

POPULISM: PATHOLOGY OR SYMPTOM? BETWEEN CRISIS OF DEMOCRACY AND DILEMMAS OF CONSTITUTIONALISM

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Abstract: this paper intends to examine populism by seeking a way that succeeds in making its nature clearer. The appropriate heuristic tool for this purpose is the Platonic comparison between the human body and the social body. Starting from this, the question arises as to whether populism represents a disease or merely a symptom of deeper pathology in the democratic system; the paper will favor the latter hypothesis. The method adopted here is dialectical and consists of comparing two approaches considered indicative of the two main scientific orientations toward populism: the first, of a politological and empirical type, adopted in a recent book by A. Arato and J.L. Cohen; the second, of a theoretical and critical type, adopted in a recent essay by C. Galli. The analytical proceeding adopted here implies the examination of two fundamental levels affected by the question: one political, concerning democracy as a form of government, the other legal, concerning constitutionalism as the arrangement and balancing of powers of the democratic State.

Keywords: Demos – Democracy – Constitutionalism – Populism

1. Introduction

In Plato's *Gorgias* (XIX, 464b) Socrates explains politics as «the art that relates to the soul» and compares it to medicine, the art that relates to the body¹. Now, Socrates argues, just as medicine is the art that studies «the nature of what it has in its care and the cause of its action» (LVI, 501a)², in the same way the analysis of politics should dwell on the nature of the phenomena it investigates in order to trace their causes, in search of the most suitable remedies for what ails the «body» of the State. Now, if, as is widely believed, populism is one of the problems afflicting contemporary politics, then, taking Socrates' comparison literally, how would the theoretical-political analysis on this

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¹ Plato, 1996, 164. All quotations in this paper have been translated by the author.

² Ivi, 212.

phenomenon gain? The following study attempts to answer that question by trying to recalibrate the established perspective on the populist phenomenon.

As is well known, not only to specialists, there is a wide literature on populism³. It is a continuous flourishing of studies urged above all by an immanent urgency, accentuated by some recent and surprising populist turns that have occurred in democracies considered mature, as in the case of Great Britain in the aftermath of Brexit, or the United States after the election (and possible return) of Donald Trump, or again Italy with the establishment of governments led by *Five Star Movement* and, currently, *Fratelli d'Italia*. Yet, one has the feeling that this proliferation of studies fails to reach a period to this phenomenon that, all things considered, is contemporary and, for that reason, still *in making*, and precisely for that so difficult to bring into focus.

The increase in the literature, although capable of restoring the different facets of the phenomenon, seems at the same time incapable of exhausting once and for all the *reasons* for its occurrence, spread and entrenchment so smoothly even in the most mature democracies. One of the reasons for the apparent circling and chasing of analyses, at least the reason that is intended to be corroborated here and from which we intend to begin this contribution, would lie in the fact that it is very difficult to escape the ideological appeal (attractive or repulsive) that populism exerts in those who approach it. A recent study by Andrew Arato and Jean L. Cohen⁴ seems to provide elements to support this hypothesis. The book is a dense in-depth study of the populist phenomenon, capable of rearranging and examining the most recent literature without even omitting the classics, and able to situate itself on multiple levels of inquiry such as the strictly inherent in political science but also the legal-constitutional. Yet, the harshness of some introductory remarks (which, as such, define the postulates of the work itself) gives the feeling of a loss of adherence to the phenomenon *itself*⁵. The phenomenon in itself, as such free from taboos, should be the only point on which to focus attention, at least in a philosophical inquiry, that is, the core where - in Socrates' view, as we have seen - *the nature of* the fact should be investigated. *Judgments* against the political actors of populism (who, as such, are mere epiphenomena) risk distorting the optics of the observer, who is forced to chase the protean adaptability of populist leaders by relentlessly adjusting his investigative lens, but losing sight of the object (the

³ Here I limit myself to citing only a portion of the most recent literature, demonstrating an always high interest in this phenomenon: M. Anselmi, 2017; A. Arato, J.L. Cohen, 2022; R. Chiarelli, 2015; V. Costa 2019; I. Diamanti, M. Lazar, 2018; B. Moffitt, 2016; G. Martinico, 2022; C. Mouffe, 2018, 2021; C. Mudde, C. Rovira Kaltwasser, 2017; J-W. Müller, 2017; D. Palano, 2017; R. Romanelli, 2021; P. Rosanvallon, 2017, 2020; C. Rovira Kaltwasser, P. Taggart, P. Ochoa Espejo, P. Ostiguy, 2017; M. Tarchi, 2019; N. Urbinati, 2020.

⁴ A. Arato, J. L. Cohen, 2023.

⁵ The Preface of the book contains (leaving out opinions on political actors) particularly alarmist tones and emphatic expressions (e.g., «threat», ivi, 27, referring to the various manifestations of populism; «progress», ivi, 26, associated with democratization) that constitute value judgments, and, as such, stand as problematic postulates in an objective examination of the issue.

phenomenon itself, precisely) that remains in the background, independent of the actors who from time to time take their turn on the stage.

Arato and Cohen's position, which is explicitly critical of the populist phenomenon, thus seems to be conditioned, excessively in my opinion, by certain value judgments, and their valuable exploration is sometimes in danger of being misunderstood into a form of political «engagement»⁶.

It does not go any better for other scholars, who could be situated on the opposite front to Arato and Cohen and whom the latter call «sympathizers»⁷ of populism, authors among whom it is impossible not to mention Ernesto Laclau⁸ and Chantal Mouffe, who, however, with intellectual honesty have also not been silent about the risks associated with the (right-wing) drifts of populism⁹. So, how to proceed in this slippery ridge without falling into one of the two opposing fields?

The present research intends to attempt to extricate itself from this problematic tangle of opposing currents¹⁰. So, neither the possible political *value* nor the possible political *disvalue* of populism will be the subject of this brief analysis, but rather its possible *functional* role. This is not entirely new. In fact, authors such as Mény and Surel¹¹, despite the perplexities of Arato and Cohen¹², have indeed grasped, or at least attempted to grasp, an aspect that could be called «signaling» of populism, namely its pointing to «structural» problems of contemporary democracies¹³.

The present paper uses the Platonic comparison between politics and medicine, and the metaphor of philosophical-political inquiry as a diagnosis of the State, as a heuristic vector capable, at least in the writer's intentions, of helping to better focus on this deviation from the democratic-constitutional system constituted by populist phenomena. This is an undoubted deviation because populism, and its empirical variants demonstrate this (as Arato and Cohen also highlight well), distorts and frustrates the difficult balance of democratic life: it pollutes public discourse by spreading fake news or feeding biased news; it magnifies some social problems (while leaving out others); and it distorts the factual field to suit the purposes of those whom Arato and Cohen call «political

⁶ Commitment that also appears manifest in *ivi*, 27.

⁷ Definition that Arato and Cohen attribute to a work by Mény and Surel on this subject, see *ivi*, 341.

⁸ Cf. E. Laclau, 2005; I. Errejón, C. Mouffe, 2020.

⁹ Cf. C. Mouffe, 2019.

¹⁰ In fact, Arato and Cohen also take a third-party analytical position, at least programmatically, which they trace back to a Critical Theory posture, cf. A. Arato, J.L. Cohen, 2023, 34. But in their case it is a matter of charting an alternative path between two interpretations of the phenomenon, which are: conservative solutions (return to liberal democracy, cf. *ivi*, 32) and radical reformist solutions (replacement of liberal democracy with a truly representative democracy, cf. *ivi*, 32-33).

¹¹ Arato and Cohen write, «the two French authors - correctly from our point of view - explicitly link the contradictions of constitutional democracy to the populist challenge», *ivi*, 341.

¹² «With great generosity, this reasoning [concerning the contradictions of constitutional democracy] could be interpreted as a desire to restart the historical trend toward democratization that, according to Mény and Surel, was abruptly interrupted by other trends after World War II», *ibidem*.

¹³ Cf. Y. Mény, Y. Surel, 2000.

entrepreneurs»¹⁴; it also taints the fairness of the democratic reciprocity that is established between representatives and represented through often unrealistic promises that are superior to the concrete possibilities of realization, and in other forms of «misleading publicity»¹⁵, punctually betrayed once they attain power, as the Italian experiences of the Conte I and Meloni governments are able to incontrovertibly demonstrate.

For the avoidance of misunderstandings, and for the sake of scientific rigor, it is therefore necessary to preliminarily establish that populism does not represent the best expression of constitutional democracy (we will not go into the debate on so-called «illiberal democracies» here), a type of democracy organized according to precise institutional criteria and legal constraints that we can summarize as: Rule of law; freedom of information and expression – and thus access to the political sphere, hence transparency of the latter –; political pluralism; alternation between different political forces in the succession of power; mutual recognition among political forces; conscious and informed participation of citizens in democratic processes; and, above all, control of and over power. Given this starting point, however, it is also necessary to have a clear understanding of what we are dealing with.

Assuming that populism is not, according to its empirical variants at least, a real political resource but mostly a degenerate manifestation of democratic politics, at least in the more mature and more complex systems such as the European-Western and North American ones, it is necessary to clarify whether we are dealing with a real *pathology* of democracy, as the most staunch detractors assert with great (perhaps excessive) emphasis, or, as will be attempted to argue here, whether it is nothing more than a *symptom*, more or less serious depending on its empirical manifestations and underlying context, of deeper pathologies of liberal and constitutional democracy. Put another way, if it is true, as Arato and Cohen assert, that populism is not an effective response to what they call «the three deficits»¹⁶ of the system – relating to democracy, welfare and social solidarity –, is it possible that this political phenomenon represents a spy – more or less visible depending on the circumstances, i.e., its contingent expressions – of these and perhaps other deficits? Is it possible, as indeed Arato and Cohen themselves speculate *en passant*, that populism is «the most impressive, if not the only symptom»¹⁷ of a crisis of liberal democracy?

Starting from these questions, the medical metaphor that we have decided to use gains validity – at least heuristically –, a metaphor that confronts us with this question: does populism embody the problems of the democratic system by posing itself as *the* latter's disease, or is it only the most visible manifestation, the symptomatology, of this disease(s), thus expressing only a signal value inside the democratic organism of more

¹⁴ A. Arato, J.L. Cohen, 2023, 135.

¹⁵ *Ibidem*.

¹⁶ *Ivi*, 34.

¹⁷ *Ivi*, 35.

serious pathologies? The answer to this question has not only an analytical value, with a view to contributing to a more precise framing of the populist phenomenon, but it takes on a far more relevant operational value with a view to identifying *solutions* both to the populist problem and, more importantly, to the possible crises underlying populism and from which it would have arisen.

2. *The Crisis of Democracy*

The three deficits highlighted by Arato and Cohen are a good starting point for assessing the working hypothesis that has been decided upon: the crisis of democracy as an *immanent cause* of the populist phenomenon.

The juxtaposition between populism and authoritarianism made by the two authors may leave one puzzled, however, it can be a starting point for this investigation and an effective support for what will be argued below. Indeed, the failure of liberal democracies in the early twentieth century is, as is well known, one of the decisive reasons behind the emergence of European fascisms. The main reason for this collapse can be traced to the inability of liberal regimes to adequately integrate a political subject new for the 20th century, the *masses*, which the political liberalism of the late 19th century, unlike Marxism, had not been able to elaborate theoretically, and probably not even to recognize in its manifestly political consistency; an operation instead pursued tenaciously (and successfully), through an unscrupulous use of the power of persuasion, by the demagogues who were proponents of authoritarian regimes¹⁸. As Jan-Werner Müller recalls, liberals, who had always feared the extension of the right to vote, «failed in their attempts to create a new form of governmental art for what German liberal Friedrich Naumann called the coming age of “mass life”. On the contrary, exponents of liberal ideology often simply denigrated the rise of the “masses”»¹⁹. These errors in reading reality, this blindness in recognizing the appearance of the new subject in public and political life, fostered on the one hand the immobility of the ruling classes, and on the other hand operational mistakes. Such short-sightedness contributed significantly to the shock that would shortly thereafter bring small extremist parties to the leadership of some of the most important European nations.

«When with the conflict over, the warring masses invaded the public arena, the weak liberal democracies did not have sufficient energy to accommodate them in lasting, living, viable forms: representative institutions designed for bourgeois minorities, for political cultures wary of democracy, were overwhelmed: institutional mediations (parliaments, based on the idea that the *logos*, the word, is the highroad of politics) were challenged by activisms and

¹⁸ Cf. J. Chapoutot, 2015.

¹⁹ J.-W. Müller, 2012, 22. A mistake, that of discrediting or blaming the masses (voters) into which the ruling classes and members of privileged classes are still in danger of falling today.

immediacies, by new ideologies, and societies devastated by the Great War and, ten years later, by the Great Crisis, traversed by open civil conflicts, were largely conquered by right-wingers – in each country with different methods, and with different intensity of mobilization»²⁰.

Instead, this new subject, the mass, had been immediately recognized in its peculiar «agent» dimension by social psychology²¹, which clearly identified its problematic characteristics, such as impulsiveness, fickleness and palingenetic potential: instinctiveness²², mental contagiousness, and suggestibility²³ are the three key factors from which Freud started in his analysis of the masses developed in long-distance dialogue with Le Bon; these three elements are also complemented by the peculiar sensitivity to images²⁴ and to the «truly magical power»²⁵ of words, all factors widely exploited by the most insightful proponents of emerging European fascisms²⁶.

The collapse of the Weimar Republic²⁷ – which arguably represented the closest political synthesis to modern forms of liberal and constitutional democracy²⁸ – constitutes the most dramatic and blatant demonstration of this failure of the bourgeois ruling classes to understand the real political strength and, at the same time, the inherent psychological weakness of the masses, but also their inability to take in and effectively translate into political action the legitimate demands of these new subjects²⁹.

Now, the inability on the part of the liberal-inspired parties of the early twentieth century to recognize the mass as a political subject and, above all, as an organic component of the new social landscape, and, in parallel, the rapidity with which demagogues instead exploited its potential, a risk about which Max Weber had promptly warned³⁰, return this entity to us as the *nerve point* of political processes, at least of contemporary ones. A failure in managing the masses, in integrating them *effectively* into the political system, implies a dangerous deficit in the democratic-liberal order itself³¹ which on two twentieth-century hairpins very indicative from this point of view - the first and second postwar periods - has its roots.

²⁰ C. Galli, 2023, 24.

²¹ S. Freud, 2011.

²² Ivi, 195.

²³ Ivi, 196.

²⁴ Ivi, 198.

²⁵ Ivi, 200

²⁶ See J. Chapoutot, 2015, 143-150.

²⁷ Cf. F. Lanchester, 2023.

²⁸ «Without any doubt, the origins of the *mass democratic-constitutional rule of law* can also be found in Weimar and its *laboratory*», ivi, 13, emphasis added.

²⁹ See also J. Chapoutot, 2015, 59 ff.

³⁰ «Weber [...] saw the greatest dangers not so much in the supposedly inferior nature of the “masses”, but in social phenomena such as the unstoppable development of bureaucracy and demagoguery, both of which he considered inevitable in the “mass” democratic state», J.-W. Müller, 2012, 22.

³¹ In this regard, reference can be made to the «representation deficits» that Arato and Cohen themselves speak of, albeit in a different historical framework, see A. Arato, J.L. Cohen, 2023, 92 ff.

Whether we call it mass (in its socio-historical configuration) or People (in the certainly more uncertain and problematic³² configuration offered by populists), we are still dealing with an *essential component* of democracy: the *demos*³³.

The question that arises at this point is: what has become of the *demos*³⁴ in contemporary democracy? What about its political «health»? Out of metaphor, what about its level of integration into the democratic political system? The answer to the latter question should illuminate, *ex negativo*, the level of penetration of populist demagoguery within the democratic «body» (the *demos*, precisely). The Italian case, because of the capacity for entrenchment that populism seems to manifest and because of the intensity and rapidity of various transition processes underway (mainly economic and social), could provide interesting insights for this investigation, and therefore will serve as a reference for the analysis that follows.

Article 1 of the Italian Constitution states in its second paragraph that «Sovereignty belongs to the people, which exercises it in the forms and within the limits of the Constitution»: are the people still able to *fully* exercise this sovereignty? Are the forms and limits established by the Constitution still the «binaries» (embankments and at the same time guarantees) of the *demos'* political action, or have they rather become «chains» as certain populist arguments seem implicitly (and dangerously) to imply? The legitimacy of the latter question lies in the fact that the growing harvest of consensus that populist parties have been gathering for several years in Italy can be interpreted, in effect, precisely as the taking advantage by certain «political entrepreneurs» of the unnatural overflow of the *demos'* *political energy* (sovereignty) from the constitutional embankments evoked by Article 1 of the Charter: so, what is the reason for this overflow? Why just now? What reason would voters have for relying on political adventurers whose speeches and programs often target the constitutional principles themselves, if the perimeter of the fundamental rules of the State already allows these subjects (voters) to fully express their political force and demands, and with the well-founded expectation that these can be received and resolved within the system? If the constitutional criteria of political participation of the *demos* become insufficient, or inadequate³⁵, here is where unscrupulous political «entrepreneurs» gather that consensus to make it an instrument of power, and even an anti-system pick. So, the fundamental question is: what determines the overflow of the *demos'* political energy from the embankments of the Constitution?

³² Cf. N. Urbinati, 2019.

³³ «Full modernity certainly sees the people as the “author” of the political order, of the State (a thesis already present in Roman law and in some texts of Scholasticism). But the people are said in two basic meanings: as a set of free equal subjects, and as a unitary mass, collectivity», C. Galli, 2023, 41; while the latter is the conceptual resource on which populisms work, it is the former meaning that coincides with the Greek idea of *demos* as an essential component of democracy.

³⁴ On the problematic issue of uncoupling the *demos*-component from democracy, cf. L. Canfora, 2022.

³⁵ As do many exponents, not only populists, of Italian politics, who, not surprisingly, have been pursuing the path of constitutional reformism for many years. See, beyond the Italian case, A. Arato, J.L. Cohen, 2023, 377 ff.

What drives the people (in this case, the Italian people, but the observation can be extended to any other liberal-democratic country) to no longer recognize themselves in the guarantees, procedures and even the principles of democratic constitutions, becoming «enrollable» (not only electorally, as the assault on Capitol Hill on January 6, 2021 shows) for sometimes radical anti-system adventures that are potentially destructive of the democratic order itself?

Arato and Cohen, drawing on pioneering work by Gino Germani³⁶, would respond that this could be the result of the extreme sharpening of certain characteristic «contradictions» of late modernity: the cultural, the economic and the political³⁷. The first contradiction consists of the «destruction of traditional or conventional forms of life, identity, status, sources of meaning and solidarity, as well as the difficulty of certain groups in accepting or embracing new post-conventional norms and identities»; «we – Arato and Cohen add – see this area of problems as the source of fundamental cultural tensions and status anxiety»³⁸; so that the first contradiction would be an almost entirely subjective phenomenon, the matrix of which would be to be found in the psychological dynamics of the individuals involved, unable to align their identities, and therefore expectations, with the new social configurations that globalization and the changes it has brought about. As far as the economic contradiction is concerned, the two authors refer directly to Marxian analysis, according to which «the capitalist era [...] has generated enormous material well-being compared to the societies that preceded it, but, paradoxically, at the price of creating new forms of poverty, oppression, inequality and economic irrationality»³⁹. Finally, the political contradiction would consist of «continually (or again) low levels of inclusion, participation, and accountability inherent in political systems»⁴⁰ that are substantiated by a deficit of representation, and, the authors point out, «where there is a potential crisis or a long-term deficit of representation, there will be subjects, organized rather than atomized, who consider themselves - usually rightly - unrepresented or underrepresented»⁴¹.

The conclusion Arato and Cohen draw from these still preliminary pages is that «the populist response to a combination of deficits is, first and foremost, political, focusing on identification with a leader or leadership»⁴². It is for this reason that the party-subject and the leader-subject of populism constitute themselves as the privileged elements of the two authors' investigation. This choice is legitimate from the analytical point of view; however, one can criticize Arato and Cohen's approach for an excessive underestimation of the subject-people, whom they – not entirely wrongly – do not recognize in their

³⁶ G. Germani, 1978.

³⁷ A. Arato, J. L. Cohen, 79.

³⁸ Ivi, 80.

³⁹ Ivi, 82.

⁴⁰ *Ibidem*.

⁴¹ Ivi, 84.

⁴² Ivi, 85, italics in the text.

configuration of full political subjectivity (who can call themselves «people»? How to definitively define «the people»?). But it is often forgotten that behind the evanescent idea of the people, behind the conceptual weakness of this word, commandeered and agitated by populist leaders, lies the stone guest of all these analyses: the *demos*, precisely, the *essential* element of demo-cracy.

So that the cultural, economic, and political contradictions in which citizens are increasingly uncomfortable should be taken very seriously and become the subject of a more careful reflection, not focused on the sociological problem of status, or the economic problem of impoverishment, but rather on the whole system in which *the demos'* (political) *acting* and *reacting* is extruded. That is, it would be necessary to take seriously – unlike what was done by the political liberalism of the early twentieth century – the inevitable «symbiosis» between the people and the political system in the democratic framework. In the absence of this «symbiosis», power does not remain floating but is absorbed by the few able to appropriate it, and easily slides toward arbitrariness, while the people from being a political *subject* becomes a mere *object* of this potentially *absolute* power⁴³. In this way we return to the elements that the Italian Constituent Fathers had had the foresight to include in an apex position among the Fundamental Principles of the 1948 Constitution: the *people* and its *political sovereignty*⁴⁴.

Refocusing the analysis from the visible subjects - parties and leaders - to the neglected subject of populism – the people –, which of the rest of populism is the main *condition of possibility*⁴⁵, and recognizing the latter in its political-structural dimension as the founding element of democracy (*demos*), implies a reversal of the perspective of the analysis. The investigation, therefore, should no longer focus on the populist phenomenon, which would threaten democracy as a kind of foreign body, an alien pest, but on democracy itself, which gradually allows itself to be eroded because it is exhausted, which manifests in a punctiform but constant and widespread manner more and more voids and short circuits and, to borrow the medical metaphor, seems to lack sufficient antibodies, or seems to lack adequate ones, to oppose those who take advantage of its weaknesses to parasitize it from within.

⁴³ I emphasize the etymon of the adjective: from the Latin past participle *absolūtu(m)*, meaning «untied from» (constraints). Keep in mind that, in the background, the definition of *sovereignty* given by Jean Bodin as the absolute and perpetual power that is proper to the State remains intact. Thus, the disengagement of the *demos* from the system of institutions and organs of the State (locus of power) leaves power floating, potentially becoming available to subjects or groups animated by private or authoritarian purposes, or both.

⁴⁴ See previous note. Cf. C. Galli, 2019.

⁴⁵ After all, «the people exist as a symbolic construct that performs an inescapable function of legitimation», G. Preterossi, 2022, 194. And, arguably, «populism must be placed in this context, because it refers back to a deficit of recognition of popular subjectivity and seeks to compensate for it», *ivi*, 194-195.

Recently, Carlo Galli proposed a concise, but theoretically very dense, multilevel (philosophical, political, historical) analysis of the «health» of democracy⁴⁶. Galli's analysis starts from the origins of democracy, which, in turn, refer to the origins of European modernity. With respect to the latter point, a historical-philosophical assumption must be held firm: modernity bears within itself peculiar aporias⁴⁷ of which the political (*il politico*) represents the unstable configuration⁴⁸ and yet synthesis. This is precarious balance but the only viable one in the absence of better solutions to cross the foundational void⁴⁹ on which modernity is built.

The conflictual dialectic inherent in the political (*politico*) is transposed by the democratic model, which, through various conflicts and at least three revolutions, has gradually established itself. Now, since «it is immanence [...] the proper dimension of modernity»⁵⁰, the modern individual had to forge new criteria to circumscribe it, organize it, and make it suitable ground for building the new epoch. However, as Galli explains, the «conceptual materials»⁵¹ were already available, retrieved from the rubble of the previous theological, philosophical, and political tradition. Fundamentally, these elements can be summed up in the «centrality of the subject and [in] the essential equality of men», «legacies of Christianity to the modern age»⁵² reinterpreted, in a secularized key and during a long travail of reason, into two notions that constitute the pillars of liberal and constitutional democracy: *freedom*⁵³ and *equality*⁵⁴.

Now, freedom and equality are not harmonious concepts, but in «mutual tension»⁵⁵. The tension of the conflict, for example, between Jacobins and Girondins, between class

⁴⁶ C. Galli, 2023. The «diagnostic» itinerary leading to this analysis also includes other essays, see Id., 2011, 2017.

⁴⁷ Cf. C. Galli, 2023, Ch. 2.

⁴⁸ Ivi, 33.

⁴⁹ In this passage, the Schmittian approach seems to emerge quite clearly (Cf., C. Schmitt 1972; F. Volpi, 2009, Ch. XIII), at the same time appearing difficult to refute because of the hermeneutical clarity it restores to us of an entire epoch. Such a vacuum, as is well known, is generated primarily by, in Galli's words, «the dramatic sinking of religion as the undisputed foundation of the political order» (Galli, 2023, 30), from which follows «the liquidation of all authority, of all transcendence» (*ibidem*). In this «“declaration of independence of the spirit”» there is a «disturbing uprooting, a dizzying liberation from traditional political and intellectual forms, but at the same time also a compulsion to build a new order» (ivi, 30-31).

⁵⁰ C. Galli, 2023, 33.

⁵¹ Ivi, 31.

⁵² *Ibidem*.

⁵³ «Freedom is the subjective mobilization - criticism and praxis - that prevents the order from closing in on itself. Without freedom, of the subject as much individual as collective, without critical force, without mobilization, without conflict, there is no modern politics and no democracy - which is the political form in which freedom, of all and each, has the most space». However, Galli points out, it «is not guaranteed but karstic: it can sink in. [...] Modernity is the age in which political freedom is possible, not necessary», ivi, 32.

⁵⁴ «Equality, the other indispensable ingredient of democracy, is equal freedom, equal emancipation for all, but it is certainly not in a spontaneous and linear relationship with freedom; it corrects its one-sided and potentially prevaricating dynamism precisely by denying that the subject can be free on its own, in a world of slaves». Moreover, «equality is not uniformity, but justice and recognition among equals», *ibidem*.

⁵⁵ *Ibidem*.

and capital, and, more generally, between revolution and restoration in its many historical manifestations, and which in contemporary liberal democracies has found different arrangements⁵⁶ only apparently definitive, in fact only provisional because precarious is the tensive premise between subjects who have measured themselves from opposing visions, directly or indirectly⁵⁷, in the historical agon of the political (*politico*).

From this point of view, modernity, as Galli argues, is «political [*politica*] in a strong sense - it does not get rid of its contradictions, which therefore, insofar as they are insuperable, are actually aporias»⁵⁸. These aporias - and this is an essential passage in Galli's reconstruction, which allows us to delve even deeper than Arato and Cohen's examination of the three deficits of democracies - constitute the fundamental *opacities* of modern democracy: «recognizable but not circumventable»⁵⁹. These are opacities that coagulate the most unresolved and, perhaps, least resolvable aporias of modernity because they are intrinsic to the secularized social dimension. These opacities settle in their most natural «vessel»: the political (*il politico*), that is, the dimension of tension and conflict that offers itself to the synthesis of *logos*.

But if modernity generates opacity it also produces its opposite. At the same time, in fact, modernity persistently pursues «as its own idea-base the construction of transparency, that is, it cultivates the claim that we can and should live together without mystery and without secrecy, free from any authority that eludes human reason, in a world that is all knowable because it is all man-made, all available to his *logos*»⁶⁰. This impulse mitigates the conflicts of the political (*politico*) and puts them in order, while also defining an alternative, though not opposing, field: that of modern law and, more precisely, constitutionalism, a horizon of defining the limits of freedoms, but in so doing, also of their formal acceptance and protection against the claims of power. Indeed, «this implies a tendency toward depoliticization, neutralization, the production of order free from conflict» and this, the only possible, «neutral element of the state is the legal and administrative order»⁶¹.

The political (*il politico*) and the legal (*il giuridico*), then, constitute the synthesis of contradictions inherent in modernity and the orderly solution that the Modern has managed to give itself.

At the same time, these processes generate universals, which are: civil society, founded on labor⁶², and the State, founded on the contract⁶³. Political parties and welfare

⁵⁶ «Democracy is a principle of legitimation of the political order, which is suspended between institution and revolution, between order and conflict», *ivi*, 43.

⁵⁷ Directly, in the case of revolutions, indirectly, in the case of the two world wars, which imposed a reorganization of economic-political and social arrangements mostly framed by post-World War II constitutions.

⁵⁸ C. Galli, 2023, 34.

⁵⁹ *Ibidem*.

⁶⁰ *Ibidem*.

⁶¹ *Ibidem*.

⁶² *Ivi*, 38.

(i.e., the promise of good living, perhaps moderate but widespread⁶⁴) constitute the garrisons within civil society and the State to guarantee this fragile equilibrium by which the modern individual has managed to barricade himself between the underlying emptiness of secularization and the unregulated appetites of rising capitalism that the collapse of the theological order had released like a Pandora's box.

This fragile balance between all these (too many and in tension) elements generated by modernity, and which the post-World War II period had rearranged into the political and constitutional framework with which we are still confronted today, comes into crisis with neoliberalism, which «was the beginning of the end of liberal democracy with social content»⁶⁵ that gave the set-up to post-World War II Europe. Specifically, with neoliberalism the balance between economics and politics⁶⁶ was broken, and what Galli frames as a «fourth revolution» of the 20th century was defined «after communism, fascism, and liberal democracy: the transition to liberalist democracy [*democrazia liberista*]. A highly efficient “passive revolution”»⁶⁷. A revolution prepared by various factors – geopolitical and economic⁶⁸, political and cultural⁶⁹ – unfolded between 1971 and the early 1980s, but which could be placed on the symbolic date of 1973, «the year of the establishment of the Trilateral Commission, the analytical brain of neoliberalism, to whose scholars (European, American, Japanese) we owe the thesis of the economic and political unsustainability of democracy with social content»⁷⁰. Moreover, this «is also the year of the coup in Chile, and of the first experiment, still local, in the open practice of neoliberalism»⁷¹. From here we can observe the cultural and economic contradictions reported by Arato and Cohen, but from a position where we can realize their historical depth and premises that are by no means accidental, but ideological and in a sense programmatic.

The contract that founds the State (protection and welfare) is betrayed for the benefit of capital; and labor that founds civil society and articulates it as the active body of the system, from being a tool in the hands of the individual and a means of development, becomes a passive instrument of capital and the object of speculative «attack», an operation that is extended against the acquired forms of social protection with the aim of efficiency and increasing economic marginality. In public debate and in the public sphere it is sometimes claimed that the competition of globalization has made the rules and forms of social protection defined after World War II obsolete, however, it is necessary to

⁶³ *Ibidem*.

⁶⁴ Welfare, Galli explains, «which is achieved by two ways: the private way of consumption and the public administrative way of the welfare state», *ivi*, 57-58.

⁶⁵ *Ivi*, 64.

⁶⁶ *Ivi*, 71.

⁶⁷ *Ibidem*.

⁶⁸ *Ivi*, 63-64.

⁶⁹ *Ivi*, 67-68.

⁷⁰ *Ivi*, 72.

⁷¹ *Ibidem*.

keep in mind what lies behind this extended competition, namely that global competition is not between *people* (who need rules that affirm equal starting levels and equal opportunities for development⁷²) but between *capitals* (who experience rules as a limitation and a problem), and yet the concrete effects of this struggle do not affect capital so much as people. For capital it is the person himself who is an obstacle since he is the bearer of values and ethical constraints that restrain the incremental projection of profit. A brake on the commercialization of every entity, thus including man, can only come from law - and thus from the politics that make the laws - never from capital.

«It is clear that all this implies - in addition to the prevalence of the needs of capital over those of labor - the prohibition of all economic policy [...] And it is clear that we are moving into a phase of depoliticization. [...] It should also be noted that neoliberal ideology does not envisage the total renunciation of the political functions of the State: it simply implements a selection of them by preserving as a “reserve” the more properly repressive options»⁷³.

The necessary collaboration between opposites – labor and capital, élites and the masses – established in the aftermath of World War II «in an act of *containment*, challenge and competition toward Eastern Communism [...] within the framework of legality of the constitutional rule of law»⁷⁴, but also of discontinuity and embankment toward the risks of authoritarian drifts manifested by the events of the first half of the twentieth century, cracks to the point of breaking down. A combination of endogenous factors (political and economic dynamics) and exogenous factors (the end of the Cold War and new emergencies in the international arena) favor the maturation of democracy in a direction foreign to the paradigm established in the last century. This is precisely what Galli calls «liberalist democracy» (*democrazia liberista*).

The neoliberal age, Galli writes, «is the global age [...] there the individualistic vectors of modernity have run alongside the universalistic ones»; but what matters most in political terms is that, paradoxically, «politicalness [*la politicità*] resurfaces under mercatist depoliticization»⁷⁵. This implies not a disappearance of power, but rather a sinking of power at the expense of the political and thus democratic control based on parliamentary and legal institutions. The market imposes its individualistic and nihilistic anthropology⁷⁶, its competitive paradigms, its accelerated temporality asynchronous to

⁷² This is one of the reasons why it is the human individual, that is, the *person* (S. Cotta, 1991, 253), the «referent» (ivi, 250) of juridic (*giuridicità*), which in turn is understood as a horizon of rules capable of ordering coexisting relations (ivi, 165).

⁷³ C. Galli, 2023, 74.

⁷⁴ Ivi, 51.

⁷⁵ Ivi, 76.

⁷⁶ «Neoliberalism seeks its legitimacy not only in prosperity, as was the case in the capitalist regime of liberal and social democracy, but in enthusiasm, in liberating euphoria, in active and purposeful pleasure - far from the conformist dreariness of administered societies. Every human being can be his or her entrepreneur of himself, and, free from strings and ties, can make his or her life a continuous adventure, an exciting discovery, the projection of a small or great will to power», ivi, 80.

the more cadenced times of the political *logos*, but, above all, it dispossesses the places of democratic power (thus to the debate and conflict of ideas) of the power of decision (after all, «there are no alternatives», thus there is nothing to debate and decide) by deferring to technocratic and in many cases informal structures the operational choices.

The main consequences of this paradigm shift are that: 1) now «the inclusion of subjects in the public space is operated by the market, not by the State, nor by labor, which has been reduced, even legally, to a private fact, devoid of public meaning, broken up into a thousand contractual facts, made rare and poor because it is the object of competition from the reserve industrial army (young people, migrants)»; 2) «social equilibrium is due less to redistribution by trade union-political means than to competition»; 3) «there is no reason to subtract any sphere of life from economic evaluations»; 4) «the entire society is a market in which everything is bought and everything is sold»; 5) it results in «the disappearance of intermediate bodies [which] implies that society becomes “liquid”, unstable, pulverized into countless individual atoms, each individually grappling with economic dynamics»⁷⁷.

It goes without saying that individuals, although addicted and/or subjugated by the seduction or threat of the new paradigm, do not remain entirely helpless as the new neoliberal anthropopoiesis might wish to encourage. Dissent and disappointment ferment and flow through the remaining arteries of liberal-constitutional democracy (what remains of the parties, the Parliament, etc.) overflowing from them, now unable to channel these instances into incisive political action, and fatally inundating the new tools made available by technology (social networks). Therefore, this unease is translated, through parties that are now unstructured and largely absorbed within the new paradigm, into a confused and helpless buzz, since it is incapable of identifying the triggers of the processes and thus the ganglions on which to focus truly incisive actions, while in the social this unease develops into a clamor that is as violent as velleitarian, since it lacks planning and even organizational and mobilization capacity.

At a more general glance, one observes the *demos* becoming increasingly disengaged (expelled?) from the fundamental institutions of democracy, primarily Parliament, leaving the *krátos* at the disposal of the opaque centers of the market. In essence, we see the exacerbating deterioration of the *demos* and its political «members» concerning representation: the most important component of democracy, without which the latter fatally degenerates into technocratic⁷⁸ and potentially authoritarian oligarchy.

In such a context, the *demos* is left with no choice but to either prepare for an unequal struggle or accept the residual «granted» affirmative spaces of identity battles (some of which are perfectly functional to neoliberal anthropopoiesis):

⁷⁷ Ivi, 78.

⁷⁸ Cf. ivi, 100. As for the authoritarian risks associated with emergentism highlighted by Galli; see ivi, 114 ff.

«it is clear, therefore, that freedom - as an activity directed toward utility and property - prevails over equality.

This has had a heavy influence on the qualification of subjective rights, which have shifted from the social sphere - where they had equality as their goal - to the civil and cultural sphere, where they have taken on a prevalent identity-oriented tone of affirming difference»⁷⁹.

This is a shift in the *focus* of political conflict that is all harmless to the neoliberal paradigm – in some respects functional to its purposes – and in any case incapable of curbing the processes ruinous to the balance of democracy, such as the concentration of wealth, social marginalization, and human impoverishment⁸⁰. Thus, «the transitory convergence [...] between capitalism and democracy is lost. Capitalism imposes its own productive logic, of radical disciplining of anthropology»⁸¹.

The democracy of Moderns is a delicate *system* in which various components are held in a precarious but effective balance, and yet particularly sensitive to the «tectonic» dynamics of historical contingency. This precarious balance between freedom and equality, guaranteed by and in liberal democracy, and between opacity and transparency, guaranteed by the constitutional Rule of law, cracks and, here and there, landslides, generating rubble (the «fluid parties» and malleable labor organizations), serious cracks (the liberal institutions, primarily the paralyzed and passive Parliament) but also new arrangements from which some – a few – benefit (the holders of liquid capital and important cash flows) while others – many, the «losers» of neoliberal competitive rhetoric – are crushed by it (the marginalized, the workers, but also the holders of assets unable to adapt to the radically new economic-financial processes introduced by neoliberal capitalism).

The welfare state had created a diaphragm between capital's appetite for profit and the need for protection of the masses that was about to become an essential and recognized component of constitutional democracies. It is necessary to insist on why it was precisely after World War II that welfare was established. Indeed, the catastrophe of the World War and the Nazi madness demonstrated what the political energy of the masses can produce, especially when fueled by dissatisfaction and precarious material conditions, such as those following World War I, and with what diligence it can be organized and manipulated by unscrupulous leaders. The postwar revival of European States was the result of a new compromise between equality (democratic instances) and freedom (liberal instances) combined with the constitution-making process (constitutionalism). Welfare was thus the sign of a «new alliance» between the State and civil society with the non-hostility of capital, and the so-called «protected democracy»⁸² was the guarantee obtained by élites against the potential excesses of the people (to the

⁷⁹ Ivi, 81.

⁸⁰ Cf. *ibidem*.

⁸¹ Ivi, 86.

⁸² Cf. J.-W. Müller, 2012, 206-208. On this topic, see also G. Preterossi, 2022, esp. 220-221.

detriment of stability, and thus the fluidity of economic processes and property) perpetrated through representation. This «protection» of (liberal) democracy is guaranteed by specific principals: internally by the constitutional courts, externally by the «external constraint» (*vincolo esterno*)⁸³. But the processes just examined undermine the social contract and apparently put the *demos* in check. «Apparently» because constitutional guarantees are supposed to be a curb not only on the reckless action of the people but also on the abuses of power (including economic power) toward the latter. Yet even constitutionalism is experiencing a phase if not of overt crisis at least of transition that exposes it to a weakness that can be subject to coups and instrumentalization. This issue is currently being considered in public law as well as in the philosophy of law and will be addressed in the remainder of this analysis.

3. The Dilemmas of Constitutionalism

Beginning at least with Vilfredo Pareto⁸⁴ and Antonio Gramsci⁸⁵ we know that the powers of the State are *always* the object of hegemonic aims on the part of narrow groups endowed with adequate means, groups animated by the intention of gaining and maintaining positions of privilege⁸⁶ with the aim of pursuing ends not necessarily in line with the public interest. Thus, the State, at least in its most immanent expression, is always poised with respect to the Archimedean point of a neutrality and transparency that is perhaps unattainable in a full way, but which constitutionalism aims to bestow upon it, as far as possible, by means of legal expedients. It is precisely for this reason that constitutionalism is a tool that makes it possible to calibrate-and thus modify! – the arrangements of the state even in the course of its work. This is one of the reasons why constitutionalism has entered fully into the debate around populism.

In their essay, Arato and Cohen give ample space to so-called «popular constitutionalism»⁸⁷ or, as the two authors prefer to call it – thereby making their perplexities manifest – «populist constitutionalism»⁸⁸. It is not of interest here to enter the debate, more politological than jurisprudential, on the opportunities – argued by some⁸⁹ – and the risks – identified by others⁹⁰ – of this propensity of populists to get their

⁸³ See J.-W. Müller, 2012, 210-211. «A central feature of the postwar constitutional arrangement was thus that, with the exception of Great Britain, the idea of virtually unlimited parliamentary supremacy ceased to be regarded as legitimate», *ivi*, 211.

⁸⁴ Cf. V. Pareto, 2023.

⁸⁵ See, for example, A. Gramsci, 1996.

⁸⁶ As is well known, Charles Wright Mills extended this theory by demystifying the real power structure of what is considered the largest Western democracy, namely the United States of America, see *Id.*, 2000.

⁸⁷ A. Arato, J. L. Cohen, 2023, 389.

⁸⁸ *Ivi*, 377 ff.

⁸⁹ Reference authors are cited by Arato and Cohen in *ivi*, 389.

⁹⁰ Including the authors of the book themselves but see also the positions of David Landau and Rosalind Dixon (*ivi*, 335) who even speak of «abusive constitutionalism».

hands on constitutions or get their hands on constitutional courts. Once again, it is *the nature* of this intention that needs to be sifted here: thus, it is the underlying motivations that deserve further investigation.

Arato and Cohen would argue that such an intention can be framed very simply in the authoritarian and anti-legal aspirations⁹¹ of populist leaderships⁹², and thus would be indicative of an unacceptable threat to the «balance [...] between sovereignty and constitutional law»⁹³. Proponents of popular constitutionalism argue, on the other hand, that «the idea that one of the three powers, the non-elective one, is the sole guardian of the constitutionality of the other two, that its opinion on the matter is the final one, should be unacceptable even to supporters of democratic constitutionalism» because, and this is the core of the issue they raise, «if it is important to prevent usurpation by two powers, then it should be possible to rein in any usurpation by the judiciary as well»⁹⁴. That advanced by popular constitutionalism, in essence, is a critique of the «“new constitutionalism” dominated by the courts»⁹⁵, in which the «constitutionality review of the acts of the legislative» takes on an increasingly crucial role; the advocates of popular constitutionalism, Arato and Cohen explain, «consider such a review not only a substantive limitation on representatives, but a limitation on “the people” themselves, whatever that means»⁹⁶. The authors’ *tranchant* gloss leaves little room for the arguments of popular constitutionalism and would also concede little to a purely theoretical reflection intended to build on this orientation. Now, since it is the weakening and retraction of the *demos* from the demo-cracy that is the problem identified here as being exacerbated, it would become entirely reasonable here to approach the question of constitutionalism from a perspective that had this very problem in the background, beginning by asking whether this «judicialization»⁹⁷ fosters greater integration of the *demos* into the democratic framework or not.

The transparent neutrality of law, as we have seen in the wake of Galli⁹⁸, is no longer unequivocally sustainable considering the mechanisms and fractures introduced into the system by the neoliberal «revolution», so that here too we must confront a reemergence of the primordial opacity of the Modern. An opacity that, inevitably, tends to envelop first the centers in which decision-making coagulates concretely (not only formally).

«Transparency has been reversed: transparent – despite the much-mentioned privacy – is the subject, seen, spied on, and eventually punished» here, in this technocratic phase of «liberalist democracy» (*democrazia liberista*), tending toward the widespread use of

⁹¹ Cf. *ivi*, 341.

⁹² The authors seem to take «authoritarian consequences of populist constitutional politics» for granted, see *ivi*, 334.

⁹³ *Ivi*, 338.

⁹⁴ *Ivi*, 343.

⁹⁵ *Ivi*, 342.

⁹⁶ *Ibidem*.

⁹⁷ *Ivi*, 341.

⁹⁸ See *supra*, § 2.

algorithms, «the administered dimension of existence is preponderant over the constitutional dimension of rights», thus, «it is instead the heart of the system, the mobilizing engine that is obscure, opaque»⁹⁹. Opacity – here it is possible to go even further than Galli – becomes an instrument of an oligarchic tendency of power that needs to occupy democratic institutions without, however, asserting an explicitly anti-democratic order, and therefore works to «parasitize» institutions more than to destroy them, through various methods that may be lobbying or the democratic conquest of power through accommodating political subjects. So far, we are at the relationship between neoliberal oligarchies and parliamentary institutions, but one may ask the following: is it possible to assume, considering the attempts of popular constitutionalism, that the courts may also become the target of an «anti-popular» constitutionalism, that is, is it possible to imagine tendencies to occupy the courts and amend constitutions from the opposite side of the populist spectrum and that aim at the protection of privileges and the assertion of economic and political goals of the few at the expense of the many? The idea may sound blasphemous, but while it is well-established that populist parties and populist theorists identify the «conquest» of constitutional courts and constitutions themselves as functional goals, it is at least conceptually conceivable that economic oligarchies may cherish the same intention, if only for «precautionary» purposes. But the real question is: would such a hypothesis be able to identify workable «shores» for these purposes within constitutionalism?

If in the scholarly debate around populism there are those who, like Colin Crouch, have spoken of a «post-democracy»¹⁰⁰, it seems significant that even in the legal sphere a tendency to *post-* has been identified, we speak in this case of a «postlaw» (*postdiritto*)¹⁰¹. This might be a mere coincidence of terminology if it were not for the fact that Giuseppe Zaccaria's analysis in which this paradoxical concept appears seems precisely to warn of the consequences of «profound factors of crisis and alteration within a once compact and homogeneous corpus of law, as a result of which [the] subjects and [the] entities [of the previous legal set-up] are forced to continue their functions in a largely and structurally changed framework»¹⁰². The conceptual pivots of postlaw are the theoretical pair deconstruction-pluralism. In this regard, the author points out that «the deconstruction of the traditional nineteenth- and twentieth-century legal order has gradually been joined by a process of greater pluralistic openness», which concerns «the opening up of the legal dimension to the presence and action of a greater number of public and private subjects»¹⁰³. It is precisely on these *private subjects* that a disenchanted observer might focus his or her perplexities, not least considering what has been examined above on the endogenous processes that fuel the crisis of democracy.

⁹⁹ C. Galli, 2023, 109.

¹⁰⁰ C. Crouch, 2004.

¹⁰¹ G. Zaccaria, 2022.

¹⁰² Ivi, 13.

¹⁰³ *Ibidem*.

As Aldo Schiavello points out, «in the age of postlaw [...] contemporary global constitutionalism adds, to the procedural limits, “substantive” limits of “content” that prevent the sovereign power – the legislative power, more precisely – from doing or deciding whatever it wants»¹⁰⁴, and so far we are not very far from the well-known powers of constitutionalism defined after World War II from a perspective of «protecting democracy», but it must be kept in mind that «this paradigm shift entails an increase in the interpretive discretion [of judges] and a parceling out of political power in the strict sense»¹⁰⁵, factors whose effects are still far from clear.

In constitutional jurisdiction, the so-called *reasonableness check* (*controllo di ragionevolezza*)¹⁰⁶, which in Italy would find its legal basis in Article 3 of the Constitution, and more specifically on the principle of equality, has gradually become established in several countries. Among constitutional judges, the versatility of this principle is well known, mainly due to a certain conceptual vagueness¹⁰⁷, which allows the courts ample room for maneuver with respect to the norms enacted by parliaments. There is nothing to lead to a well-founded suspicion that the courts make «political» use of the *principle of reasonableness*, however, this doubt is also far from being able to be ruled out once and for all, and it certainly constitutes a tool for populist rhetoric and populist leaders' criticism of the judiciary.

What does this generate? What effects can it have on the democratic system? Beyond the polemics of the populists, there is no doubt that the outcome of these processes sees the legislative (already particularly weakened for reasons touched on in part above) squeezed between, on the one hand, the executive which seeks to expand its powers by justifying itself with the need to respond to the severity of current emergencies and to adjust the timing of decision-making to the increasingly fast times of the economy, and, on the other, the judiciary, which fatally expands its power, if only by a heterogenesis of ends, in an attempt to limit the executive's hypertrophy. Compressed by this dual pressure is not so much liberal or constitutional democracy, whose institutions – even if only formally – are intact and fully operational, but *substantial democracy*, that is, democracy as the power of the *demos* in its indispensable dimension of representative effectiveness (making laws). It is here that the popular mutates into populist and, potentially, democracy risks turning into post-democracy.

4. Conclusions

As we have seen, the scheme drawn by Carlo Galli takes on the characteristics of a real *system*, in which the homeostatic balance between equality and freedom, State and

¹⁰⁴ A. Schiavello, 2023, 265.

¹⁰⁵ *Ibidem*.

¹⁰⁶ Cf. M. Cartabia, 2013.

¹⁰⁷ Cf. *ivi*, 2.

civil society, legal (*il giuridico*) and political (*il politico*), capital and labor, opacity and transparency, élites and masses is guaranteed by a proportional *optimum* of relationships consolidated by history, thus by the mutual contribution of all its parts, each according to its tasks and limits. This is how liberal and constitutional democracy has managed, while preserving its basic contradictions, to generate itself through the great turning points of modernity and, once accomplished, to traverse the challenges of the dramatic «short century».

Now, the relationship between the elements of a system refers back to *geometric relations*, and it is perhaps following this insight that Plato envisioned the State as an «administrator of justice», where the latter was configured as «a general principle of order, regularity, unity and legitimacy» which, precisely, «shows itself in the “geometric proportion” between the different classes, according to which each part of the social body receives what is due to it, and cooperates in the maintenance of the general order»¹⁰⁸.

In the *Gorgias* (XXXVIII, 483B; XXXIX, 483d), Callicles' position remains emblematic of a staunchly antidemocratic conception of political power, according to which

«those who make the laws are the weakest, the most; they, evidently, institute the laws for their own favor and benefit, and praise and blame they dispense within these terms. Frightening the strongest, those who would have the ability to prevail, in order to prevent, precisely, them from prevailing, they say that an ugly and unjust thing is to want to be superior to others, and that committing injustice consists precisely in that, in trying to prevail over others. They, the weaker ones, I think well that they settle for equality! That is why the law says unjust and ugly is the attempt to want to prevail over the many, that is why they call it committing injustice. Instead, I am convinced that nature itself clearly reveals it to be right that the best should prevail over the worst, the most capable over the least capable. That it really is so, that such is the criterion of right, that the strongest commands and prevails over the weakest, wherever nature shows it, among animals and among men, in citizen complexes and in families»¹⁰⁹.

The «force» that Callicles had in mind concerned, and this is the Socrates' objection (XLVI, 491c), «now [...] the sturdiest, now [...] the cleverest, [...] the courageous»¹¹⁰: an incoherent floating about a way of being better (*àristoi*) that aims at the form and not at the substance of the political order, which should concern the stability of the State built according to virtue. In this regard, the image of Socrates with which this paper began, juxtaposing politics with medicine, was much more than a metaphor, for it alluded to the fact that the art of the soul – politics – concerns the individual man as much as the man in society, and just as the art that treats the body – medicine – has a duty to restore «the order [that] is called sanity, whence comes to the physique health and every other virtue»

¹⁰⁸ E. Cassirer, 2007, 81. «With this conception he became the founder and defender of the Rule of law», *ibidem*.

¹⁰⁹ Plato, 1996, 188-189.

¹¹⁰ *Ivi*, 198-199.

(LIX, 504c)¹¹¹, so politics has the task of caring for the «body» of the State taking into account a similar balance that Socrates identified in «legality and law» founded on «order and proportion», from which flow «justice and temperance» (LIX, 504d)¹¹².

So, Socrates rhetorically asks in stating this, «even the soul [...] that is ordered, according to its own order, is better than a disordered soul?» (LXII, 506e)¹¹³. But this is an order of what kind? It has to do with «geometrical equality», alludes to virtue¹¹⁴ and does not coincide with Callicles' «overpower» (*strapotenza*) (LXIII, 508a)¹¹⁵ and which mathematically would refer to a brute arithmetic, from time to time declined according to the criterion of economic, social, etc. power.

Plato welcomes his master's teachings and insists on the *political* projection of man's virtue¹¹⁶ as an expression of a balance among the forces that make up the State, though without misunderstanding the role of the respective capacities of the components and the tasks of each¹¹⁷. Above all, Plato understood that signs of moral corruption are anticipatory indices of a more general corruption that will sooner or later plague the State. Breaking an order, whether of the soul or of public affairs, implies a collapse from which it is difficult to return. Here it is not intended to argue that the corruption of democracy has resulted from contaminations of moral tenor originating in the individual, as in Socratic-Platonic pedagogy, but the reciprocal: the degeneration of the masses that linger in hatred and resentment, fueled and magnified by the new forms of communication offered by social media, and that fuel the growth of populisms and the strengthening of improbable leaderships, are the product of a decadence of the people as *demos*, which in turn is a sign of the pathologies of democracy due to the breakdown of its fundamental balances.

In conclusion, and to summarize, it seems well-founded to argue that the populist phenomenon, when observed in its nature as a response to internal crises in liberal democracy and to still uncertain changes (as to direction) in democratic constitutionalism, represents more of a symptom – certainly alarming, but not unique – of a malaise in democracy than a real disease of the democratic order. What are the solutions and what are the remedies? This question is beyond the perimeter defined here, yet we can limit ourselves to stating that political scholars have only the task of recognizing this «fever» as such, without being fooled by its severity, and trying to trace its root causes, while it would be up to political actors to identify the «cure». Surely, Plato would argue, this «cure» could be fruitful only if elaborated through a wise and responsible administration of public affairs, keeping virtue in its forms of justice, truth, and moderation as a beacon.

¹¹¹ Ivi, 216.

¹¹² *Ibidem*.

¹¹³ Ivi, 219.

¹¹⁴ Cf. Plato's *Protagoras*, ivi.

¹¹⁵ Ivi, 221.

¹¹⁶ Cf. E. Cassirer 2007, 80-90.

¹¹⁷ Cf. the concept of *dikaion* in Plato. The limits of this conception would be overcome, in Michel Villey's view, by Aristotle, see M. Villey, 1985, Ch. 2-3.

An idea that fatally tends to exclude populist leaders, who seem to voluntarily feed the «fever» only to «sell» their (fake) «medicines», but which does not even seem able to count expendable candidates for this purpose in the current panorama of system leaders.

BIBLIOGRAPHY

ANSELMIS Manuel, 2017, *Populismo. Teorie e problemi*. Mondadori, Milano.

ARATO Andrew, COHEN Jean L., 2022, *Populism and Civil Society. The Challenge to Constitutional Democracy*. Oxford University Press, Oxford. Trad. It., 2023, *Populismo e società civile. La sfida alla democrazia costituzionale*. Meltemi, Milano.

CANFORA Luciano, 2022, *La democrazia dei signori*. Laterza, Bari-Roma.

CARTABIA Marta, 2013, «I principi di ragionevolezza e proporzionalità nella giurisprudenza costituzionale italiana». Conferenza trilaterale delle Corti costituzionali italiana, portoghese e spagnola, presso Roma, Palazzo della Consulta 24-26 ottobre 2013. https://www.cortecostituzionale.it/documenti/convegni_seminari/RI_Cartabia_Roma2013.pdf. Documento consultato il 24/03/2024.

CASSIRER Ernst, 2007, *Il mito dello Stato*. Se, Milano.

CHAPOUTOT Johann, 2015, *Controllare e distruggere. Fascismo, nazismo e regimi autoritari in Europa (1918-1945)*. Einaudi, Torino.

CHIARELLI Raffaele (a cura di), 2015, *Il populismo tra storia, politica e diritto*. Rubbettino, Soveria Mannelli.

COSTA Vincenzo, 2019, *Élites e Populismo. La democrazia nel mondo della vita*. Rubbettino, Soveria Mannelli.

COTTA Sergio, 1991, *Il diritto nell'esistenza*. Giuffrè, Milano.

CROUCH Colin, 2004, *Post-Democracy*. Polity Press, Cambridge.

DIAMANTI Ilvo, LAZAR Marc, 2018, *Popolocrazia. La metamorfosi delle nostre democrazie*. Laterza, Roma-Bari.

ERREJÓN Iñigo, MOUFFE Chantal, 2020, *Costruire popolo. Egemonia e radicalizzazione della democrazia*. Castelvecchi, Roma.

FREUD Sigmund, 2011, *Psicologia delle masse e analisi dell'io*. Bollati Boringhieri, Torino.

GALLI Carlo, 2011, *Il disagio della democrazia*. Einaudi, Torino.

GALLI Carlo, 2017, *Democrazia senza popolo. Cronache dal parlamento sulla crisi della politica italiana*. Feltrinelli, Milano.

GALLI Carlo, 2019, *Sovranità*. Il Mulino, Bologna.

GALLI Carlo, 2023, *Democrazia, ultimo atto?* Einaudi, Torino.

GERMANI, Gino, 1978, *Authoritarianism, Fascism, and National Populism*. Transaction Publishers, New Brunswick.

GRAMSCI Antonio, 1996, *Note su Machiavelli*. Editori Riuniti, Roma.

LACLAU Ernesto, 2005, *On Populist Reason*. Verso, London.

LANCHESTER Fulco, 2023, *Il costituzionalismo contemporaneo e l'incubo di Weimar*. Cedam, Milano.

MENY Yves, SUREL Yves, 2000, *Par le peuple, pour le peuple*. Fayard, Paris.

MOFFITT Benjamin, 2016, *The Global Rise of Populism: Performance, Political Style, and Representation*. Stanford University Press, Stanford.

MOUFFE Chantal, 2018, *For a Left Populism*. Verso, London.

MOUFFE Chantal, 2019, *La sfida del populismo*. Castelvecchi, Roma.

MOUFFE Chantal, 2021, «Populism and Radical Democracy». In *Rechtstheorie*, vol. 52, 153–157.

MUDDE Cas e ROVIRA KALTWASSER Cristobal, 2017, *Populism: A Very Short Introduction*. Oxford University Press, New York.

MÜLLER Jan-Werner, 2012, *L'enigma democrazia. Le idee politiche nell'Europa del Novecento*. Einaudi, Torino.

MÜLLER Jan-Werner, 2017, *What is Populism?* Penguin, London.

PALANO Damiano, 2017, *Populismo*. Editrice Bibliografica, Milano.

PARETO Vilfredo, 2013, *Trasformazione della democrazia*. Castelvechi, Roma.

PLATONE, 1996, *Opere complete*, 5. Laterza, Roma-Bari.

PRETEROSSO Geminello, 2022, *Teologia politica e diritto*. Laterza, Bari-Roma.

ROMANELLI Raffaele, 2021, *Nelle mani del popolo. Le fragili fondamenta della politica moderna*. Donzelli, Roma.

ROSANVALLON Pierre, 2017, *Pensare il populismo*. Castelvechi, Roma.

ROSANVALLON, 2020, *Le siècle du populisme. Histoire, théorie, critique*. Seuil, Paris.

ROVIRA KALTWASSER Cristobal, TAGGART Paul, OCHOA ESPEJO Paulina, OSTIGUY Pierre (edited by), 2017, *The Oxford Handbook of Populism*. Oxford University Press, Oxford.

SCHIAVELLO Aldo, 2023, «Postdiritto: una breve guida per i perplessi». In *Rivista di filosofia del diritto*, 2/2023, 261-280.

SCHMITT Carl, 1972, *Le categorie del politico*. Il Mulino, Bologna.

TARCHI Marco (a cura di), 2019, *Anatomia del populismo*. Diana, Napoli.

URBINATI Nadia, 2019, *Me the People: How Populism Transforms Democracy*. Harvard University Press, Cambridge.

VILLEY Michel, 1985, *La formazione del pensiero giuridico moderno*. Jaca Book, Milano.

VOLPI Franco, 2009, *Il nichilismo*. Laterza, Roma-Bari.

WRIGHT MILLS Charles, 2000, *The Power Elite*. Oxford University Press, New York.

ZACCARIA Giuseppe, 2022, *Postdiritto. Nuove fonti, nuove categorie*. Il Mulino, Bologna.