientific information and advice. Parliaments realized that they needed to have their own reliable source of information in order to compete with the government's sources of information and also with the lobbies' sources.

To this purpose many parliaments created special bodies with the aim to provide impartial and high-quality reports of *anticipatory* developments in issues such as biotechnology, genetics, bioethics, public health, marine biology, nuclear energy, solar energy, ICT, digital transformation, artificial intelligence challenges, research and development policy etc., whereby the economic, social, ethical and environmental consequences of new technologies could be thoroughly discussed by scientists, stakeholders and civic society.

Let us name only one of the most important contemporary breakthroughs: the genetic revolution. The genetic revolution refers to the mapping and sequencing of the human genome, a process which was launched by the discovery of the double helix by James Watson and Francis Crick in 1953. The two scientists were awarded the Nobel Prize for understanding the way genetic informa-

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3. See, for instance, Darrell M. West, "It's Time to Restore the U.S. Office of Technology Assessment", at <https://www.brookings.edu/research/it-is-time-to-restore-the-us-office-of-technology-assessment/>, accessed 8 March 2023.

tion is passed from generation to generation *via* the double helix. Later, in 2000 the mapping of the whole human genome paved the way to new developments in the field of genetic interventions, proved the huge scientific and medical potential of the genetic data and opened the way for the creation of public and private biobanks in many countries in the world. The recent discovery of CRISPR-Ca9 by the scientists Jennifer Doudna and Emmanuelle Charpentier, who were awarded the 2020 Nobel Prize in Chemistry, allows us to be optimistic as to the cure of many as of now incurable diseases and to the drafting of new plants. This last method also called in vernacular as “genetic scissors” allows the replacement of pathological genes with sound ones and promises new possibilities in pharmacological and medical individual treatment.

The institutionalization of technology assessment took various forms in the European countries, depending on the political culture of each country, the relations between parliament and government, the civic traditions of civil society and how open the political elites are and the available financial resources.

In most cases, the initiative was accompanied by the desire to improve the information for policy-making. In some countries, however, this aim was accompanied by the initiative to foster debate and public understanding in the society and acceptance of the impacts of science and technology from a neutral, nonpartisan position, always using scientific information of the best possible quality.<sup>4</sup> That perception emphasized the democratic control of technological developments and a broader grassroots-involvement in decision-making.

Parliamentary committees and independent agencies furnishing technology assessment services to parliaments have formed the European Parliamentary Technology Assessment (EPTA) network, established in 1990, under the patronage of the then President of the European Parliament, Mr. Enrique Baron Crespo. The network has a light structure, guided by the EPTA Council and by meetings of Directors of the EPTA partner organizations. There are full members of EPTA and Associates, which are not allowed to vote in the EPTA Council. Their work contributes to the democratic control of scientific and technological innovations.

EPTA gives the following definition on Parliamentary Technology Assessment:

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4. Lura Cruz-Castro, Luis Sanz-Menedez, “Politics and Institutions: European Parliamentary Technology Assessment”, *Technological Forecasting and Social Change* 72 (2005): 429-448 (430).

TA is a scientific, interactive and communicative process which aims to contribute to the formation of public and political opinion on societal aspects of science and technology. TA explores the relationship between science, technology, parliament and society. It is a concept which brings together researchers from different disciplines such as business economics, sociology or biology, to name a few. The common goal is to explore how current technological developments affect the world we live in.

More concretely TA could make policy analysis about: the energy situation; working conditions in the light of increasing ICT work; globalization and labour market competences; GMOs and the environment; privacy issues in e-government; the potentials of nanotechnology in health care, etc.

TA has three dimensions: The cognitive dimension, creating an overview on knowledge relevant to policy-making; the normative dimension, establishing dialogue in order to support opinion making; the pragmatic dimension, establishing processes that help decisions to be made. The three components thereof are the issue of technology, the social aspects, and the policy aspects.<sup>5</sup>

The most recent development are the foresight studies, by which we understand reports where the drafters try to foresee the possible influence and evolution of existing technological achievements in the future by means of mathematical models, algorithms etc.

### **Organs of Parliamentary Technology Assessment**

Parliamentary TA is institutionalized in different ways, ranging from permanent parliamentary committees for TA, separate TA units as part of the parliamentary administration to independent institutions with a mandate to serve as a permanent consulting institution for the parliament.<sup>6</sup>

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5. EPTA Report, *Towards a Digital Democracy: Opportunities and challenges*, EPTA Report, Compiled by Riccardo Molinari and Zsolt Pataki and edited by Theo Karapiperis, Scientific Foresight Unit (STOA) (Brussels, European Parliament, 2018), compiled by Riccardo Molinari and Zsolt Pataki and edited by Theo Karapiperis, Scientific Foresight Unit (STOA), 85, at <https://eptanetwork.org/images/documents/minutes/EPTA-Report2018.pdf>, accessed 8 March 2023.

6. Michael Nentwich, *Parliamentary Technology Assessment Institutions and Practices* (Vienna: ITA, 2016); Norman J. Vig, Herbert Paschen (ed.), *Parliaments and Technology. The Development of Technology Assessment in Europe* (Albany: State University of New York Press, 2000); Ismini Kriari-Katrani, *Τεχνολογία και Κοινοβούλιο: Ο θεσμικός ρόλος και το έργο των Κοινοβουλευτικών Επιτροπών και των Γραφείων Αποτίμησης Τεχνολογίας* [Technology and Parliament: The institutional role and work of Parliamentary Committees and Technology Assessment Offices] (Athens: Sakkoulas, 2001).

## **Parliamentary Committees**

Finland, Lithuania, and Greece have parliamentary committees entrusted with the study of new technological challenges. They are composed of members of the Parliament on the principle of proportional representation of the political groups.

The Finnish and Lithuanian Committees are called Committees for the Future, as they use technology assessment and foresight studies, i.e. strategic forecasting in order to supply the Parliament with the necessary information about future challenges, which are likely to accompany new technologies. This is particularly evident in the Conferences organized by the Lithuanian Committee: “Preparedness for 2050” and “Evidence-based solution and governance for the future of Lithuania”, and in the resolutions with the significant titles: “Resolution on future digital transformation and digital sovereignty”; “Resolution on the future of demographic policy and social development”.

The Finnish Committee for the Future has the task to generate dialogue with the government on major future problems and opportunities: at least once during its term of office the Government issues a report on long-term future prospects and the government’s targets. The Committee for the Future has to prepare a response to the government’s Report on the Future and by this way, the Finnish Parliament and government recognize important political themes at such an early stage that different alternatives and policy lines are still completely open and under development.<sup>7</sup>

The Finnish Parliament organized the World Summit of the Committees of the Future in October 2022.

The Greek Permanent Committee on Research and Technology focuses on studies of national importance or issues of general interest that emerge from technological developments. Some of the issues studied are: Agricultural production, Ageing society, Marine environment, Biomass, Climate change and Urbanization, Geothermal energy.

## **Parliamentary Offices composed of Members of Parliament and Scholars**

A second form of Parliamentary technology assessment are the Parliamentary Offices composed of members of the Parliament and scholars. To this type be-

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7. <https://www.eduskunta.fi/en/Pages/default.aspx>, accessed 8 March 2023.

long the British Parliamentary Office on Science and Technology (POST), since 2000 a permanent institution at Parliament, the Parliamentary Board of which is composed of 8 Members of the House of Commons, 4 Members of the House of Lords, leading non-parliamentarians from the research community, nominated by the National Academies and representatives of the House of Lords and the Research and Information and Chamber and Committees teams of the House of Commons.<sup>8</sup> POST's work program is mapped by its Board on quarterly meetings, proposals might come from different sources.

The POST issues: 1. POST briefs, characterized as dynamic and strategic evidence syntheses, produced rapidly in response to major developments in current affairs of select committee inquiries, i.e. genome edited animals. 2. POST notes, considered as flagship reports, a four-page briefing on emerging areas of research, i.e. invisible disabilities in education and employment. 3. Horizon Scanning, defining areas of change to help UK Parliament prepare for the future, i.e. the future of UK research: structure and funding. 4. Rapid response, which can be published within weeks to brief parliamentarians on important research developments, i.e. science diplomacy.

It co-sponsored the 1st and 2nd consensus-conferences on Genetically Modified Food and on Radioactive Waste Management. POST reports and POST briefs cover almost every topic of technological interest, i.e. Biological Sciences, Environment and Energy, Information and Communication Technology and Science policy.

The French Office Parlementaire pour le Évaluation des Choix Scientifiques et Technologiques is composed by 18 Deputies and 18 Senators and a Scientific Committee with 24 leading scientists. Only members of Parliament may submit issues for discussion. The Office issues briefings and reports in order to enlighten the deputies on challenging themes and it conducts public hearings to stimulate debate. It organizes symposia to deepen the information of the Parliament and the public. Its reports cover every issue of scientific and strategic importance for France, i.e. the creation of an observatory in the Arctic.

The advisory Board of the Parliament of Catalonia on Science and Technology, composed of 18 members (9 of the Parliament of Catalonia and 9 members of the main scientific and technical institutions of Catalonia), aims to promote shared responsibility between the scientific community and the Parliament in

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8. [post.parliament.uk/about-us/](https://post.parliament.uk/about-us/), accessed 8 March 2023.

5 sectors: Science and technology, Bioethics, Environment and Energy, Dissemination and Education Policies.

### **Scientific Agencies working with Parliaments**

Independent scientific organizations build another institutional variant of technology assessment. In the Federal Republic of Germany, the Buro fuer Technikfolgen-Abschaetzung (TAB) is an independent scientific institution, operated by the Institute of Technology Assessment and System Analysis at the Karlsruhe Research Center. Motion to start a TAB Project may be submitted to the Committee of Education and Research or to other Committees of the Bundestag. Some of its reports: Light pollution, digitalization of agriculture, possible discrimination of algorithms, decision systems and machine learning. In a number of reports, it underlines the importance of participatory procedures for the strengthening of democracy.<sup>9</sup>

The Austrian Institute of Technology Assessment is a unit of the Austrian Academy of Sciences, it performs interdisciplinary research at the interface of technology and society and the results provide the basis for the discussions of the decision-makers. Also a pioneer in foresight studies, i.e. Mission 2030 – Young people want to make Klagenfurt a smart city (first youth foresight process in Austria).

The Parliamentary Evaluation and Research Unit of the Swedish Parliament<sup>10</sup> was founded in 2006, conducts research in different areas and has incorporated the foresight instruments in its working method. Some of its issues: fossil-free fuels, aviation in the future, the vulnerability of agriculture.

In Spain, the Science and Technology Office of the Congress of Deputies, was founded in 2021, after the Spanish Foundation for Science and Technology signed a collaboration Agreement with the Spanish Congress of deputies for the development of the Science and Technology Office. A science and technology advice committee, including the main scientific institutions in Spain contributes to the reports of the Office. Its main objective is to provide the Congress with scientific evidence, in order to facilitate informed decision-making.

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9. TAB, *Partizipative Verfahren der Technikfolgen-Abschaetzung und parlamentarische Politikberatung*, Nr.96 (2004); TAB, *Innovative und partizipative Verfahren der Technikfolgen-Abschaetzung*, Ntr. 192 (2021).

10. [eptanetwork.org/static-html/comparative-table/countryreport/Sweden.html](https://eptanetwork.org/static-html/comparative-table/countryreport/Sweden.html), accessed 5 March 2023.

Its flag initiative is *Week C*, a pairing scheme in which researchers and deputies share experiences for a week.

The Portuguese Observatory for Technology Assessment, founded in 2015, is an applied Research Unit of the research center CICS NOVA, that has its main location at the University NOVA in Lisbon. It has permanent research cooperation with the Portuguese Parliament. Some of its projects: AI, effects on work and employment in Portugal, social implications of micro-robotics.

In Poland, the Buero for Research provides necessary information for the Lower House of the Polish Parliament. Some of its studies: global challenges in the arctic region, internet privacy, ageing population.

The European Parliament has its own TA advisory body, the Panel for the Future of Science and Technology (formerly Science and Technology Options Assessment: STOA, established in 1987).<sup>11</sup> STOA's mission is to provide members of the European Parliament with independent expert assessments of scientific and technological developments and related policy options, all in the service of informed political decision-making. It conducts TA and scientific foresight to provide Members with a strategic view on techno-scientific developments and their implications across many policy areas affecting society, the economy and the environment in a broad sense, in the near as well the distant future. Its priority thematic areas are: Artificial Intelligence and other disruptive technologies; The European Green Deal; Quality of Life. Its Priority Policy areas are: Science, technology and innovation; Societal and ethical challenges; Economic challenges; Legal challenges.

STOA applies TA and a foresight-based approach to its science advice activities. This ensures that the focus is on preparedness for what could happen or what could be needed in the future. It puts an emphasis on the possible future impacts of new technological developments on all of society.

The foresight element is particularly important when dealing with controversial or complicated issues, such as, for instance genome editing or climate change.

STOA launched its Center for Artificial Intelligence to intensify its activities in this field in 2019. In 2020, STOA launched its European Science–Media Hub in order to develop a network among policy-makers, scientists and media within the European Parliament and to promote science-based information. It has also

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11. *STOA Annual Report 2020*, European Parliament, Panel for the Future of Science and Technology, EPRS/European Parliamentary Research Service, Scientific Foresight Unit (Brussels 2021).

kept up with its activities to make members better aware of scientific issues attracting media attention and keep the press community abreast of scientific issues discussed within the European Parliament.

### **Agencies with a participatory approach**

In Netherlands, the Rathenau Institute, based in The Hague, falls under the administrative responsibility of the Royal Netherlands Academy of Arts and Science. Its staff is multidisciplinary and its specific mission is to offer assistance to the Parliament and the Society for crucial scientific developments. Some of its topics: digital society; making perfect lives; democratic information society; robust science and technology; potatoes are the future: three scenarios for hybrid potatoes and global food.

The Rathenau Institute is celebrated as an institution engaging with newly emerging science and technology while also organizing technology festivals and increasing the level of social knowledge. It is argued that the Institute “has shifted from a role of science-based policy analysis to one of social assessment ... bridging the gap between Science and Technology and society”.<sup>12</sup>

The Danish Board of Technology, founded by the government since 2012, a non-profit, common good, corporate foundation has as its mission to clarify dilemmas and conflicts and to specify the opportunities for and the impact on people, the environment and social conditions, in order to enlighten the Parliament as to future scientific perspectives and the societal attitudes about them. It enjoys a reputation that is demonstrated in the 1.000.000 visits at the portal [www.tekno.dk](http://www.tekno.dk). Some of its publications are downloaded by 250.000 people. It has a different approach for the people who *need to know* and the people who *think it is nice to know*. For the first group they establish direct collaboration, for the second they publish pamphlets, briefings and focus on media work.

As its methods, it applies classical TA and participatory formations (i.e. citizens may form a panel and discuss an issue with a panel of scientists, and prepare a final document (scenario workshops, consensus conference). Further, it aims at education of the general public.<sup>13</sup>

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12. Pierre Delvenne, Catherine Fallon, Sebastien Brunet, “Parliamentary Technology Assessment Institutions as Indications of Reflexive Modernization”, *Technology in Society* 33 (2011): 36-43 (41).

13. Lars Kluever, “A Given in Danish Culture”, in Simon Joss and Sergio Belucci (eds.), *Participa-*



One of its recent reports was dedicated to e-voting: A challenge for democracy.

The Norwegian Board of Technology, founded in 1999 by the Norwegian government upon initiative of the Norwegian Parliament has as its supervising authority the Norwegian Research Council. It has 15 members appointed by the government and is multidisciplinary in character. The Board sets its own agenda. Its methods are participatory (consensus conferences, citizens panels, open hearings) and multidisciplinary (working groups at expert level). The results are disseminated to the parliament, the press, the public and are accompanied by media activities.

The Swiss Foundation for TA is since 2008 a center of excellence and an organization unit of its own within the Swiss Academy of Arts and Science. As one of its founders said: “In our old and robust republic we may vote for the price of milk, but we need other kind of assistance in order to decide on complex challenges”.

A Foundation Council with six members representing the political and academic world is responsible for the overall management of the TA Swiss. Its activities cover the fields: Biotechnology and Medicine (one of its recent reports was on Social Freezing, a highly publicized issue in the frame of human assisted fertilization), Mobility-Energy-Climate (Geothermal energy), Information Society, Nanotechnologies. Some of the reports: *Der Tod in digitalem Zeitalter*; *Kultur und Digitalisierung Wenn Algorithmen fuer uns entscheiden*; *Chancen und Risiken der kuenstlichen Intelligenz*; *Genome Editing, New Applications for DNA-Analysis*; *Szenarien zur Demokratie und Digitalisierung – ein partizipatives Zukunftsexperiment fuer die Schweiz*.

### **Concluding remarks**

The constant evolution of the technology assessment units bears testimony to the growing importance of technology assessment procedures for the parliamentary work, the future policy drafting and the societal acceptance of new and cutting-edge technologies. These technologies have to be implemented in societies characterized by a plurality of values, where established convictions are no longer accepted, and individual and emotional perceptions sometimes

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*tory Technology Assessment* (Gateshead: Centre for the Study of Democracy and Athenaeum Press, 2002), 75-91.

take the place of rationale thinking. Parliaments have to undertake great efforts, in order to achieve the final goal of the legislative process: societal consensus, leading to social robustness. Social robustness requires opening up to society.

As Thomas Jefferson said: “The end of all knowledge is action”. An Arab poet, Khalil Gilbran has put it better: “A little knowledge that acts is infinite better than much knowledge, which is hidden”. So the reports, the studies, the round-tables, the consensus conferences, all should serve that one and precious goal: To embed all positive results of technological progress to a given society.



# HOW DID THE REMOTE VOTING SYSTEM WORK IN THE SPANISH PARLIAMENT DURING THE COVID-19 PANDEMIC: ORIGINAL REGULATION AND NECESSARY REFORMS

*Luis Manuel Miranda López*



During the coronavirus pandemic, telematic voting turned out to be an essential element for the functioning of the Congress of Deputies. From the outset, it allowed the Congress of Deputies to continue working with a certain normality and adopt the necessary agreements to face the pandemic. However, once the worst stages of the pandemic were overcome, a debate ensued which led up to a reform of the Standing Orders of the Congress of Deputies adopted in 2022.

In 2011, there was a Reform of the Standing Orders of the Congress of Deputies (Section 79 and Section 82) to introduce the remote voting system. This reform regulated the core elements of a new voting procedure by means of a telematic procedure with personal verification. There were three points in the Explanatory Statement:

- The need to reconcile the right of the Members of Parliament to vote in plenary sessions with the imperative that the adoption of agreements in the Chambers must be done with all due guarantees makes it necessary to limit the foreseeable cases allowing to cast the vote through off-site procedures.
- To this end, a telematic procedure with identity verification was chosen.
- It was applicable to voting in plenary session when there is certainty as to the manner and moment when it will take place.

Thus, the Bureau of the Congress of Deputies adopted the necessary provisions and measures to implement the telematic procedure with identity verification introduced by this reform of the Standing Orders: Resolution of the Bureau of the Congress of Deputies, 21 May 2012, to develop the procedure of telematic voting system.

However, in 2022 this article was subject to reform once more, approved by the Plenary of the Congress of Deputies in its sitting held on 26 May 2022 and, in turn, the Bureau of the Chamber in its meeting held on 21 June 2022, adopt-

ed a new Resolution for the development of the telematic voting procedure.

Therefore, in the first place, I would like to comment on the regulation of telematic vote prior to the pandemic; in the second place, I shall address the changes gradually introduced during the pandemic and finally, I shall briefly explain the new legal regime and some final conclusions and reflections.

### **Casting votes by means of telematic procedure, in accordance with the Reform of the Standing Orders of 2011 and the Resolution of 2012**

Pursuant to this regulation, in the first place, the cases in which authorization could be granted were pregnancy, maternity, paternity or serious illness, which, since they prevented the performance of parliamentary duties, were considered to be sufficiently justified in view of the special circumstances. The Bureau of the Chamber assessed the case in view of such circumstances.

In the second place, those MPs who foresaw their absence in a plenary sitting and wished to be authorized by the Bureau to be able to vote therein, should file the request to cast the vote telematically by means of a written document addressed to the Bureau, explaining and justifying the reasons preventing him/her from performing his/her parliamentary duties. Likewise, the MP had to specify in the same letter for how long he or she expected to be unable to perform his or her parliamentary duties normally and, consequently, the period of time for which he/she was requesting the relevant authorization to cast the vote by means of the telematic procedure. In parallel to the request, the relevant MP used to start arranging the necessary technical procedures in order to have the computer support to be able to cast the vote by telematic means. To this end, in order to cast his or her vote, the authorized MP had to access the Congress of Deputies' intranet using his or her password, and the telematic verification of identity was conducted by means of a valid digital signature certificate.

The Bureau could accept or reject the request to authorize telematic voting. To that end, the Bureau assessed the reasons detailed in the request, normally in view of a medical report attached to the relevant request. If the Bureau agreed to authorize voting by telematic procedure, this decision was notified to the requesting MP as soon as possible, indicating the period of time during which the said authorization was granted, which could be up to a specific date, if so indicated in the request, or until an indeterminate one, such as, for example, until the end of the sittings period. Subsequently, the Bureau drafted a series of instructions to cast the vote, detailing the following elements:

- The specific items on the plenary agenda for which voting by telematic procedure was authorized.
- The onset and end moment of the time granted to cast the vote telematically by the relevant authorized MP.

Should it be envisaged that the absence would last for more than one week, the Speaker, by delegation of the Bureau, specified the items on each plenary agenda that each week could be subject to telematic voting, as well as the onset and end moments of the time granted to cast the vote by means of this procedure. These details were notified to the authorized MP, usually on the Friday prior to the plenary sitting where he/she was to vote by means of this procedure.

In any case, before the deadline granted in the authorization expired, it was possible to request an extension or, once the authorization to cast the telematic vote had ended, request a new authorization provided the circumstances prompting it in the first place still existed.

This type of voting procedure could only be used in plenary votings, since this reform was not aimed solely at balancing MPs functions with certain personal circumstances, but also at being able to maintain the political configuration of the Congress should one or more MPs not attend the sitting. As regards the matters subject to telematic voting, both the Standing Orders of the Congress and the resolution excluded those which might be subject to fragmentation or modification during the debate in the Plenary. This was all the more important since it seemed advisable that only those matters of which the exact details were known could be subject to anticipated voting. Thus, the consideration of legislative proposals or the ratification or repeal of royal decree-laws were considered as such. On the contrary, the initiatives encouraging the government to adopt measures, such as motions or amendments tabled to legislative initiatives could not be subject to this kind of voting.

Likewise, those matters to be voted upon by public roll-call, such as the investiture of the candidate to the presidency of the government, the motion of censure and the question of confidence could also be subject to telematic voting. To this end, in the list of MPs to be called to cast their vote, next to the name of the MP having voted telematically, there would be an indication as to the sense of the vote cast, so that it could be read aloud by the relevant Secretary when being called.

Finally, voting by telematic procedure was likewise authorized in secret votings to elect an individual, namely, those conducted by means of ballots, such

as the proposal for the appointment of magistrates of the Constitutional Court or members of the General Council of the Judiciary. In such cases, the vote cast by telematic means was printed on a card bearing the name or names of elected candidates, leaving out the identification of the authorized MP. The said voting ballot was introduced by the Speaker in the ballot box upon the onset of the voting.

As regards how to fix the moment when telematic voting could start and when it should end, although the onset moment posed no significant problems, in practice, the end moment was much more complicated. The resolution envisaged that telematic voting could not be authorized for later than one hour before that envisaged for the beginning of the in-person voting in the Plenary of the Chamber. Even if the deadline was certain – one hour – it was also true that the complexity to count it lay in the fact that it was very difficult to know the onset moment for voting in advance. Thus, the convention was to authorize telematic voting until exactly the starting time of the plenary sitting.

Once the telematic vote was cast, the resolution laid down that the Speaker or delegated body –in practice one of the legal advisors– should verify on the phone with the authorized MP, before the in-person voting in the Plenary started, the actual issuance of the vote and its sense. Finally, once these aspects were verified, the telematic vote cast was conveyed to the Speaker at the onset of the in-person voting in the Plenary with a view to the announcement of the accumulated result of the votes, whether by means of the voting notebook or in the aforementioned manners in the case of public voting by roll-call or with ballots.

The resolution included two additional provisions worth considering. In the first place, in case of a tie, the sense of the votes cast by telematic means would be maintained for subsequent votings on the same topic, provided the repetition of the votes conducted pursuant to article 88 of the Standing Orders of the Congress was carried out on an immediate basis. Otherwise, the Speaker would determine if the subsequent votings could be subject to non in-person vote, which was notified to the requesting MP together with the starting and finishing times of the time to exercise the right to vote by telematic means.

In the second place, the MP having cast his/her vote by telematic procedure could not cast the vote in person without express authorization by the Bureau of the Chamber, which, should it authorize in-person vote, would declare the vote cast telematically null and not counted as cast. The reason for this factual situation void is that if once the telematic vote is authorized and cast the initial circumstances that prompted it no longer exist, and thus the MP can be present

at the hemicycle to exercise his/her vote in person. This could be the case in cancelled surgeries. Thus, the request to suspend the authorization and casting of the vote by telematic means takes on its full meaning and, moreover, allows the MP to vote all items in the agenda and not solely those that meet the requirements to be subject to telematic vote.

Finally, should an item lapse or be removed from the agenda by the Plenary of the Chamber, the telematic vote cast would be deemed lapsed. Since 2012 until December 2019, 1,824 votes have been cast through this remote voting system.

### **Functioning of the telematic vote system during the COVID-19 pandemic: Agreements adopted by the Bureau of the Chamber**

During the 14th Legislative Term and as a result of the state of alarm declared by means of Royal Decree 463/2020, of 14 March, whereby the state of alarm was declared for the management of the health crisis situation resulting from the COVID-19, the regime ruling the casting of votes by telematic means had to be amended in order to guarantee parliamentary functions in the framework of the movement restrictions caused by the health crisis. Thus, several agreements were reached in order to set up this new regime, although on a transitory basis, for as long as the health crisis lasted. Hence, we must analyze the agreements adopted by the Bureau in this sense, divided into three different periods: agreements of 19 March and 16 June of 2020; agreement of 26 October 2021; and agreement of 1 February 2022.

I. On 19 March 2020, the Bureau of the Chamber, pursuant to the declaration of the state of alarm by Royal Decree 463/2020 of 14 March, and bearing in mind the special circumstances which hindered the normal performance of parliamentary functions, agreed that, for as long as the state of alarm lasted, following a request by parliamentary groups, their MPs could cast their votes by telematic procedure in the plenary sittings to be held during this period.<sup>1</sup>

In turn, pursuant to article 82 of the Standing Orders of the Congress and without detriment to the provisions of the Resolution of 2012 adopted by the Bureau, votes were cast through the Chamber's Intranet, with the MPs introducing to this end username and password as verification method of the per-

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1. Practice recognized as valid by the Constitutional Court in its Decision 168/2021, of 5 October.



sonal casting of the vote. In this sense, the most immediate consequence was that the vote and its sense were not verified subsequently again by means of personal verification by phone call.

Finally, the assessment of the written requests tabled by parliamentary groups and the fixing of the items in the agenda, as well as the starting and finishing times for casting the vote in each plenary sitting within the period subject to the present authorization, was delegated to the Speaker of the Chamber. Once the state of alarm came to an end, on 16 June 2020, it was agreed that until it was deemed that the health crisis caused by COVID-19 was over, MPs would be allowed to cast their vote by telematic means in the plenary sittings to be held during this period, in the same terms enshrined in the Agreement of the Bureau of 19 March 2020.

Together with this transitory and limited in time change of the regime ruling the exercise of the vote by telematic means in general terms by all members of the Chamber that so requested, two essential elements of the regime ruling telematic vote were also modified: matters which could be voted upon with this procedure and the starting and finishing times for casting the vote. Regarding the first issue, and after some discussions in the Board of Party Spokespersons, it was finally agreed that any matter subject to voting in a plenary sitting could be voted upon telematically, despite the drafting of the article which expressly laid down that those matters which could be subject to fragmentation or modification could not be submitted to this procedure. As regards the second, on some occasions, the deadline for casting the telematic vote started once the relevant debate finished and its closure took place several minutes before the in-person vote was conducted in the hemicycle. On other occasions, the plenary sitting was even suspended for telematic votes to be cast, subsequently resuming the sitting either to hold the in-person voting or to declare its result.

In quantitative terms, in some plenary sittings more than 300 MPs cast their votes by telematic procedure, reaching in some cases 350, as it was the case concerning the amendments tabled to the State General Budget bill for 2021. In such cases, the Speaker, upon the completion of the voting, just announced those which had been finally adopted, as stated in the Journal of Sittings.

II. The Bureau of the Chamber, in its meeting held on 26 October, agreed to repeal the agreement adopted on 16 June 2020, whereby the prior agreement of 19 March 2020 was extended, although it included three relevant nuances concerning the general voting system by telematic procedure until the end of the crisis

situation resulting from COVID-19. On the one hand, it deemed that illnesses caused by COVID-19 and subsequent eventual confinements of MPs as a result of the latter were deemed as cases included in article 82.2 of the Standing Orders of the Chamber. On the other, it retained the possibility to establish that, in light of its duration or in other circumstances that so required, in certain votings all MPs cast their votes by telematic procedure. In fact, that was the case in several plenary sittings, again, for example, on occasion of the vote on the amendments and opinions to the bill on the State General Budget for 2022. Finally, it deemed that votes should be cast through the Chamber's Intranet, introducing to that end username and password as verification method for the personal casting of the vote. In turn, and as a result of this new agreement, the MP had to individually address the relevant written request to vote telematically to the Bureau of the Chamber in case the MP found him/herself in any of the envisaged cases, and could only cast the vote by telematic means regarding those matters which, given that they were not susceptible of fragmentation or modification, there could be certainty as to the manner and moment when it would take place.

III. Finally, the Bureau of the Chamber, in its meeting held on 1 February 2022 agreed, in a complementary manner to its agreement of 26 October 2021, and until the end of the health crisis situation resulting from COVID-19, to allow MPs authorized to cast their vote telematically to do so concerning all items in the plenary agenda. To this end, in each plenary sitting, debates and votings should be arranged in such a manner that the terms in which the latter would take place be known when casting the telematic vote, according to the terms set forth in article 82.2 of the Standing Orders. In other words, it removed the limitation in the sense that only those matters could be voted upon, where due to the fact that they were not susceptible to fragmentation or modification there could certainty as to the manner and moment in which it would take place.

**Lessons learnt during the pandemic: issuing votes by telematic procedure, in accordance with the Reform of the Standing Orders of 2022 and the Resolution of 2022**

After a decade of telematic voting pursuant to the provisions of the regulatory reform of 2011 and the Resolution of 2012, the system ruling votes by this procedure has undergone substantial changes. To a great extent, this came as a consequence of the pandemic situation since March 2020 and of the need to adapt

the Congress of Deputies to this new reality. The explanatory memorandum of the reform adopted by the Plenary of the Congress of Deputies in its sitting of 26 May 2022 regarding this article is crystal clear: “The functioning of the telematic voting procedure in the Congress of Deputies has been technically consolidated during the last months as a result of the restrictions stemming from the pandemic. This consolidation allows to extend the cases set forth in the reform of article 82 adopted in 2011 to those cases in which MPs cannot attend votings in a plenary sitting because they must fulfil institutional representation commitments in international fora abroad”. In turn, pursuant to this article, the Bureau of the Chamber has adopted the Resolution of the Bureau of the Congress of Deputies of 21 June 2022, to develop the telematic voting procedure. Thus, we shall now deal with the main changes and their impact on parliamentary practice.

The first substantive novelty lies in the factual situations regarding which the Bureau may authorize to cast the vote by telematic means. Together with the more traditional cases of pregnancy, maternity, paternity and illness, which in this new drafting do not include the term “serious”, there is the generic and imprecise case of “exceptional situations of particular seriousness” no doubt resulting from the experience of the COVID-19 pandemic but without forgetting other factual situations such as natural catastrophes, bad weather conditions, cuts or discontinuity in transport services, provided it is actually not possible to perform parliamentary duties due to these circumstances.

However, the actual change is to be found in the second paragraph, where it sets forth that this same voting regime – namely that of casting the vote telematically – shall be applied to members of the Permanent Delegations of the *Cortes Generales* before Parliamentary Assemblies, or to the MPs with institutional representation commitments abroad in European, Latin American, NATO or G-20 summits, as well as official meetings of the UN General Assembly, its Conventions or assimilated bodies, when attending their official activities prevents them from attending the votings in plenary sittings.

This new case has been a constant demand by a great number of the members of the Permanent Delegations before Parliamentary Assemblies, facing the difficulty of complying on many occasions with the commitments stemming from this membership. Currently, the *Cortes Generales* have delegations before the Parliamentary Assembly of the Council of Europe, the Parliamentary Assembly of the Organization for Security and Cooperation in Europe (OSCE), the NATO Parliamentary Assembly, the Assembly of the Inter Parliamentary Union (IPU) and the Parliamentary Assembly of the Union for the Mediterranean. But, apart

from the commitments stemming from the membership in these assemblies, as are the attendance to their plenary sittings, their Committees, the different working bodies or the participation in electoral observation missions, the Bureau frequently authorizes trips of the Committees themselves and the participation in parliamentary fora, namely, an increasing international activity.

On the other hand, and although it is not always the case, the President and some members of the government are usually MPs as well, which means that they would be compelled to choose between their international commitments as members of the Executive and their commitment as MPs, particularly casting their votes in plenary sittings, hence the clause regarding institutional representation commitments abroad in European, Latin American, NATO or G-20 summits, as well as official meetings of the UN General Assembly or its conventions or related bodies. Thus, thanks to this new drafting it is not necessary for the MPs and parliamentary groups to calculate, particularly in periods of limited majorities, if the absence of an MP in order to fulfil the international mandate of his/her mandate may result in losing a voting.

The second novelty featured in this reform is that related to matters which may be subject to a voting. While, as mentioned before, in the first drafting only those matters that could not be subject to fragmentation or modification whereby the manner and moment when they would be voted upon could be foreseeable, could be put to the vote, in line with the practice during the pandemic this restriction has been removed in such a way that any topic included in the agenda of a plenary system can be voted by this procedure. On the other hand, it is no longer the Bureau of the Chamber the one who determines the votings and the period of time during which they are to be conducted, exclusively authorizing or dismissing the request to vote telematically, and determining the period of time during which the latter is eventually authorized, but instead, pursuant to the second paragraph of the Resolution and in line with the regulatory powers it enjoys, it is the Speaker who shall fix concerning the agenda of the Plenary in each sitting the onset and end moments to cast the telematic vote, ensuring in this sense that the fixed deadline shall come to an end once the relevant debate has likewise finished. Concerning this last aspect, it is to be noted that much of the criticism towards the prior telematic voting regime had resulted from the fact that the MP could vote upon a topic without the relevant item having been discussed. This provision is aimed at alleviating this situation, although it is also true that the reference to “ensuring” must be understood in a flexible manner, since, given the schedules of plenary sittings this might not always be possible.

And, obvious as it might seem, it is envisaged that the voting deadline shall always be related to Spanish official local time valid in the Peninsula, particularly bearing in mind that it might be the case that several MPs find themselves in different time zones and when they receive the relevant instructions for voting the times therein may not match their time zone.

Another important novelty is the one related to the verification of the vote. The former personal verification of the vote by means of a phone call for personal verification is replaced by a verification system established by the Bureau, which grants greater flexibility and is better aligned with new technologies. As the present article is being drafted, the transitory provision of the Resolution is being applied pursuant to which as long as the Bureau of the Chamber does not agree otherwise, the telematic verification of the identity of the MP mentioned in section 3 of this Resolution shall be conducted by means of the Chamber's intranet, introducing to that end username and password.

On the other hand, the consequences of having cast the vote by telematic means and also in-person are clarified. The sixth paragraph of the 2011 Resolution allowed for a *sensu contrario* interpretation according to which if a MP casts his/her vote both by telematic means and in-person, the in-person vote was rendered void since there was no explicit authorization by the Bureau in this sense. However, currently, section four of the Resolution in force grants greater legal certainty to this situation laying down that, should an authorized MP, after casting the telematic vote, vote in-person as well, solely the vote cast by telematic means shall be deemed as valid. And this is supplemented by the new drafting of section six, which sets forth that the MP authorized to vote telematically, regardless of his/her having done so, shall not be allowed to vote in person, in such a way that there is no possibility whatsoever to cast the vote in person if that individual has been authorized to vote telematically, even if he/she has not done so. However, without detriment to the latter, should the telematic vote have been granted for periods beyond a plenary sitting, the latter understood as a full agenda, the Bureau may invalidate the authorization, provided that a request in writing by the MP be submitted before the onset of the next plenary sitting. This is the sole case in which the Bureau may revoke the possibility to cast the vote by telematic means.

Two more novelties. The first, in case of a tie there is no longer the option for the subsequent votings demand in-person attendance: the MPs can vote telematically, to which end the Speaker shall fix the onset and end of the time granted to exercise, again, the right to vote telematically. In the second place, those mat-

ters to be put to the vote by agreement –together with the cases in which an item lapses or is removed from the agenda– entail the lapsing of the telematic vote.

This new regulation updates the functioning for casting votes telematically, adapting it to the new parliamentary circumstances and needs, such as the obligations stemming from the Chamber's international activity and envisages the possibility that in the future there may arise circumstances that hinder the exercise of parliamentary functions. On the other hand, it represents an important change, subjecting all matters in the agenda to this procedure, and it also aims at shortening the distance between debate and voting for those who cannot attend the sitting to be on equal terms with those who can.

## Conclusion

We must point out that, although telematic voting has allowed to make the national and international obligations of the MPs compatible, the implementation of this system for casting the votes cannot in any case be generalized, nor can it become the priority way to cast the votes, since otherwise we would not be complying with the principle of the due physical presence of the members of the Chamber in the hemicycle. Nevertheless, we must acknowledge that, as already pointed out, this procedure to cast the votes has allowed us to overcome, at least partly, the situation resulting from the declaration of the state of alarm as a consequence of the health crisis, thus being able to perform parliamentary functions with a certain normality. In other words, the coronavirus crisis has changed the rules governing the functioning of the parliament.

Indeed, some political groups wanted to extend the remote voting system to all bodies in the Parliament. In my opinion, this is a mistake. I agree with the ideas about an advanced democracy, but I think that the physical presence of the MPs is very important for the representative democracy system. However, it is important to recognize that during the coronavirus crisis the functioning of the Parliament was made possible thanks to the remote voting system.

The Parliament is an *agora*, which requires the physical presence of the MPs. No doubt, the international involvement of MPs is essential within the framework of the international commitments undertaken by Parliaments, and thus this new reform of the Standing Orders is welcome. However, looking to the future, we must avoid an indiscriminate use, not only of telematic voting, but also of new technologies that may void the Parliament of its deliberative function.



# THE IMPACT OF TECHNOLOGY IN INTERPARLIAMENTARY COOPERATION: HOW IS THE DIGITAL TRANSITION ENHANCING THE ROLE OF NATIONAL PARLIAMENTS IN THE EU?

*Bruno Dias Pinheiro*



The article analyses the way in which the digital transition accelerated by the COVID-19 pandemic impacted the activity of national Parliaments at EU level, specifically with regard to interparliamentary cooperation.

The author is currently the Permanent Member of the COSAC<sup>1</sup> Secretariat the longest established interparliamentary Conference (1989), and prior to that, served as the Permanent Representative of the Portuguese Parliament to the EU institutions, in which capacity he was responsible for the coordination of the institutional and political aspects of the Parliamentary Dimension of the PT EU Council Presidency in 2021.

This essay was thus written by a practitioner and a direct observer of these phenomena, which has allowed the author the privilege of witnessing the main institutional and political developments in interparliamentary cooperation at the EU level since the Treaty of Lisbon entered into force. This covers not only its operative implementation, its interpretation and the changes it produced and induced in the behaviour of national Parliaments as a *de facto* player in the EU institutional systems. Thus, the approach taken is mostly empirical and heuristic, i.e. a standard technique based on professional experience to promote and develop a more in-depth knowledge of a scientific area, oriented towards problem-solving and the identification of new patterns of behaviour of the institutional actors who operate in this given environment.

This chapter is divided in four parts: in the first one, a brief overview is provided on the use of technology for interparliamentary cooperation to date; secondly, light is shed on the impact of the pandemic in the European activities of NPs, and how they have struggled to adapt; thirdly, a case-study is highlighted,

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1. Conference of Parliamentary Committees for Union Affairs of Parliaments of the European Union.



namely on how to organise an EU Council Presidency (parliamentary dimension) in full virtual mode; the fourth and final section is dedicated to the main lessons learnt and some possible proposals for the future.

### **EU Parliaments and the use of technology for interparliamentary cooperation**

Digital technology is fundamentally transforming the world in which we live: it has disrupted old models and invented new ones, changing the organizing principles of every business. This includes Parliaments. In fact, it is correct to assume that there is a before and after the COVID-19 pandemic in the way Parliaments see technology and how they use it to the benefit of interparliamentary cooperation at EU level.

It should be noted, however, that even before the COVID-19 pandemic, the issue of technology as a way to enhance interparliamentary cooperation was already on the agenda of Parliaments. The Conference of Speakers of EU Parliaments (hereinafter referred to as Conference of Speakers) held in Vienna, in April 2019,<sup>2</sup> requested the incoming Finnish Presidency to organize a working group to report on the subject of better use of modern means of communication to facilitate inter-parliamentary cooperation.

The working group, composed at staff level, adopted a first draft still in 2019<sup>3</sup> and agreed at the time that, for established inter-parliamentary conferences, such as the Conference of Speakers, the meeting of Secretaries-General, COSAC, the permanent thematic conferences, etc., meeting physically in a specific location is valuable in itself. In fact, it was considered that conferences provide opportunities for *interaction and networking among members of parliaments beyond what happens in the conference hall*. Hence, *there could be no question of replacing inter-parliamentary conferences via technology*.

The exact wording stemming from this initial work within the framework of the Conference of Speakers in 2019 was that it:

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2. Conclusions available at <https://ipexl.europarl.europa.eu/IPEXL-WEB/download/file/082db c56a75a131016a77f1693c010d/EN%20Conclusions%20final%2009.04.2019.pdf>, accessed 9 March 2023.

3. First draft report adopted in November 2019, “Enhanced inter-parliamentary cooperation through modern technology – Report and recommendations of the working group to update the Guidelines for Interparliamentary Cooperation in the EU”, available at [https://ipexl.europarl.europa.eu/IPEXL-WEB/download/file/8a8629a86e891977016ed655048141cb/6.%20EN\\_ICT%20report.pdf](https://ipexl.europarl.europa.eu/IPEXL-WEB/download/file/8a8629a86e891977016ed655048141cb/6.%20EN_ICT%20report.pdf), accessed 9 March 2023.

- Notes that conferences and meetings of parliaments are a core function of inter-parliamentary cooperation, to which technology offers an enhancement not a replacement.
- Observes that technology permits the replacement of some non-core meetings, e.g., for preparatory and administrative purposes and of officials, by teleconferencing, through collaborative workspaces or other technical means. The EUSC encourages parliaments to consider the option of dispensing with physical meetings when their purpose can be achieved without travel.

However, the Finnish Presidency had to cancel its meeting of the Conference of Speakers,<sup>4</sup> scheduled for May 2020, precisely because no valid and consolidated alternative format for in-person meetings was available at the time.

The German Presidency of the Conference of Speakers that followed in 2020/21 decided to give priority to updating the above-mentioned report on enhanced inter-parliamentary cooperation through modern technology. In fact, it was the Presidency's view that, in light of the recent experiences of this COVID-19 pandemic, it had become clear that technical solutions not only propose a useful tool to enhance existing physical conferences but may furthermore become an indispensable means of inter-parliamentary communication and cooperation in times where physical meetings are impossible.

Therefore, an amended version of the initial report was prepared for the Conference of Speakers that met –for the first time– virtually on 10 and 11 May 2021,<sup>5</sup> putting forward a set of recommendations on enhancing inter-parliamentary cooperation through technology:<sup>6</sup>

- 30.1 Notes that conferences and meetings of parliaments are a core function of interparliamentary cooperation, for which technology offers an enhancement.
- 30.7 Encourages parliaments to develop a strategic awareness of how digital

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4. Letter of canceling available at <https://ipexl.europarl.europa.eu/IPEXL-WEB/download/file/8a8629a870a42c820171120e950a4385/EUSC%20letter%20to%20delegations%2013.3.pdf>, accessed 9 March 2023.

5. Programme at [https://ipexl.europarl.europa.eu/IPEXL-WEB/download/file/8a8629a878e849dc0178e92dba900075/1.\\_EN\\_Draft%20programme\\_EUSC.pdf](https://ipexl.europarl.europa.eu/IPEXL-WEB/download/file/8a8629a878e849dc0178e92dba900075/1._EN_Draft%20programme_EUSC.pdf), accessed 9 March 2023.

6. The full report on “Enhanced Inter-Parliamentary Cooperation through Modern Technology” is available at [https://ipexl.europarl.europa.eu/IPEXL-WEB/download/file/8a8629a8791bca4301791c5e92850044/2.\\_Amended\\_technical\\_report\\_EN.pdf](https://ipexl.europarl.europa.eu/IPEXL-WEB/download/file/8a8629a8791bca4301791c5e92850044/2._Amended_technical_report_EN.pdf), accessed 9 March 2023.

tools and services can improve parliamentary work and make parliaments more open, accessible and accountable.

Therefore, and on the political and institutional dimension of this process, the first conclusion was that Parliaments had identified the need to put technology to the best use to enhance interparliamentary cooperation already before the COVID-19 pandemic and have stepped up their efforts to adapt to the new challenges brought by the need to rethink the way parliamentary business is conducted.

### **National Parliaments and the COVID-19 pandemic: Old problems, new challenges? How to adapt?**

The coronavirus pandemic presented parliamentary institutions in the EU with a new and unprecedented scenario. In fact, parliamentary business in representative democracies is built upon the principles of pluralism, deliberation and transparency, enabling the opportunity to publicly confront each other's points of view in a free and fair setting. This is essentially incompatible with measures seeking to minimize social contacts and discourage –or directly forbid– mass gatherings.

In EU affairs, literature has identified several shortcomings or challenges that Parliaments face to perform their scrutiny role: the asymmetry in the access to information and to the main stakeholders at EU level; the geographical discontinuity of NPs or the fact that each Parliament “sits” in its own capital and there is no daily interaction between Parliamentarians following the same subject; the lack of a centralized structure that steers the collective voice and opinion of Parliaments.

All of this has been mitigated, throughout the years and especially since the Treaty of Lisbon, by the deepening of interparliamentary cooperation, namely via the multiplication of interparliamentary conferences: there is virtually one IPC for each of the main EU policy areas nowadays (CFSP/CSDP, Europol, Eurojust, Economic Governance, or COSAC).

These are all old problems which were amplified by the pandemic that brought new challenges.

The main questions with which Parliaments were now confronted were:

- How do you keep the parliamentary business running without physical meetings?

- Interparliamentary cooperation is about networking: how do you ensure business continuity without physical meetings?
- Interparliamentary cooperation is about travelling and discussing: how do you keep your Members motivated to attend conferences virtually and engage in this format?
- Equality: how to ensure that all the 39 Parliamentary Chambers are on equal footing technologically to participate in interparliamentary conferences in remote format (e.g. different web conference platforms, asymmetric level of digital literacy of Members and staff across the EU)?

The pandemic also brought a new range of issues: how can Parliaments scrutinize their governments in emergency mode/state of emergency? How can interparliamentary cooperation assist in keeping track of how other Parliaments are dealing with the pandemic, exerting their prerogatives, and legislating?

A word of appreciation is due to the network of national Parliaments' representatives in Brussels that has proven its worthiness, since they were key in keeping the flow of information untouched and fluid, collecting data, sharing best practice and keeping the "engine room" of interparliamentary cooperation operating non-stop throughout these challenging times.

Therefore, it is also correct to assume that the COVID-19 pandemic accelerated the digital transformation of Parliaments, but did not prevent them from doing their business, including in EU affairs and interparliamentary cooperation.

### **How to organize an EU Council Presidency in full virtual mode?**

As mentioned above, the author was responsible for the coordination of the institutional and political aspects of the Parliamentary Dimension of the PT EU Council Presidency in 2021. In that capacity, we were confronted with many of the challenges identified above in the preparation for the Presidency, like also Croatia and Germany did before Portugal.

The first question to be addressed was, in fact, that three different scenarios were considered for the organization of the interparliamentary meetings during the first semester of 2021: traditional in person; hybrid or full virtual.

The main factor was the evolution of the sanitary situation related to COVID-19, since these interparliamentary meetings traditionally gather a large number of participants (between 100 and 300, depending on the Conference).

Furthermore, the choice of the format had also a direct impact on issues such as the choice of topics and speakers, factoring in the digital literacy of Members, not only the ones chairing meetings on behalf of the Presidency, but also those from the other delegations in the remaining 26 capitals and in the EP, to ensure a smooth and meaningful running of events.

In a nutshell, the main challenge was how to make sure that organized chaos that Parliamentary events usually are can also be politically meaningful in full digital mode? For that purpose, a list of key guidelines were identified:

- Be transparent and keep the flow of information: communicate better (avoid too much info) and in advance;
- Learn from previous (good and bad) practice;
- Choose meaningful topics and speakers: be even more bold than usual;
- Develop a digital etiquette: speaking time, conducting of meetings, continuous IT support;
- Be innovative: grant full access, think outside the box (e.g. interparliamentary virtual meeting about EU-Africa relations of the virtual ceremony to sign the trio declaration between the Parliaments of Germany, Portugal and Slovenia) and gradually build a culture of more informality that can be business friendly.
- make use of greater availability of keynote speakers for virtual meetings, given the impossibility of traveling. With this regard, the organization of informal exchanges by videoconference with European Commissioners is a very clear example.

To illustrate the latter, we can refer to the line-up of the opening session of the European Parliamentary Week: Interparliamentary Conference on Stability, Economic Coordination and Governance in the EU and European Semester Conference, held on 22 February 2021:<sup>7</sup> only for the opening session, the speakers were David Maria Sassoli, President of the European Parliament, Eduardo Ferro Rodrigues, President of the Portuguese Assembleia da República, António Guterres, Secretary General of United Nations, Kristalina Georgieva, Managing Director of the International Monetary, Charles Michel, President of the European Council, Ursula von der Leyen, President of the European Commission, Christine Lagarde, President of the European Central Bank.

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7. Full agenda at [https://parleu2021.parlamento.pt/agenda\\_detalhe?id=7](https://parleu2021.parlamento.pt/agenda_detalhe?id=7), accessed 9 March 2023.

Another striking example was the work carried in the framework of the Conference on the Future of Europe (CoFE): within the national Parliament's component, the overwhelming majority of the coordination was also made via virtual means – this was extremely meaningful, both on content and on the substantial exchange of views during the Portuguese Presidency, which was the first that actually had to deal with the CoFE in place.

Therefore, at this point we can conclude that, despite the challenges brought by the need to put technology to the service of democracy and the role of Parliaments in the EU, the main takeaway is that it enabled the Portuguese Presidency to keep the same level of political ambition, with the necessary adaptations.

The Presidency was indeed an opportunity to put issues on the agenda of MPs who were at home at the time: how to follow and scrutinize the work being done at the European Council or within the Eurogroup with regard to the financial packages to tackle the economic and fiscal impact of the pandemic? How to exchange information and best practice on issues like the SURE facility, the Next Generation EU build-up of the vaccine roll-out? None of this would have been possible at the EU level for Parliaments without technology.

All the main events organized during the parliamentary dimension of the Portuguese Presidency can be found here: <https://parleu2021.parlamento.pt/index?lingua=EN>.

### **Main lessons learnt and what stays for the future? Some further thinking**

Addressing concretely the title of the Conference held in Athens, “The impact of technology in interparliamentary cooperation: How is the digital transition enhancing the role of national Parliaments in the EU?”, the first lesson is to acknowledge two different approaches by Parliaments to the role of technology in interparliamentary cooperation:

- Before the COVID-19 pandemic: skepticism and limited use.
- After: realism and balance. There is an added value for interparliamentary cooperation in the tools offered by technology.

The main downside of full virtual meetings is that nothing replaces physical interactions and networking between politicians (and staff, it might be added). At this point some challenges can be identified:

- to representative democracy – MPs (and Parliaments) needed to reinvent themselves (some coped, others disappeared): exacerbating previous trends.

- it brought representative democracy and direct democracy one step closer to each other (e.g. CoFE and the consultation of citizens at European and national level)
- adaptation of the skill set of MPs (and staff) to a new way of doing politics - creativity, innovation, digitally resourceful (more collaborative tools)

Furthermore, this also leads to another set of complex questions: Why isn't representative democracy sufficient? Why do citizens feel disengaged from the EU and abstention rates are so high? Why do they seek refuge in digital democracy and see it as a stage for direct democracy?

In fact, one of the main lessons from the impact of technology in democracy is the acknowledgement that the connection with citizens needs to be continuous – people need to have a feeling that they are part of the discussion every day – and not only every four years when elections take place.

Therefore, and in our view, the only way to avoid that overthrow of politics is to build social capacity, which means looking for answers to two questions:

1. How to get people more (and better) involved and commit them to the coming changes in our societies and the EU's role therein?
2. How to restructure politics and democracy by improving the ways of working and delivering results to meet the expectations of citizens?

One good recent example of how representative and direct democracy interact and are mutually beneficial at EU level was the Conference on the Future of Europe, that ended on 9 May, which we can consider as the most illustrative exercise of a blend between representative and direct democracy making full use of digital means in recent times.

This was an exercise in which elected representatives interacted directly with citizens, who were called to debate and issue recommendations on how the EU should be organized and which purpose should it serve.

As part of the Conference process, a Multilingual Digital Platform was launched on 19 April 2021 ([futureu.europa.eu](https://futureu.europa.eu)): it gave every EU citizen the chance to participate in any of the 24 official EU languages. Citizens could put forward their ideas, endorse other people's ideas and comment on them. The platform was also the place where everyone could share information on Conference events and report on their outcomes.

All contributions on the platform were then collected and analyzed in order to serve as input for the work of the European Citizens' Panels, the Conference Plenary.

Up until 9 May 2022, 48,530 contributions were recorded on the platform, with 18,955 ideas, 22,570 comments and 7,005 events covering all 10 topics.

As Guy Verhofstadt put it: “The recommendations of the citizens and the conclusions of the Conference, offer us a roadmap to avoid that we become irrelevant or disappear. A new, effective and more democratic Europe is possible. There is no real opposition or contradiction between representative and participatory democracy; on the contrary; in a modern democracy both are necessary.”<sup>8</sup>

Finally, our analysis also tries to shed light on what features of this accelerated digital transition will stay and actually enhance democracy and interparliamentary cooperation?

Firstly, it brought new opportunities for more regular exchanges between parliamentarians, either bilateral exchanges, dialogue between rapporteurs on specific legislative files, hearings with MEPs or informal meetings with European Commissioners, among others.

Secondly, this also represents a renewed access to more information and more ways of interacting, to more collaborative tools and a fundamental change of culture amongst Parliaments, fostering a more open mindset to some informality and ways of cooperating.

To illustrate this, an allusion to a couple of concrete examples is pertinent: first, one of the main recommendations of this Conference is precisely the permanent institutionalization of direct citizen’s participation in the European project. Secondly, and referring to the current context with the Russian aggression against Ukraine, it should be noted that President Volodymyr Zelenskyy has been portrayed as a keen and proficient protagonist of digital direct democracy, since he has addressed Parliaments of 25 out of the 27 Member-States of the EU via VTC, shaping different messages to different audiences. In our view, this would not have been possible without this digital transition.

To finalize, we advocate for a few suggestions and proposals to make the best possible use of the *digital transition to enhancing the role of national Parliaments in the EU, after the recent experience of the parliamentary dimension of EU Council Presidencies*:

- focusing and streamlining the *digital dimension in interparliamentary co-*

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8. Speech delivered at the closing ceremony of the CoFE, on 9 May 2022, and available at <https://www.reneweuropegroup.eu/news/2022-05-09/this-europe-day-is-an-opportunity-to-continue-working-for-the-future-of-the-eu>, accessed 10 March 2023.



*operation*: consider it as a standing element of any initiative (social media, interaction with citizens, transparency, collecting of ideas);

- *develop a digital strategy for interparliamentary cooperation* which is business enabling. With that regard, the most relevant example we could find to date comes from the UK House of Commons, who recently (July 2022) adopted its revised Digital Strategy for Parliament, 2022-25. It includes a set of priorities (e.g. to ensure that the digital services are flexible, secure and resilient, to keep pace with advances in digital technology to support parliamentary functions and modern working practices, and to engage and empower Members and staff to make the best use of digital) and action to implement this strategy (such as to continue to build digital skills and improve a digital culture and community).

To make interparliamentary cooperation more effective through modern technology, the adoption of an encompassing digital strategy for interparliamentary cooperation is therefore advised. This is however not an easy task, since it means that each and everyone of us (practitioners, politicians, academics, citizens, etc) must be willing to reinvent oneself and learn to engage in this new ecosystem: doing politics is not the same as before the pandemic, the expectations of citizens regarding issues like inequalities, access to public goods etc., are higher than ever, the business model of journalism has changed immensely into an attention-based model, in which the number of clicks can be regarded as more important than the accuracy and veracity of the facts.

The challenge is there and the first Conference on Digital Technologies and the Stakes for Representative Democracy, held in Athens and Nafplion in June 2022, was an important step in overcoming it.

# ARTIFICIAL INTELLIGENCE IN THE WORK OF THE EUROPEAN PARLIAMENT

*Theodoros Karapiperis\**



This short intervention resulted from a request, articulated by Professor N. K. Alivizatos during the debate, for an update on the ways the European Parliament (EP) was addressing and, in particular, employing artificial intelligence (AI) in its own work, as a new, multi-faceted and pervasive technology. The response was organized in three sections:

## **How the EP employs AI in its own work**

AI is already facilitating the EP's work in various ways:

- 1) Most legislation of the European Union (EU) is co-decided by the EP and the EU Council according to an elaborate procedure ensuring the delicate balance between the co-legislators' respective roles. Clustering of amendments is part of the preparation of votes in committees and Plenary. Setting up voting lists for such amendments and, in particular, grouping them according to their content, and ordering them in terms of the priority in which they will be voted upon is a major part of the work of committee secretariats and plenary services. The task is rendered particularly demanding in the (not unusual) cases of votes involving thousands of amendments (such as the votes on the "Fit for 55" package of measures for reducing greenhouse gas emissions). AI has started being applied through different pilot projects in this area, both for files in progress and files that have been archived. The

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\* The speaker would like to sincerely thank for their generous help in terms of detailed updates concerning the latest developments in their respective sectors of activities, his former colleagues from the Secretariat of the European Parliament Franck Debié, Director for the Library and Knowledge Services, EPRS, Eschel Alpermann, Head of the Strategy and Innovation Unit, EPRS, Annamaria Forgacs, Head of the Linking the Levels Unit, EPRS, Philip Boucher, Administrator in the Secretariat of the Industry, Research and Energy Committee (ITRE), formerly Policy Analyst in the Scientific Foresight Unit (STOA), Andrés García Higuera, Seconded National Expert in the STOA Unit, Svetla Tanova-Encke, Coordinator of the European Science-Media Hub (ESMH) within the STOA Unit, as well as Eszter Fáy and Vitalba Crivello, Policy Analysts in the ESMH.

- aim is to reduce the amount of effort required from staff, while maintaining the reliability of the lists. Staff would anyway perform, as a safeguard, a final check of the clustering and ordering of amendments before the vote.
- 2) Citizens can address questions to the EP by post or online via the Ask EP platform. Of the order of 10,000 different questions are addressed to the EP annually. There are broadly two kinds of enquiries: those submitted by individual citizens acting alone (average of 874 per month over the past 12 months) and those submitted multiple times by hundreds or thousands of citizens acting as part of organized campaigns (average of 2,759 individual messages per month over the same period). The very diverse information requested has to be carefully checked and properly curated before it is sent to the enquiring citizens. EP services are particularly concerned to provide accurate and comprehensible data. AI is routinely used to clean up the metadata, and remove spurious and inconsistent entries, before finalizing the reply with which the data is sent.
  - 3) The European Institutions are among the most transcription, translation and interpretation-intensive multi-lingual organizations worldwide. The functioning of the EP depends crucially on the capacity of its services to translate texts, transcribe speeches and debates, and interpret them into as many of the official EU languages as required by the participating/interested EP Members (MEPs). This includes notably the minutes of the EP plenary sessions. AI has simplified tremendously the transcription of the oral speech and its translation into other languages. Draft minutes are prepared automatically and are subsequently checked by multi-lingual staff for the more widely spoken languages (English, French, German) and for other official languages when they are published or explicitly requested by Members. Recent advances in the accuracy and reliability of automatic transcription and translation have been crucial for this development. Conversely, the abundant publicly available text translations conducted by EP services are contributing valuably to the development and improvement of AI translation tools.
  - 4) The EP's Linking the Levels Unit (LINK), tasked with "interconnecting various levels of government in the EU ... [and e]nhancing cooperation with European, national, regional and local governmental institutions ... and other relevant organisations",<sup>1</sup> has begun to develop, together with the In-

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1. <https://trustedjobs.eu/jobs/1988>, accessed 9 March 2023.

formation Technology (IT) Unit of the European Parliamentary Research Service (EPRS, to which LINK also belongs),<sup>2</sup> a new IT tool, which will use AI and will help strengthen the consultation phase of the policy cycle by finding input from these partners and selecting the information most relevant for EPRS researchers.

### AI-relevant legislative work

The EP, as EU co-legislator, and its committees are busy at the moment in intensive AI-related legislative work. It would go beyond the scope of the present response to address in detail the different legislative files, but the main ones among them are listed below – the date indicated for each file is either that of the adoption by the EP or of publication in the Official Journal (OJ) of the EU (no asterisk) or that of the adoption of the respective proposal by the European Commission (EC; \*: still under discussion / not yet adopted by the EP):

- Digital Markets Act (adopted by the EP in July 2022);<sup>3</sup>
- Digital Services Act (adopted by the EP in July 2022);<sup>4</sup>
- Data Governance Act (final act published in June 2022);<sup>5</sup>
- Data Act (February 2022\*);<sup>6</sup>
- European Declaration on Digital Rights and Principles for the Digital Decade (January 2022\*);<sup>7</sup>
- Decision establishing 2030 Policy Programme “Path to the Digital Decade” (September 2021\*);<sup>8</sup>
- AI Act (April 2021\*);<sup>9</sup>

2. <https://www.europarl.europa.eu/at-your-service/en/stay-informed/research-and-analysis>, accessed 9 March 2023.

3. <https://oeil.secure.europarl.europa.eu/oeil/popups/summary.do?id=1710475&t=e&l=en>, accessed 9 March 2023.

4. <https://oeil.secure.europarl.europa.eu/oeil/popups/summary.do?id=1710469&t=e&l=en>, accessed 9 March 2023.

5. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022R0868>, accessed 9 March 2023.

6. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A68%3AFIN>, accessed 9 March 2023.

7. <https://digital-strategy.ec.europa.eu/en/library/declaration-european-digital-rights-and-principles#Declaration>, accessed 9 March 2023.

8. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0574>, accessed 9 March 2023.

9. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021PC0206>, accessed 9 March 2023.

- Digital Resilience Act (September 2020\*);<sup>10</sup>
- Directive on liability for defective products<sup>11</sup> (September 2022\*; adapting the EU’s liability regime to the digital transition and repealing the Product Liability Directive 85/374/EEC);<sup>12</sup>
- Directive on adapting non-contractual civil liability rules to AI (AI Liability Directive; September 2022\*);<sup>13</sup>

EU digital policy is based on numerous policy documents, including various initiatives of EU Presidencies such as the Lisbon Declaration – Digital Democracy with a Purpose (June 2021),<sup>14</sup> the Berlin Declaration on Digital Society and Value-based Digital Government (December 2020)<sup>15</sup> and the Tallinn Declaration on eGovernment (October 2017),<sup>16</sup> as well as the EC’s digital strategy as formulated in the Communication Shaping Europe’s Digital Future (February 2020).<sup>17</sup> For further information, you can consult: (i) the AI Repository of documents and other online resources,<sup>18</sup> published by the EP’s Panel for the Future of Science and Technology (STOA),<sup>19</sup> including STOA’s European Science Media Hub (ESMH),<sup>20</sup> and various units of EPRS, and (ii) the AI Legislative Overview of EP decisions and other EU policy documents related to AI,<sup>21</sup> both managed by STOA’s Centre for AI.<sup>22</sup>

10. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020PC0595>, accessed 9 March 2023.

11. <https://eur-lex.europa.eu/legal-content/NL/TXT/?uri=CELEX:52022PC0495>, accessed 9 March 2023.

12. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01985L0374-19990604>, accessed 9 March 2023.

13. [https://www.europarl.europa.eu/RegData/docs\\_autres\\_institutions/commission\\_europeenne.com/2022/0496/COM\\_COM\(2022\)0496\\_EN.pdf](https://www.europarl.europa.eu/RegData/docs_autres_institutions/commission_europeenne.com/2022/0496/COM_COM(2022)0496_EN.pdf), accessed 9 March 2023.

14. [https://cdn.bndlyr.com/saktyd721tavnm2/\\_assets/svmXxZTg2Aylr4v.pdf](https://cdn.bndlyr.com/saktyd721tavnm2/_assets/svmXxZTg2Aylr4v.pdf), accessed 9 March 2023.

15. [https://ec.europa.eu/isa2/sites/default/files/cdr\\_20201207\\_eu2020\\_berlin\\_declaration\\_on\\_digital\\_society\\_and\\_value-based\\_digital\\_government\\_.pdf](https://ec.europa.eu/isa2/sites/default/files/cdr_20201207_eu2020_berlin_declaration_on_digital_society_and_value-based_digital_government_.pdf), accessed 9 March 2023.

16. <https://dig.watch/resource/tallinn-declaration-on-egovernment#:~:text=During%20the%20eGovernment%20Ministerial%20Conference,border%20public%20services%20for%20businesses>, accessed 9 March 2023.

17. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020DC0067>, accessed 9 March 2023.

18. [https://www.europarl.europa.eu/cmsdata/250734/STOA\\_EPRS\\_AI%20\\_Repository%2006.07.2022.pdf](https://www.europarl.europa.eu/cmsdata/250734/STOA_EPRS_AI%20_Repository%2006.07.2022.pdf), accessed 9 March 2023.

19. <https://www.europarl.europa.eu/stoa/en/home/highlights>, accessed 9 March 2023.

20. <https://sciencemediahub.eu/>, accessed 9 March 2023.

21. <https://www.europarl.europa.eu/cmsdata/250733/STOA%20C4AI%20AI%20Legislative%20Overview%2006.07.2022.pdf>, accessed 9 March 2023.

22. <https://www.europarl.europa.eu/stoa/en/centre-for-AI>, accessed 9 March 2023.

## STOA and other EPRS publications and events

STOA was launched in 1987 as a panel of (currently 27) MEPs nominated by different (currently 11) permanent parliamentary committees and it carries out technology assessment and scientific foresight projects for the purpose of advising the EP and its committees on the implications of new and emerging science and technologies, notably for the economy, the environment and society in general. To this end, STOA collects and disseminates independent information and assists MEPs in their parliamentary work by identifying and assessing the widest possible range of options for long-term, strategic planning and policy-making. The outcomes of STOA's research are presented in the form of "independent, high-quality and scientifically impartial studies"<sup>23</sup> and options briefs published (and publicly available)<sup>24</sup> on the STOA website.

STOA also organises public events,<sup>25</sup> where MEPs and other policy-makers, experts, stakeholders and the public at large "discuss and compare scientific and technological developments of political relevance to civil society".<sup>26</sup> These events are typically divided in standard workshops, "STOA meets experts" smaller-scale workshops usually taking place at lunchtime, and the STOA Annual Lecture featuring eminent scientists –often Nobel-Prize laureates– speaking about subjects high on the political agenda. Further publications and events are related to the ESMH (examples listed below), STOA's membership of the European Parliamentary Technology Assessment (EPTA) network (one example listed below) and STOA's MEP-Scientist Pairing Scheme (not covered by this paper).

STOA activities and products address diverse topics linked to the digital and green transitions, including technologies in the areas of energy, transport, communications, agriculture, health and the life sciences. Recent STOA work has focused on various aspects of the COVID-19 pandemic and digital technologies. A detailed list of the output of STOA's AI-related work is presented below.

The presentation includes recent work by other units within EPRS, namely the units of the Members' Research Service (MRS, an EPRS Directorate), and the European Added Value Unit (EAVA) of the Directorate for Impact Assessment

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23. STOA Rules, Article 1(2), 1st indent, available at [https://www.europarl.europa.eu/cms-data/244561/STOA%20Rules\\_EP%20Bureau%20decision%20of%2015.04.2019.pdf](https://www.europarl.europa.eu/cms-data/244561/STOA%20Rules_EP%20Bureau%20decision%20of%2015.04.2019.pdf), accessed 9 March 2023.

24. <https://www.europarl.europa.eu/stoa/en/publications/search>, accessed 9 March 2023.

25. <https://www.europarl.europa.eu/stoa/en/events/past>, accessed 9 March 2023.

26. STOA Rules, Article 1(2), 2nd indent.

and European Added Value, where the Scientific Foresight Unit that provides the STOA administration also belongs. MRS delivers, through its units covering all EU policy areas, in-house information, analysis and research to individual MEPs upon request and publishes a wide range of pro-active, accessible briefings of wider interest on major EU policies. EAVA assesses the potential benefits to be obtained through common EU action in particular policy areas. The presentation does not cover publications and activities of the EP's Policy Departments.

STOA publications:<sup>27</sup>

Studies directly/closely linked to AI published in the year preceding the conference and in July 2022:

- Auditing the quality of datasets used in algorithmic decision-making systems | Study and Options Brief, July 2022;
- Ethical and societal challenges of the approaching technological storm | Study and Options Brief, July 2022;
- 'Splinternets': Addressing the renewed debate on internet fragmentation | Study and Options Brief, July 2022;
- Governing data and artificial intelligence for all: Models for sustainable and just data governance | Study and Options Brief, July 2022;
- Artificial intelligence in healthcare: Applications, risks, and ethical and societal impacts | Study, June 2022;
- Regulatory divergences in the draft AI act: Differences in public and private sector obligations | Study and Options Brief, May 2022;
- AI and digital tools in workplace management and evaluation: An assessment of the EU's legal framework | Study and Options Brief, May 2022;
- Key enabling technologies for Europe's technological sovereignty | STOA Study and Options Brief, December 2021;
- Person identification, human rights and ethical principles: Rethinking biometrics in the era of artificial intelligence | STOA Study and Options Brief, December 2021;
- EU health data centre and a common data strategy for public health | STOA Study and Options Brief, September 2021;
- Innovative technologies shaping the 2040 battlefield | STOA Study and Options Brief, August 2021;

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27. <https://www.europarl.europa.eu/stoa/en/publications/search>, accessed 9 March 2023.

- Tackling deepfakes in European policy | STOA Study, Options Brief and video clip, July 2021.

Selected relevant studies published in recent years:

- The ethics of artificial intelligence: Issues and initiatives | Study and Options Brief, March 2020;
- A governance framework for algorithmic accountability and transparency | Study and Options Brief, April 2019;
- Automated tackling of disinformation: Major challenges ahead | Study and Options Brief, March 2019;
- A group of two studies and a briefing on technology and social polarisation:
  - Polarisation and the news media in Europe | Study, March 2019;
  - Polarisation and the use of technology in political campaigns and communication | Study, March 2019;
  - Technology and social polarisation | Options Brief, March 2019;
- A collection of four opinion pieces entitled ‘Should we fear artificial intelligence?’ (In-Depth Analysis, March 2018), based on the Workshop ‘Rational optimism: Should we fear the future?’ hosted by STOA on 19 October 2017 to consider whether it is rational to be optimistic about AI.

The following documents were published by STOA in the context of its scientific foresight activities:

- A framework for foresight intelligence - Part 1: Horizon scanning tailored to STOA’s needs | Study, November 2021;
- A framework for foresight intelligence - Part 2: Online stakeholder engagement | In-Depth Analysis, 25 November 2021;
- Regulating genome editing: Societal hopes and fears | Study, December 2021;
- Horizon scanning and analysis of techno-scientific trends | Study, July 2017.

In the July 2017 foresight study, STOA employed external experts to conduct a horizon scan for the purpose of “identify[ing] the most ‘trending’ techno-scientific topics” and selecting “a set of STOA-relevant topics” to feed into the discussions of the STOA panel about future STOA research. The experts “used data analytics, i.e. several elements of their artificial intelligence toolkit, com-



bined with a ‘journalistic’ approach (a combination of mind and machine-based data analytics) to collect and analyze 16,491 news articles and over 8.3 million tweets”. They concluded that their analysis illustrates “how data analytics using a combination of mind and machine methodologies could support the selection of emerging technologies and other trend areas for policy advisory purposes”.

In the 2021 project “A framework for foresight intelligence”, STOA first contracted an external “professional trends knowledge platform that collects and analyses information on phenomena such as technology, trends and signals, using AI-based tools and a team of foresight experts to anticipate future developments. These trends and signals were used to build a set of trend radars with a view to testing the feasibility of adding horizon-scanning activities to STOA’s methodological toolbox” (Part 1). “The main objective [of Part 2 of the project was] ... to assess online engagement methods and tools, and their suitability for brainstorming with stakeholders in technology assessment (TA) and foresight projects. ... For this purpose, STOA selected a ... study ... requested by the STOA Panel [to investigate] a complex issue that is the subject of controversy: gen[om]e editing techniques for the future of farming in Europe”. Using the methodology described in Part 2, STOA conducted, with the help of external experts, an online survey of relevant stakeholders to identify “concerns and arguments [...] refined with the help of the stakeholders themselves during [a] subsequent workshop”. The outcomes were presented in the December 2021 study cited above.

STOA’s two-page foresight publications (“What-if”) summarize the state-of-the-art of a new or emerging technology, examine the technology’s potential wider impacts, and enhance the EP’s preparedness through insights into possible policy responses. For each “What if”, EPRS publishes a Science and Technology Podcast.<sup>28</sup> STOA has recently published the following AI-related “What ifs”:<sup>29</sup>

- What if AI could make the agri-food sector more resilient? | At a glance and podcast, September 2022;
- What if AI regulation promoted innovation? | At a glance and podcast, April 2022;
- What if we chose new metaphors for AI? | At a glance and podcast, June 2021;

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28. <https://epthinktank.eu/podcasts/>, accessed 9 March 2023.

29. <https://www.europarl.europa.eu/stoa/en/publications/search>, accessed 9 March 2023.

- What if objects around us flocked together and became intelligent? | At a glance and podcast, June 2021.

The following articles/interviews were published over the past year by STOA's ESMH:

- “Artificial intelligence starts to hit the right note”, August 2022;<sup>30</sup>
- Cyber attacks are far from science fiction, April 2022;<sup>31</sup>
- AI in healthcare: Applications, risks, ethical and societal impacts, February 2022;<sup>32</sup>
- The future of AI for healthcare: AI can make a huge difference, November 2021;<sup>33</sup>
- AI in agriculture: benefits and challenges ahead, September 2021;<sup>34</sup>
- Artificial or Artistic Intelligence?, August 2021;<sup>35</sup>
- The AI-cyber nexus: mending defences, recasting threats, August 2021.<sup>36</sup>

#### Other EPRS publications:

A selection of other EPRS products published over the past year is listed below:

- Artificial intelligence act and regulatory sandboxes, MRS Briefing, June 2022;<sup>37</sup>
- Investigation into the potential of AI in the digital age MRS At a glance, April 2022;<sup>38</sup>

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30. <https://sciencemediahub.eu/2022/08/31/ai-starts-to-hit-the-right-note/>, accessed 9 March 2023.

31. <https://sciencemediahub.eu/2022/04/25/cyber-attacks-are-far-from-science-fiction/>, accessed 9 March 2023.

32. <https://sciencemediahub.eu/2022/02/09/prof-karim-lekadir-applications-risks-ethical-and-societal-impacts-of-ai-in-healthcare/>, accessed 9 March 2023.

33. <https://sciencemediahub.eu/2021/11/17/the-future-of-ai-in-medical-imaging/>, accessed 9 March 2023.

34. <https://sciencemediahub.eu/2021/09/29/ai-in-agriculture-benefits-and-challenges-ahead/>, accessed 9 March 2023.

35. <https://sciencemediahub.eu/2021/08/11/artificial-or-artistic-intelligence/>, accessed 9 March 2023.

36. <https://sciencemediahub.eu/2021/07/07/the-ai-cyber-nexus-mending-defences-recasting-threats/>, accessed 9 March 2023.

37. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733544/EPRS\\_BRI\(2022\)733544\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733544/EPRS_BRI(2022)733544_EN.pdf), accessed 9 March 2023.

38. [https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729381/EPRS\\_ATA\(2022\)729381\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/ATAG/2022/729381/EPRS_ATA(2022)729381_EN.pdf), accessed 9 March 2023.

- The future of data protection and privacy | MRS Briefing, April 2022;<sup>39</sup>
- Artificial intelligence act | MRS Briefing, January 2022;<sup>40</sup>
- Digital transformation – Cost of Non-Europe | EAVA Study, January 2022.<sup>41</sup>

#### STOA events:<sup>42</sup>

All recent Annual Lectures were directly or closely related to AI (no Annual Lecture in 2019):

- Edge computing, 6G and satellite communications | Annual Lecture, 1 December 2021;<sup>43</sup>
- Digital human rights and the future of democracy | Annual Lecture, 9 December 2020;<sup>44</sup>
- Quantum technologies, artificial intelligence, cybersecurity | Annual Lecture, 4 December 2018;<sup>45</sup>
- Media in the Age of Artificial Intelligence | Annual Lecture, 21 November 2017.<sup>46</sup>

AI-relevant workshops organized by STOA over the past five years are listed below:

- Quantum and chips: Developing European industrial capabilities in quantum technologies | Workshop, 12 October 2022;
- High-Level Roundtable on Cybersecurity, 26 April 2022;
- Ethical issues in the COVID-19 pandemic: The case of digital health applications (online event) | Workshop, 11 February 2022;
- The Athens Roundtable on Artificial Intelligence and the Rule of Law (online event), 6 December 2021 and 16 November 2020;

39. [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729396/EPRS\\_BRI\(2022\)729396\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729396/EPRS_BRI(2022)729396_EN.pdf), accessed 9 March 2023.

40. <https://epthinktank.eu/2021/11/18/artificial-intelligence-act-eu-legislation-in-progress/>, accessed 9 March 2023.

41. [https://www.europarl.europa.eu/RegData/etudes/STUD/2022/699475/EPRS\\_STU\(2022\)699475\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2022/699475/EPRS_STU(2022)699475_EN.pdf), accessed 9 March 2023.

42. <https://www.europarl.europa.eu/stoa/en/events/past>, accessed 9 March 2023.

43. <https://www.europarl.europa.eu/stoa/en/events/details/edge-computing-6g-and-satellite-communic/20211027EOT06004>, accessed 9 March 2023.

44. <https://www.europarl.europa.eu/stoa/en/events/details/digital-human-rights-and-the-future-of-d/20201005EOT04941>, accessed 9 March 2023.

45. <https://www.europarl.europa.eu/stoa/en/events/details/2018-quantum-technologies-artificial-int/20181120EOT03381>, accessed 9 March 2023.

46. <https://www.europarl.europa.eu/stoa/en/events/details/2017-media-in-the-age-of-artificial-inte/20171129EOT01981>, accessed 9 March 2023.

- Key Enabling Technologies for Europe’s technological sovereignty (online event) | STOA meets experts, 15 June 2021;
- Putting the ‘e’ in e-health | Workshop, 21 September 2021;
- Governing online platforms: Policy options for shaping a principled digital future (online event) | Workshop, 30 March 2021;
- Policy options for the ethical governance of disruptive technologies (online event) | Workshop, 23 March 2021;
- Use of AI, big data and space technologies in terrestrial management (online event) | Workshop, 23 February 2021;
- STOA Roundtable on Digital Sovereign Identity (online event), 11 June 2020;
- The Future of Artificial Intelligence for Europe | Workshop, 29 January 2020;
- Is artificial intelligence a human rights issue? | Workshop, 20 March 2019;
- Artificial Intelligence for early diagnosis and treatment, Workshop, 7 February 2019;
- Towards a digital democracy – Opportunities and challenges | EPTA Conference 2018, 4 December 2018 (organised by STOA in the context of the EPTA Presidency it held over 2018);
- Achieving a Sovereign and Trustworthy ICT Industry in the EU | Workshop, 27 September 2017.

A STOA workshop on “AI Public Perspectives” was scheduled to and did take place on 14 November 2022 focusing on how do citizens perceive AI, how mentalities are evolving, what stories are told about AI, and what impacts people’s relation to AI.<sup>47</sup> The short film ‘The Best Option’, produced by STOA, was presented to the public for the first time at this event as an introduction to the debate that will follow among experts from different disciplines, policy-makers, artists and the public.

## Conclusion

AI is bound to play an important role in the functioning of Parliaments in the near future. Although this intervention arose spontaneously during the de-

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47. <https://www.europarl.europa.eu/stoa/en/events/details/artificial-intelligence-public-perspecti/20221020WKS04561>, accessed 9 March 2023.

bate in this inaugural conference, an update (consisting of presentations and subsequent discussion) by different Parliaments on their experiences with the development and implementation of AI techniques (or other digital technologies they deem relevant) in their work, as well as on any plans they have in this direction, would be worth considering as a permanent feature (e.g. as a separate session) of future follow-up conferences. This would be entirely natural, given the overall theme of these conferences, while providing a unique opportunity for informing and learning from each other during these gatherings of policymakers and officials with relevant responsibilities, expertise and/or interests from Parliaments with diverse political traditions, technical capacities and institutional arrangements. The specific structure of the relevant session would of course have to be dynamically adapted to a rapidly evolving economic, technological and political environment.

PART III

THE ACTORS' VIEWPOINT



## OPPORTUNITIES AND CHALLENGES THAT DIGITAL TECHNOLOGY POSES FOR REPRESENTATIVE DEMOCRACY

*Christos-Georgios Skertsos*



In times of crises, and haven't we seen quite a few of them lately, we should always try to find space and time to step back, reflect and discuss the fundamentals that rule our co-existence. How we can improve the way our democratic states and societies respond to crises in order to fulfill their core mission – which is to protect their citizens and ensure their wellbeing and prosperity.

So, there is no doubt that everyone believes in representative democracy. After all, even with all its flaws representative democracy is the best of all existing and tried solutions, in order to establish individual and collective progress but also safeguard some very important public values in modern societies.

Which are these public values? Despite the fact that all the more often they are taken for granted and are not well appreciated, we are talking about a set of essential political virtues that cannot be found under any other political regime except for democracy.

These are the respect we owe and we show to individual rights, freedom of speech, checks and balances of powers, equality for all under the rule of law, priority to science versus magical thinking, respect for the pursuit of happiness and the nurturing of the talents, needs and desires of everyone no matter their political and religious beliefs, ethnic or sexual identity, justice and protection for the vulnerable, the poor and the oppressed, but also tolerance to different opinions – sometimes even towards opinions that come from the enemies of democracy and free speech. These values are the thread that ties the fabric of representative democracy together and make it the best political regime out there.

Is representative democracy perfect? The answer, of course, is: by no means. Because it consists of humans. And despite what our mothers – especially Greek ones – tell us when we are young, we are actually far from perfect as human beings.



Whenever I have such challenging topics in my hands that go beyond my level of expertise and knowledge, I always find comfort to return to the classics and see what they have to say about it. So what did the founders of modern democracy think about democracy? What did John Adams, Alexis de Tocqueville and Stuart Mill have to say about representative democracy?

To begin with and in a nutshell they thought that democracy is a full time job and a pretty difficult one. That is why we need elected responsible and accomplished representatives to do it for us. Otherwise we would not be able to do our proper jobs and have functioning societies and economies.

Because of that, they also thought that the cornerstone of representative democracies is trust. Exactly because we bestow to our elected leaders the power to make decisions on behalf of us. Without a minimum level of trust to the ones we elect in the Parliament to represent us there is no us. There is no society. There is no democracy.

However the founding fathers of modern democracies were by no means naïve. This is why they thought that “democracy is fragile and never lasts long enough” and that it would be arrogant – to say the least – to think that democracies are less vain, superfluous, egotistical, ambitious or greedy than aristocracies, monarchies or other authoritarian regimes. Because we as humans are also egotistical and vain and greedy ... that is why we need constant checks and balances to contain our passions and our vices.

According to them, the threat to modern representative democracies comes from within not from outside, and basically derives from the complacency that democratic and economic prosperity inevitably bring with it. They spotted one more threat, which is actually a political paradox. Although trust is the cornerstone for democratic coexistence, modern democracies suffer from a serious lack of trust towards democratic institutions and elected politicians, simply because in a democracy you can do that. We have the right to challenge our institutions and constantly doubt the fairness, efficacy and efficiency of their decisions. By default a democracy fosters an environment of freedom of expression and free judgment. And this is in my opinion the thin line where technology steps in and makes things even more interesting and I might say complicated for democratic societies.

Post modern mass democratic societies suffer from the disease of instant gratification, that is of wanting to have everything and have it now – a symptom directly related to technology which has made such advances that it is able to bring pretty much everything to the palm of our hands almost without any

effort. This notion, if you think about it, with which children grow from a very young age, is a game changer for every aspect of our lives, our relationships, our economies but also for representative democracy.

The reason is that representative democracy is by default slower exactly because it is representative and not direct or participatory. Instant gratification nurtures the belief that democratic institutions should also be as fast, responsive and effective as our smartphones. And when they are not, then social and political angst begins in democracies and the forces of populism and extremism are looming to take advantage of it. If you blend into this mix the rising inequalities stemming from rampant market driven globalization that hits predominantly working and middle class citizens in western democracies, then you have a very explosive mix.

In principle technology is a tool. It is a powerful but neutral force that can be used for the good but also for the bad, depending on the institutional framework that governs its use. Representative democracy should not shy away from technology because they run at different speeds. But rather I believe it should embrace it and take advantage of it in order to reinvent itself.

An opportunity that technology brings forward in this respect for representative democracy is to make it more participatory. But at the same time there is also a danger there. We have to keep in mind that in today's post truth world of extreme and ever growing complexity and polarization – where very powerful special interests try and sometimes succeed to manipulate and influence politics by using digital technology – we need to have a well educated, informed, unbiased and mature electorate when opening up to participatory democracy. So baby steps at the local level should be more appropriate there.

Personally I believe that in the right hands and under the proper legal framework digital technology can advance modern democracies and increase the public's trust towards political institutions. There are four reasons for that:

- a. It can bring citizens closer to their representatives, by using tools of participatory democracy and deliberation that are currently missing,
- b. It can improve the quality and speed of public services and public goods by digitizing their delivery and minimizing bureaucracy,
- c. It can reduce inequalities by applying data analytics that support evidence based policy-making thus producing better regulation and better governance.

- d. It can advance international cooperation to address global challenges like terrorism, pandemics and climate change.

We can all be winners if we trust and invest more on digital technology but with the proper safeguards. We as Europeans are lucky enough to live in a political Union which has the most comprehensive and democratic set of rules for the use of data and technology. We represent the third road between the Chinese surveillance digital – big brotherish – state and the American laissez faire unregulated digital freedom of expression. So I believe that with more accountability, checks and balances and respect in the protection of personal data we can all harness the benefits of technology and at the same time improve and reinvent our democracies.

# DIGITAL TECHNOLOGIES AND THE STAKES FOR REPRESENTATIVE DEMOCRACY

*Alexandre Quintanilha*



Let me start by thanking the organizers for challenging us, parliamentarians, to debate the current and future impacts of digital technologies. Not only on the functioning of our Parliaments but also, implicitly, on the future of democracies and the many mechanisms that might strengthen (or weaken) them.

Digital technologies have been around for several decades, but the current rate of innovation in this domain has been gigantic. And the way society reacts to such rapid changes varies dramatically. Some are excited, almost mesmerized, by the possibilities that are promised, while others are concerned, almost terrified, by the unforeseen consequences of its applications. I would venture to say that most of us could no longer imagine a world without these technologies. They invade our lives in a multitude of ways, some of which we appreciate greatly, others that frighten us.

The disruptive effects of the printing press introduced in the first half of the fifteenth century are well known. The printing revolution, as it is sometimes referred to, not only quickened the spread and sharing of knowledge, but was also responsible, to a significant extent, for the bloody wars of the Reformation and Counter-Reformation.

Digital technologies are tools. Just as the printing press was a new tool, back then, we need to be aware of the many uses that these new technologies are able to deliver. And today we are keenly aware that some of these uses require careful regulation.

Democracies are strengthened when policies are based on the most robust knowledge available. But knowledge grows slowly, and robust knowledge even more slowly. It takes time to think of new and interesting questions. It often takes even more time to design the appropriate strategies to try to answer those questions. Invariably, unforeseen new questions always arise. In all domains, adding to current knowledge follows this pattern. It demands curiosity, imagination and hard work. And time!

And yet, when faced with emergencies, time becomes a luxury that parliamentarians and politicians cannot afford. They have to act. They are expected to act.

Yet, when faced with the dilemma of deciding which data to use that justify the decisions, it is not only the quantity of data available that is relevant, but also the quality of such data.

It is often claimed that given more data it will become easier to reach consensus and therefore to decide. That is not true. There are two main reasons why it is not true. First because it takes time to select the data that will become reliable information. And even longer, before that information becomes knowledge. Unreliable data has to be weeded out, prolonging the time to reach consensus. When expected to take decisions and to act, such time is often not available. But there is a second reason of a different nature: given large amounts of data, most of us will select those that fit best with our worldview and disregard those that go against it. We all do it, even if some of us have been trained to be cautious regarding what appears blatantly obvious. Experience teaches us that there are many instances when what seems obvious is false.

Needless to say, fake data is lethal to the process. Data is only useful if it is trusted. And again the issue of time becomes critical. Trust takes time. If we want to trust the data, we need to trust the institutions as well as the researchers that produce the data, that convert that data into reliable information and new knowledge.

Looking at two specific examples is useful, namely climate change and the recent SARS-Cov2 pandemic. The accumulated knowledge, since Eunice Foote in 1856 described the greenhouse effect of CO<sub>2</sub>, including all the subsequent research on climate change is overwhelming. And yet, after twenty six COPs (Conference of the Parties), CO<sub>2</sub> levels continue to rise at an accelerated pace. The European Union has an ambitious agenda to deal with this challenge, but unless the rest of the world adopts a similar strategy, we are bound to be forced to adapt to very significant climate changes.

On the other hand, regarding the SARS-Cov2 pandemic, the response was extremely rapid, in spite of all the uncertainties regarding the long-term effect of the virus and the vaccines.

In both cases, the percentage of negationists in different countries varies significantly.

In Portugal, we have recently approved a extremely ambitious climate law and many cities and local authorities are promoting a circular economy and a more

efficient use of resources such as water and energy. And almost 90 percent of the population is fully vaccinated against SARS-Cov2 (95 percent has received at least one dose). The remaining negationists, which I am certain are still out there, seem to have lost their voice. Or no one pays much attention to them.

Why? Why is it also, that in a recent Eurobarometer report (end of 2021) Portuguese citizens appear to be leading when it comes to believing that knowledge is the most likely tool to address emerging challenges?

There are probably many reasons. Some have to do with the penetration of digital technologies, others not.

The creation of *Ciência Viva* (Living Science) in 1996 was a key event in promoting citizen engagement and understanding of the role of science and broader domains of knowledge in today's society. Created by Minister Mariano Gago as a dedicated Agency to promote science literacy, it was regarded at the time as utopian. Today, with 21 Science Centers focused on a variety of topics and close to 900 Science Clubs, located in schools all over the country, the *Ciência Viva* network is recognised, both within Portugal and abroad as responsible for a major transformation in the manner in which our citizens regard and use knowledge to evaluate policy choices.

The *Parlamento dos Jovens* (Parliament of Youth) was launched also in the mid-1990s, to promote and encourage democratic debate and to familiarize pupils in primary and secondary schools with the parliamentary procedures that produce legislation. Today, close to 1000 schools participate in this exercise. The end "product" is a plenary session in our National Parliament with concrete proposals for new legislation. Some of these proposals are then taken up by different political parties for further implementation.

Normally, twice a year, our Parliament organizes *Cafés de Ciência* (Science Cafes) in partnership with *Ciência Viva* and research centres, on emerging controversies that include topics ranging from food security, gender issues, climate change, forest fires, pandemics and/or the fragility of democracies. Parliamentarians, together with a few teachers and students have an opportunity to debate with many experts the complexity of some of the challenges that we are currently facing.

These three examples are meant to illustrate our attempts to strengthen the understanding of the need to integrate diverse sources of data and information when making policy decisions. But also, the need to be aware that the accumulation of knowledge often requires changes in long standing policies. And even more importantly, that it takes time.

Our Parliament has also implemented a number of different digital tools (electronic platforms) that facilitate the submission by concerned citizens of petitions, legislative initiatives and referendum initiatives. Not surprisingly, these are increasingly being used.

The Portuguese Presidency of Council hosted a European Citizen's Event of the Conference on the topic "The Future of Europe" during June of the current year (2022) in Lisbon. In a hybrid format it gathered the 27 representatives of national citizens' panels or events and successfully demonstrated the power of digital technologies and platforms.

I would like to end by, once more, emphasizing the idea that digital technologies are tools. Powerful tools. They have demonstrated their enormous potential in accessing knowledge. The need to be able to pinpoint and identify the sources of fake knowledge is vital. Trust depends on that capability. Let us hope that such a goal is achievable, as quickly as possible. Our democracies will rely on that capability.







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