4

The Plebiscite of the Audience and the Politics of Passivity

When coupled with mass society and mass media communication, appeal to the people can facilitate a plebiscitarian transformation of democracy: "plebiscitarianism promises to restore the notion of the People as a meaningful concept of collective identity within contemporary political life" and does so by rendering it in its collective capacity "a mass spectator of political elites."[1] Yet when leaders go to the people directly they radicalize issues and make parties' bargaining more difficult; this makes the terrain of politics naturally fertile for leader activism, which does not, however, entail people activism.[2] "Certainly, when the representation of the parliament collapses and no longer finds supporters, [when there is an argument of 'nonrepresentative democracy'] the plebiscitary process is always stronger"[3] and democracy may become a call of legitimacy via audience over legal institutions.[4] The myth of unanimity or a deeper unity than that achieved by the arithmetic aggregation of votes gives plebiscitarian politics the aura of a stronger and more sincere democracy.[5]

Being *under the eyes of the people* is a plebiscitarian view that seeks to replace accountability by means of procedures and institutions with popularity while giving the public sphere a new meaning and configuration as it makes the public play mainly an aesthetic, theatrical function. As Jeffrey Edward Green writes in presenting his theory of plebiscitarian democracy as an application of Hannah Arendt's celebration of political life, this vision of democracy breaks with the "automatic and repetitive process of nature" and welcomes the idea that "eventfulness is a value to be

enjoyed, not simply by the political actors who perform the event, but even more by spectators who behold them."[6] This is where populism and plebiscitarianism diverge, because although they both oppose theories of democracy that are suspicious of the People as an entity prior to the political process and that locate the source of authorization in the individual right to vote, populism gives the People a political presence, whereas plebiscitarianism gives it a passive one endowed with the negative function of watching. The former invokes participation; the latter wants transparency.

Plebiscitarian democracy in the audience style I will discuss here is a postrepresentative democracy in all respects because it wants to unmark the vanity of the myth of participation (i.e., citizenship as autonomy) and to exalt the role of mass media as an extraconstitutional factor of surveillance (in fact, even more relevant than constitutional checks). It declares the end of the idea that politics is a mix of decision and judgment and makes politics a work of visual attendance by an audience in relation to which the basic question is about the quality of communication between the government and the citizens or what people know of the lives of their rulers.[7]

Whereas populism has been throughout the decades the recipient of a rich analysis, with the end of totalitarian regimes plebiscitarianism had lost attraction among scholars of politics. Things have somehow changed lately. In the United States political theory is also witnessing a renaissance of interest in and sympathy for plebiscitary democracy as a result of a more favorable inclination toward majoritarianism and an idea of democracy that is less concerned with institutional limitations and more attentive to fostering forms of popular activity, either as direct populist action or as vindication of the visual transparency of power. In some European countries, parliamentary democracy is witnessing a plebiscitarian transformation because of several concomitant factors, on the top of which there is the decline of traditional parties, the role of television in constructing political consent, and the increasing weight of the executive as a result of the economic and financial emergency.

The aim of the critical examination I devise in this chapter is to bring to the fore this new enthusiasm for plebiscitary democracy and present it as an illustration of the intriguing role of the public as a power that, while making democracy look at first sight different from authoritarian regimes, can transform its features quite radically and in ways that are remarkable.

To anticipate in a nutshell my argument, plebiscitary democracy is, like populism, a possible destiny that representative democracy incubates and mass media facilitate. Audience democracy in the age of mass communication takes a plebiscitary form. Contrary to unpolitical and epistemic democracy, it rejects any attempt to amend opinion with truth; contrary to populism, it does not blur democracy's diarchy by making one hegemonic opinion the ruling power of the state. The plebiscite of the audience accepts the diarchic structure of representative democracy and is ready to endorse a Schumpeterian rendering of democratic procedures as a method to select leaders, yet it reinterprets the role of the public forum in a way that stretches and exaggerates one of its functions. Indeed, we can detect this form of plebiscitarianism whenever we consider the sphere of opinion in its multifarious functions—cognitive, political, and aesthetical—or as a complex activity that pertains to production and diffusion of information, to formation of political judgments, and to the claim for public exposure of the deeds of the leaders. As I have argued on several occasions through this book, the complex nature of the forum is one important reason for democracy's strength. It is also the domain in which changes in democracy's appearance are most observable. In what follows I will first analyze the meaning and theorization of plebiscitary democracy through the works of its classical scholars, namely, Max Weber and Carl Schmitt, and then turn to its contemporary renaissance as a plebiscite of the audience in consolidated democracies.

The Appeal to the People

In its classical meaning, plebiscitarianism entails an electoral form of leadership creation that seeks popular approval (in the next section I will explain in more details its historical origins in the Roman republic and its renaissance in the nineteenth century, along with representative government). In Schmitt's vocabulary, it entails a claim of legitimacy (this is what approval is for) that relies on the people directly as the sovereign that is "outside and above any constitutional norm."[8] Yet a cumbersome sovereign is not necessarily a sovereign that is democratically active. The passivity of the people figures in the instrumental rendering of procedural democracy. So Joseph A. Schumpeter famously wrote: "Democracy means only that the people have the opportunity of accepting or refuting the men who are to rule them."[9] *Approval* is the core theme of the plebiscite

as a sign of investiture and confidence. Unlike populism, which embodies the ideal of mobilization, plebiscitary democracy narrows the role of active citizenship to stress instead people's reactive answer to the promises, deeds, decisions, and appearances of the leader(s). The other face of the appeal to the people is *transparency*: if the leader goes to the people for approval, the people are entitled to ask for the leader's public exposure. Transparency is the price of approval. These two phenomena attract each other and make sense of the plebiscitarian blurring of "popular" and "public." I will elaborate on this crucial aspect in discussing the ideas of Schmitt and show that in following them, contemporary plebiscitary Democrats put transparency first and give a theatrical feature to the opinion leg of diarchy. They argue that in modern democracy the paradigm of political autonomy gives way to that of spectatorship, which makes the "exposure of the leader" the first goal of democratic politics.[10] Plebiscitarian democracy is a celebration of the politics of passivity.

Like populism, plebiscitarianism has a Caesarist vocation. Weber thought that when the masses are democratically activated, a plebiscite is the instrument a charismatic leader may want to use in order to seal his charisma in people's eyes and with people's formal approval.[11] Representative institutions and constitutional rules enter the scene at this point as strategies for stopping the plebiscitarian democratic leader from becoming a plebiscitarian dictator. Parliaments and the formal constitution, in Weber's view, are thus important not because they regulate consent and control legitimacy but because they provide for what the charismatic leader cannot: institutional stability, the preservation of the legal order, and a gradual succession in leadership. Legal constraints are ancillary to leadership; they are important in the foreseeable event that the leader loses the trust of the masses, an event that can never, of course, be excluded.[12] Thus, Peron, Chavez, and, to a certain extent, Berlusconi are populist leaders and also Caesaristic leaders in Weber's sense, who seek trust and faith by the masses but want also the people's approval with a formal vote and do not disdain having a parliament. What they disdain is the check on their decision-making power by nonpolitical institutions, like a supreme court or a constitutional court. What they seek is the direct contact with the audience ("Chavez spent more than 1,500 hours denouncing capitalism on *Alo Presidente,* his own TV show;"[13] Berlusconi was for years a daily attraction in both state and his private national television stations). Plebiscitary democracy is a presidential mass democracy that downplays a liberal

conception of power limitation and the division of powers. According to Weber, the American presidential system was a step ahead of parliamentary democracy because it entertained a direct relation with the people outside the procedures of election, and meanwhile succeeded in remaining within the track of constitutional democracy.

Weber thought that the democratization of an electoral regime consisted in the transition from a time in which a political leader is declared or chosen by "a circle of notables" and tested before the parliament (this was more or less how representative government functioned in pre-democratic Germany) to a time in which the leader "uses the means of mass demagogy to gain the confidence of the masses and their belief in his person."[14] Within this reading, as we shall see below, some theorists argue today that the media seem to play a more effective role of control than the legal strategies of checks and balances and the division of powers. But as Jeffrey K. Tulis has observed in his classical study on the rhetorical presidency, when the primary interlocutor of the president is the people rather than Congress, the quality of communication or speech by the president changes because his goal is not that of transmitting documents or special messages to the assembly, but of moving public feelings "where the visible and audible performance would become as important as the prepared text."[15] For a plebiscitarian president, delivering visionary speeches is more important than giving information or exchanging reasoned arguments to the other branches of government.

Populism is primed to be the open door to a plebiscitarian transformation of democracy insofar as it makes the role of personality essential in representing the unity of the People and elections a plebiscite that crowns the leader.[16] For this reason, presidential democracies are more exposed to both the populist style of politics and a plebiscitary kind of relationship between the leader and the people. Leadership is moreover offered as a cure for, or a preemptive strategy or gridlock, in Antonio Gramsci's words, against a "catastrophic equilibrium" of powers. The idea that a leader should be plebiscitarian thus adds to the idea that he or she is better capable of governing. Some scholars have thus distinguished Caesarism and plebiscitarianism with the argument that while the former is a category that belongs in the authoritarian genre of government, the latter belongs instead in the genre of democracy.[17] Yet much like the "bad" and "good" demagogues described by Aristotle, Caesarism too can have different connotations, so we can interpret the popular presidency as a kind of

democratic Caesarism, a category that fits, for instance, the Wilsonian presidency.[18] However, regardless of the energizing factor a strong leader may have, it is certain that Caesarism is dangerously open to solutions that stretch the Constitution and the division of powers. In extreme cases, when the leader proposes authoritarian solutions, the government he or she leads does not even need to rely on electoral consent, let alone the communication or appeal to the parliament, and most of the time ends up inaugurating a police state with propaganda that orchestrates popular consent. The Caesarist solution shows that starting with people's trust or approval is not enough of a guarantee to qualify a regime as democratic because it is not sufficient to guarantee control and accountability. Other institutions and procedures are needed, which plebiscitarians neglect. A crucial factor is the *form* of people's approval. I will now explain what the people do when they vote in a plebiscite.

What Is a Plebiscite?

The Roman *plebiscitum* was a yes-no decision by the plebs to a proposal that came from the tribune of the plebs. Through the centuries, this form of decision has been used to give the mark of acceptance to a fact or to a course of action that was already decided in the state or by a leader. The meaning of plebiscitary consensus is popular *pronunciation* more than popular *decision*. Hence, Green insists correctly that plebiscitary democracy is opposite to citizenship activism and in fact the proclamation of the "citizens-being-ruled" principle.[19] As a pronunciation for or against, but not according to procedural normality like referendum or voting for a representative, this form of popular involvement has meant to sanction an exceptional event, to be a quest of trust, more than an election that seeks to limit power or to hold the elected accountable.[20] A few historical examples may be helpful to clarify the difference between plebiscite and election.

A plebiscite was held by Napoleon Bonaparte on several crucial occasions of regime change that he initiated: for instance, in 1800, when he sought people's approval for his new constitution, after the coup d'état on the Directory of 19 Brumaire 1799, by which means he "terminated the revolution" and made himself a military dictator in the role of consul for life, a decision he then wanted to be sanctified with a plebiscite (1802),[21] as he did with the designation of himself as emperor (1804).[22] A plebiscite

was used by the king of Savoy in 1861 to seek popular approval by the inhabitants (with large male suffrage) of northern Italian regions that were previously military incorporated. A plebiscite may also have a democratic use. Its most democratic use is when it decides on a regime change, as in the case of Italy with the popular decision between the republic and the monarchy on June 2, 1946, or with the 1992 decision concerning secession in Czechoslovakia. In these and similar cases in which the vote is meant to open a new democratic phase and not to crown a leader, a plebiscite is identifiable with a constitutional referendum or, to use Václav Havel's apt words, a radical decision made in "a civilized manner."[23]

These different examples have in common the following: they show that what a plebiscite seeks is a leader's or a proposition's direct support by the people and the bypassing of any institutional intermediation. Besides these technical meanings and usage, a plebiscite is supposed also to have strong symbolic meaning and emotional impact on the people because it is an act of belief in the future, a trust or a pledge on something that a leader or a new regime promises to be. Thus, Ernest Renan used it to signify the commitment of a nation toward its own past and future, a pledge by which means a nation selects from its historical past what to retain or drop in the view of defining its cultural identity and strengthening its will to promote and protect it always. A plebiscite expresses a kind of religious consensus, thus, or a solemn recognition of a beginning or a renewal.[24] When rendered as the approval of a leader it is an act of identification with his deeds, words, and promises. This explains why the main concern the leader has is with abstention more than rebuff; indeed, it is high participation in the plebiscite, rather than the majority of the votes in and by itself, which seals the impressive adhesion of the people with his plans.[25] Counting suffrages does not count as much as the spectacle of showing consensus.

Let us return to the Roman meaning then, and the reason why since Roman times the plebiscite has been used as a strategy for strengthening obedience or devotion or faith by strengthening the solidarity of the plebs with their leader, their unity under and through him. Created in 494 BC as a concession by the patricians to the plebeian soldiers when they refused to combat and seceded to the Aventine and asked for the right to elect their own official, the tribune of the plebs represented the most important protection of liberty in Rome. The tribune did not come from the aristocratic or senatorial class, where from Roman magistracies must

originate, and thus was not voted on by all the people of Rome (plebeians and patricians) but only by the plebeians. This entailed that the Tribune was not properly a magistrate, a condition that explains why he had to be made "sacrosanct." For the tribune to be sacrosanct meant that he needed to be protected against the aristocratic family "by divine interference, or popular vengeance."[26] The tribune acquired his sacrosanctity by the people's pledge to kill whomever harmed or interfered with him while in Rome and during his term office. His sacrosanctity sealed his unity with the plebs by making any offense against him an offense against the plebs (as a matter of fact, to harm a tribune or disregard his veto or obstruct his function translated de facto into a curtailing of the right of the plebs to resist abuses by the magistrates). Sacrosanctity entailed at the same time a protection of the tribune and of the prerogatives of the plebs insofar as the tribune was the guarantor of the civil liberties of the Roman citizens against arbitrary state power.[27]

A plebiscite was thus an act that signified the unity of the plebeians, because they sanctified their trust and faith in their leader. This is the aspect that best illustrates the difference between a plebiscite and the right to vote in a modern democratic sense, which stresses the judgment of each citizen in the act of making a decision and the aggregative aspect of the outcome of his or her vote.[28] Voting in a political election divides the people into parties and interests, but voting in a plebiscite creates a unity of the people beyond its internal divisions.

Vote versus Plebiscite

Voting in a political election is a matter of preference and trust together; the paradox is that the more votes are about trust, the less their function is that of a checking device. Ideological alignment or faith and individual choice are in a tense relationship, and this is what makes elections divisive. Election relies upon several factors, like wide dissemination of information, interpretations and opinions that both the press and intermediary associations, from parties to civil associations, contribute in prompting. It is thus also based on belief (for the additional reason that information comes to electors though means they do not produce and control, as I have shown in Chapter 1), which means that cognition is not always the determinant factor that motivates electoral decisions. Certainly, as Bolingbroke made it clear in 1734, without trust in the Constitution, partisan

"divisions" are destructive.[29] Moreover, as an impressive literature in electoral behavior has explained in a century-old empirical body of research, citizens should expect that the candidates and then the elected will perform according to their promise in order for elections to operate as a valid system of appointment of representatives. Without this belief they cannot predict how the candidates will behave and thus judge them accordingly. But if this belief plays prominently they have little control over the elected.[30] In sum, information is a partial component that belief integrates. Belief is essential because the future is the perspective in relation to which voters choose a candidate, since they do not have all the information they would need to make a perfectly rational choice (supposing this kind of choice is feasible). Belief or trust thus applies to all social relations as the condition without which citizens who are strangers to each other and with limited information cannot coordinate their behavior.[31] For this reason trust has been considered as the fabric of society and its destruction as the most disastrous occurrence—destroying it, Thomas Schelling wrote, is to "spoil communication, to create distrust and suspicion, to make agreements unenforceable, to undermine transition, to reduce solidarity, [and] to discredit leadership."[32]

But voting in a plebiscite entails only one of the two components of voting because it operates for the purpose of proving the intensity of people's faith in a proposed leader; here, accountability is wholly out of place, and voting is acclamation rather than election.[33] Confidence and popularity rather than information is what counts, President Woodrow Wilson said. "Persuasion is a force, but not information; and persuasion is accomplished by creeping into the confidence of those you would lead."[34] Contrary to the election of a representative, thus, the plebiscite does not condition the deeds of the elected but confirms or accepts his leading role. Plebiscites are not for making the leader accountable but for making him popular. Hence, Weber stressed that a plebiscite can also be used for sanctioning a dictator: "Either the leader arises by the military route—like the military dictator, Napoleon I, who then has his position confirmed by plebiscite. Or he rises via the civil route, as a non-military politician (like Napoleon III) whose claim on the leadership is confirmed by plebiscite and then accepted by the military."[35] We should keep in mind these two aspects—the "plebian" approval and the antielectoral character—because they are, as we shall see, the pillars upon which modern rendering of plebiscitarian democracy rests.[36]

In sum, if the plebiscite is included within democracy, it is because of the formal modality of the popular consent it imports. Yet this is not enough to make an acclaimed leader a democratic leader.

Form and Matter

Weber was the author who first welcomed the transition to plebiscitarian politics as one toward democratization. He was also the author who radically dissociated democracy from the Constitution. Control and stability came from state institutions, not democracy, which for Weber, as for subsequent plebiscitarian theorists, meant essentially mass action external to the legal order, like pure and protean energy.[37] Weber's political conception rested on a polarized view of form and matter: the life in the cage of legalism and rationalism and the life of the extraordinary that gives politics new energy and even the poetry of heroism.[38] On that unshaped matter the leader put his mark.[39] Within a mass-democracy scenario, the parliament played an important function, yet not as a source of political legitimacy (which was vested in the people's plebiscitary consent) but as a means of control (on the plebiscitary leader) and stability (of democracy).[40] According to Wolfgang Mommsen, Weber thought that the leader and the parliament should work in tandem in order to neutralize the worst of them taken separately and face the challenge coming from the growth of bureaucracy, the true target of Weber's plebiscitary democracy.[41] The Machiavellian view of political conflict as a mechanism that both empowers and creates great personalities is one possible and legitimate reading of Weber's critique of parliamentary bureaucratism.[42] Yet Weber's appeal to the leader as rejuvenation of democracy was meant to overcome the strictures of parliamentary democracy and the legalistic constraints of the Constitution. A charismatic leader who lived for politics had the capacity (and people gave him the strength he needed) to break through the normality of legalism and overturn the limitation on decision-making power that constitutionalism created.[43]

Weber's understanding of leadership passed through a stylized reflection on the ancient states, certainly Athens and Rome. It was an understanding that "remained trapped within a view of the masses as essentially to be warded off or worked upon. The distinction is inherently cast in a tragic mode: the statesman can only control or remake the masses to a certain

extent, and for a certain amount of time, before they break out of his command and he becomes their victim."[44] In fact, it was Theodor Mommsen's depiction of Julius Caesar as the chief of the "new monarchy" that was able to put an end to the conflicting and corrupt "old republic" that inspired Weber. Like Pericles, Caesar was a demagogue who was able to transform people's support into a creative source of energy that changed the character of his state, domestically and internationally.[45] This was Weber's model of a plebiscitarian leader, a "genuine statesman," Mommsen wrote of Caesar, who "served not the people for reward—not even for the reward of their love—but sacrificed the favour of his contemporaries for the blessing of posterity, and above all for the permission to save and renew his nation."[46]

Within this model, plebiscitary politics was identical to democracy, once democracy was rendered not as consent by "regular election" but as "popular confession of belief in the vocation for leadership" through acclamation.[47] This identification was inescapable because democracy was for Weber either en masse or it was not. Indeed, in order to be capable of any functional or instrumental or rational kind of action (to produce any effect whatsoever that was not simply anarchy), the masses needed a leader—as a leader needed the masses to reveal his character to the world. Charisma was a destiny, not a choice: for this reason electoral representation was out of place, because, although it may be staged, charisma cannot be pretended or be a fake artifact that cunning leaders and propagandists make.[48]

After Weber, the dualism between matter and form has become the paradigm of plebiscitarianism as democracy in action; its opposite was electoral and parliamentary democracy as lethargic democracy. In this sense, a plebiscitarian element is present in all electoral theories of democracy that regard elections as a confession of the masses' impotence to act without leaders.[49] Schumpeter called his anticlassical doctrine of democracy a "theory of competitive leadership," even if he resisted the conclusion that the government should depend for its ordinary acts directly on the people.[50] But it is precisely the government's direct dependence on the opinion of the people that plebiscitary democracy stresses. Within this scheme, the radical dualism it poses between state apparatuses and the masses fosters an ideology of antiparliamentarianism. Indeed, from the idea that parliamentary politics is inimical to demagoguery it is possible to jump to the conclusion (as Weber did not do) that true democracy means

181

downplaying the function of electoral suffrage and the institutional control it generates.[51]

For sure, according to Weber the parliamentary organization of politics was more antagonistic to plebiscitarianism than it was to military Caesarism or even dictatorship. As a matter of fact, the latter could enjoy the support of the masses as in the case of Pericles or Napoleon, but parliamentary politics would kill demagoguery altogether. "Every parliamentary democracy, too, assiduously seeks for its part to exclude the plebiscitary methods of leadership election because they threaten the power of the parliament."[52]

Weber can be made our guide for understanding the following factors as the starting points of any plebiscitarian form of democracy: a sharp dualism, and actually a conflict between the legal order and the order of the masses, and the assertion of the masses are the sources of authorization of the leader, outside or beyond representative procedures that like elections institute a claim of accountability (but the irrational nature of the masses excludes both electoral authorization and accountability). The transition to plebiscitary democracy is thus more than simply rhetorical; it is a change in the figure of democracy because it is a downfall of democracy's procedural form. It is a change that is primed to occur more easily in a presidential system than in a parliamentary one, and in a society that relies on a pervasive system of mass media. The idea of the president as a popular leader has become "an unquestionable premise of our political culture. Far from questioning popular leadership, intellectuals and columnists have embraced the concept and appeal to a constant calling for more or better leadership of popular opinion. Today, it is taken for granted that presidents have a *duty* constantly to defend themselves publicly, to promote policy initiatives nationwide, and to inspirit the population."[53] Being popular is the virtue that makes accountability less important.

We can of course question the effectiveness of the claim for accountability. The point is that the very existence of a form of election that entails this claim introduces something that is crucial: it separates the people from the elected and positions the elected to question and control them. The elected are held responsible for "the manner in which they make and implement" the public choices.[54] For a president to communicate to the people via parliament or Congress entails avoiding the style that direct communication allows, hence being more attentive to the deliberative character of his rhetoric than to its emotional character and more cautious in

supporting his talk with evidence. Talking to the parliament is making issues public; talking to the people is making them popular, wrote Tulis effectively.[55] As Schmitt made adamantly clear, plebiscitarianism consists in eliminating all distance (of judgment and opinion) between the leader and the people, thus merging "public" and "popular" and bypassing procedures and regulations that constitutional democracy has devised in order also to tame the few (the demagogues), not only the many. But as an act of acclamation or faith, a plebiscite does not contain any quest for control, regulated speech, and accountability. Moreover, electoral accountability intends to remove arbitrariness and regulate political temporality by linking decisions to the future (promise) and the past (reckoning) of their actualization, beyond the moment of their initiative. "The distinguishing characteristic of modern democratic political accountability is the attempt to control such hazards not at the moment of (or in advance of) public choice, but on the basis of subsequent assessment and initiative."[56] Responsibility of the leader and a regulated temporality are the two characteristics that representative democracy impresses on politics, and that plebiscitarian democracy opposes.

The Ocular Public against the Secret Ballot

Pivoting on the difference between election and acclamation, Schmitt radicalized Weber's plebiscitary argument and added a crucial specification that would derail plebiscitarianism from the track of liberal constitutionalism and parliamentary checking functions altogether: he attacked the secret ballot, the foundation of representative democracy, against which he opposed the plebiscite as the truest expression of the voice of the people.[57] Whereas Weber criticized the weak and debilitating effects of party politics and parliamentary democracy on national politics, Schmitt went to the heart of the problem and questioned the procedural organization of electoral democracy in its eighteenth-century foundation: *the individual right to suffrage in the form of the secret ballot.* Not by chance, he criticized the French Revolution of 1789 for its liberal character, which produced a "bourgeois (constitutional) democracy" based on the rights of the individual citizen.[58] "Under the current regulation of the method for secret individual votes, however, he [the individual] transforms himself precisely at the decisive moment into a private man. The electoral secret is the point at which this transformation occurs and the reshaping of

democracy into the liberal protection of the private takes place. Herein lies perhaps one of the *arcana* of the modern bourgeois democracy."[59] *Arcana* as opposite of publicity paralleled *secret ballot* as opposite of plebiscite.

Arguments against the secret ballot were largely widespread in the nineteenth century, and not only among critics of liberalism.[60] Schmitt persisted in defending the open ballot in the twentieth century and did so explicitly in order to dissociate democracy from liberalism and pit one against the other. His project remained constant throughout his life and pertained to a definition of the public that was radically antiliberal. "Equal rights make good sense where homogeneity exists" and does not mean that an "adult person, simply as a person . . . *eo ispo* [is a] political equal to every other person."[61] Hence, to make it the voice of the People the vote must be disembodied from the "person" (the individual citizen) and rendered as the public expression of the will of the masses.[62] The form of the manifestation thus plays a central role.

In his assault on the secret ballot Schmitt advanced a new conception of *the public* that was not anchored in individual rights and their guarantee against the abuses of state power but was meant to render the aesthetic or visual and theatrical representation of the sovereign. His assault was thus not on *arcana imperii* as in Kant's tradition of the public but on the private as individual rendering (through secret ballot) of sovereign authority. Schmitt's appeal to visibility was for the sake of eliminating the anarchical or dissenting counterpower that the individual right to suffrage incubated. His move was perfectly rational since his objective was restoring state authority, not making government responsible to the electors. "The belief in public opinion," he wrote in *The Crisis of Parliamentary Democracy*, "is less a question of public opinion than a question about the openness of opinions."[63] This antiliberal view, which has the visual at its core rather than the articulation of ideas and interests in a communicative practice among equal citizens, resurfaces in the contemporary plebiscitarian renaissance.

Schmitt devised the most complete antiliberal definition of the public when he identified it with the visual. This is the sense of his attack against the secret ballot. Whereas to nineteenth-century critics of the secret ballot—among them liberals like John Stuart Mill—that form of voting epitomized a decline of political virtue and the license to use political power for the promotion of private interests (or, as in Benthamite vocabu-

lary, "sinister interests"), Schmitt criticized it from a perspective that had nothing to do with the civic or republican tradition, but had instead one basic concern: *the restoration of the state's authority.* The theological dogma of Catholicism offered him the paradigm for fulfilling his objective. Schmitt's move acquired the meaning of a critique of liberal as Protestant modernity.

Similarly to Catholic theologians in post-Reformation debates on the dogma of transubstantiation, or the presence of Christ in the Eucharist, Schmitt argued that the sovereignty of the People was one thing with its appearance in the plebiscite: just as the symbol of the Eucharist was the very body of Christ, the acclamation by the People was the body of the People. The form was the substance. The particle was the symbol that revealed the presence of a mysterious entity that escaped all rational understanding.[64] As for politics, it would not be through discussion that the People could attain the unity of its parts. That unity must be simply seen in action, prior to any discursive strategy. There were no words that could convey what the People thought, any more so than in the case of the mystery of the flesh and the body of Christ that became bread.[65] The symbol served to reveal, not explain. To apply to Schmitt's notion of sovereignty, in Pierre Bourdieu's words, we may say that sovereignty represents in all respects a struggle "to produce and impose one vision of the word."[66]

Thus, elections, instead of creating a distance between the citizens and the leaders (on which distance, as we saw, the quest for accountability is meaningful), should serve to unify them and erase all difference. Elections are democratic insofar as they annul individual reasoning. Control and limitation are totally out of place because the symbol is identical to the matter, not a procedure by which means individuals advance their interpretative views or interests. It is evident that Schmitt's rejection of the secret ballot and its replacement with the public exposure of the voice of the people (*seeing* the voice through the show of votes) is the locus of the most radically antiliberal formulation of the public in the twentieth century.[67] The ocular is the public.

Public in Schmitt's vocabulary did not mean the "public interest" or the "general interest." It meant the form of the manifestation of the sovereign. It did not even entail a counter-power against the tendency of state power to conceal its intentions and deeds. Schmitt opposed the ocular public to the enlightenment (and in particular Kant's) idea of publicity of state power against the absolute state. The enlightenment used publicity to

DEMOCRACY DISFIGURED

tame the Leviathan. Schmitt used it to make the Leviathan stronger and more absolute in its authority because it was affirmed by the voice and face of the masses themselves, rather than by the outcome of an agreement among individuals. Hence, Schmitt's public meant that which was visible, or made in public. The opposite was *arcanum,* which had nothing to do with the nature of the issue and in this sense was not opposite to private interests per se—indeed, if a private interest was able to receive the support of a plebiscite, it became immediately public. *Arcanum* entailed not-done-in-public, or covered and concealed.

The form, not the content, was thus crucial. What the sovereign decided was in and of itself public, and at that point no judgment was justified that inquired over the content of the state's decisions because no normative perspective existed outside the expressed and visible voice of the sovereign. The content of what was made in public was irrelevant. For instance, foreign ministers pursue state interests in secrecy because they do not want to be seen or heard by the enemy. Schmitt would not object to *this* arcana, nor to the vast realm of discretionary decisions that the executive made far from people's eyes. He excluded secrecy only in elections or in the expression of the opinion of the sovereign.

The secret ballot was in Schmitt's rendering the veil of privatization that liberalism put on democracy; it was a violation of the principle of publicity that the popular sovereign instead entailed. Publicity thus meant not so much or only the legal or what the civil authority put under its mantel and made an object of sanctioned decisions under state jurisdiction. It meant instead the action of the sovereign as staged in the open, similar in kind to the public executions in the squares of monarchical absolutist Europe. "The public execution is to be understood not only as a judicial, but also as a political ritual. It belongs, even in minor cases, to the ceremonies by which power is manifested."[68] In Schmitt's analysis the people were much like the crowd that attended spectacles of punishment in the ancient regime.

Deeds made in front of the people so that the people have the impression (illusion?) that they are the judge: this is the underlying logic of the visual meaning of the public, which opens the door to propaganda more than to control or surveillance precisely because it is not based on rights and freedom of interpretation and contestation, and seeks publicity not to protect the subjects from the state's arbitrary decisions but to show and prove the authority of the public. "Freedom of opinion is a freedom for

private people" that serves for electoral competition but not, however, for making the public rule.[69] Thus, if Schmitt attacked secret ballot it was because secret ballot takes the people away from the visual scene, more or less like with the modern state decision of bringing trials inside the tribunals and subjecting the defendants to a judgment that is performed behind closed doors, although pronounced for the public and according to public (as state) procedures and by publicly appointed magistrates. The secret ballot followed the same path as the eighteenth-century conceptualization of justice: in the voting booth as in the jury, the judgment or individual reason was performed *within* (the mind of the elector or behind closed doors) and *away* from the eyes of the public, while its performance was held according to procedures that were *public* (going to the ballot or pronouncing the verdict). Cesare Beccaria and the Marquis de Condorcet, just to mention the name of two theorists who most contributed in defining the character and procedures of those public acts (and who were Schmitt's target), proposed the notion of the public against which Schmitt launched his radical critique. Beccaria and Condorcet identified the public with open discussion (hence, freedom of speech and the press) and with individual deliberation (hence, the right of each citizen to an equal voice) and surmised that "this" publicity would be "the most effective protection against political abuses."[70] Kant famously declared this to be the mark of both modernity and freedom: "And the freedom in question is the most innocuous form of all—freedom to make *public use* of one's reason on all matters."[71]

To get rid of this idea of the public use of one's reason (the individual judgment as essential for public opinion), Schmitt attacked the secret ballot for transforming judgment into a matter of calculation and its results into an object of aggregation. In this sense, individuals exercising their political rights were acting as private persons and only the counting of their decisions was made public. The substance was private although vested in public garb. And it was precisely that substance that Schmitt wanted to make public, because only in this way would voting be purged of its aggregative implication and be an act of acclamation. The form that the opinion took in the diarchic structure of representative democracy was the issue against which Schmitt mobilized plebiscitarian consensus.

To Schmitt, thus, the form of the presence (the garb) was that which made the nature of the actors and of their deeds. *Public as made in public:* this was the garb or the form that gave substance to the political. The

"People" as the sovereign could only be conceived in public. Hence, voting in secret and in silence was a guarantee of the private individual and a free ride for his social and economic interests, not a guarantee of the power of the People, which was simply displaced in the very moment citizens voted individually and secretly. The People as a mass could not be rendered through the will and opinion of the individuals going to the ballot. Public appearance and the masses were two essential and intertwined aspects of what Schmitt thought democracy consisted in. In his view, starting from this notion of the public would allow us to see the paradox of representative democracy: secrecy as the substance of the sovereign. The sovereign becomes the *arcana*, a not-seen entity that receives the mark of the public by constitutional law and procedures that regulate the actions of associated individuals.

Schmitt invites us to think that the form or the way the sovereign acts is what characterizes a regime. If public as theatrical is the form of the political, then plebiscitarian democracy is the best kind of democracy. Clearly, the opposite of democracy would not be monarchy or any other regimes held by the few. Its opposite would be instead representative as parliamentary democracy, which replaces acclamation with suffrage and stimulates a kind of public opinion that is anchored on the individual rights and freedom, thus playing the role of information, knowledge, contestation, and advocacy, not only of aesthetic reaction to public appearance of the elected leaders.[72] But to Schmitt, democracy consisted in expelling the private mind of the voter from public opinion, and with it, liberty. We have to consider that to him politics was not the home of liberty but of authority, and consequently it was the place of acclamation not dissent, of unity not diversity or plurality of opinions.

The identification of the people with the public that Schmitt promoted makes sense of the fact that democracy means "government by public opinion," but in a new (and I would add, disfiguring) way. "No public opinion can arise by way of secret individual ballot and through the adding up of the opinions of isolated private people. All these registration methods are only means of assistance, and as such they are useful and valuable. But in no way do they fully encompass public opinion. *Public opinion is the modern type of acclamation.*"[73] Of course, no rational voice is detectable in this view of public opinion because no individual opinion is allowed. Schmitt's public opinion is not the expression of many publics

but the popular support by acclamation and without dissenting voices of a leader or a regime, an act of faith and identification.

A Question of Faith

The Roman republic is the template that better fits the view of democracy as mass democracy in which the forum rules. Thus, parliamentary democracy is the primary target of *democracy in public and of the public.* Since the making of modern representative democracy, in fact, since Napoleon's plebiscitarianism, Schmitt explained, two antithetical views of government by means of opinion have been opposing each other: one in which decision by suffrage is kept separated from the opinions in the forum (diarchy of will and opinion) and one in which the distinction remains but the two domains change their form and meaning, in particular opinion that acquires the simplicity of the people's expression in the forum. Opinion no longer performs the complex function we said above, but rather has only the function of testifying visually to the acclaiming people. "The genuinely assembled people are first a people. . . . They can acclaim in that they express their consent or disapproval by a simple calling out, calling higher or lower, celebrating a leader or a suggestion, honoring the king or some other person, or denying the acclamation by silence or complaining."[74]

We can thus appreciate why Schmitt thought that the form of election in plebiscitarian democracy is acclamation. Acclamation is the action of an assemblage of people that react to a proposal or a view or a fact it does not produce or initiate. Schmitt is very candid when he says that the act of petition or law proposal is always the work of a minority or even of one person. Yet it is irrelevant the way in which a proposal is made. What makes it popular is not the participation of the people in formulating it but the people's reaction to it: a petition that does not receive the people's approval remains simply a private fact, while a petition that receives majority support is *ipso facto* public. In Schmitt's positivist formalism, it is the majority victory that makes an issue a public act. Thus, the people do not govern, represent, or exercise any specific political function: "the peculiarity of the word 'people' lies in the fact that it is precisely *not officials* who are active here" but the people, who sanction with yes/no what the officials do.[75] The People is a mass and acts as a mass or as an indistinct unity of identical parts; it

cannot be asked to reason or act the way in which individuals do; its activity consists in sanctioning or reacting en masse.

The mass is the judging agent. The fact that its judgment is not a rationalizable kind of presence (not the base for aggregating votes, like interests or preferences) is what makes the people en masse the only master and an absolutely arbitrary sovereign. The government by means of opinion and the will, the diarchic character of indirect democracy, changes its appearance in quite a remarkable way in order to comply with the plebiscite as a public *fiat*. In a word, Schmitt radicalized both the domain of the will and that of opinion. He made the former the expression of one and only one procedure—the rule of majority, and he made the latter the expression of one and only one form of opinion—the public show of consent.

We have seen in the previous chapter how the assembly by acclamation mimics the Spartan assembly more than it does the Athenian one; in fact, it mimics the Roman forum and the comitia. Its model is the Roman forum because of the public in action through opinion uttered in mass, and it is the Roman comitia because in those assemblies the citizens voted in public and together by shouting "yes" or "no" or raising their hands on proposals coming from the magistrates. No less important is the majoritarian character of the plebiscites. Except for Athens, in Sparta and Rome what counted was the assessment of the majority vote. In the Roman comitia, the counting stopped as soon as the majority was reached because what the assembly was expected to do was reveal the opinion of the people or the majority opinion, not account for each opinion.[76] In Schmitt's jargon, plebiscite versus "bourgeois" individual suffrage meant precisely to convey the perfunctory value of voting, which was indeed a shout or acclamation because it was not expected to make each individual (let alone the minority) public, but only the majority. Voting counted thus not as an expression of the equal right of each but as an expression of the incorporation of all in the collective public. Public voting versus secret ballot was for the obliteration of the individual, his or her participation in the making of opinions, and his or her decision. Indeed, in plebiscitary democracy the individual citizen has no place and no power: he or she simply does not exist. As a matter of fact, thinking has no place in politics because, as I argued, it retains a private garb and the form of judgment insofar as it occurs in one's mind (for this reason Rousseau wanted a silent assembly). But politics consists in showing of opinions, making the will of the people visible. Thus, within plebiscitarian democracy politics has an endogenous

irrationality that the arithmetic of counting tries in vain to sedate while the plebiscite accepts and exalts.

A similar point has been recently made by Laclau when he objected to the rational choice interpretation of voting. As we saw in the previous chapter, similarly to the epistemic theorists' own proposal, Laclau introduces his populist view by attacking the classical argument of the irrationality or political incompetence of the crowd. Like they do, he wants to rescue democratic politics from this classical and periodically resurrected aristocratic argument. Yet his answer is opposite to that of the epistemics. Laclau resumes Gustave Le Bon's classical study on the crowd in his analyses of the psychological effects of rhetorical politics on the mind of individuals when acting en masse. He drops Le Bon's antidemocratic ideology but retains some central themes of his argument. Gathered and assembled peoples, Laclau agrees with Le Bon, introduce an element of irrationality that is new and different from individual irrationality insofar as it cannot be opposed with the rationality of each individual composing the crowd or the sum of individual opinions. Thus, Laclau questions, with Le Bon, the "ideal," which was born along with representative government, that "a large gathering of men is much more capable than a small number of them coming to a wise and independent decision on a given subject."[77] Even supposing each member of the crowd is rational, their acting together as a homogenous whole makes their decision what it is: an act of power, which has nothing to do with the judgment of an individual kind of rationality or irrationality. For sure, this new kind of irrationality can be employed to serve rational plans or goals and be thus instrumentally very rational (as for instance, when leaders seek people's support for political programs that are patently unpopular).

In substance, in both populist and plebiscitarian thinking, the defense of the crowd does not pass through the claim of the rationality of the crowd and is not identical with that of the best and most informed individuals. This is what makes them different from the epistemic revision of diarchic democracy. Populism and plebiscitarianism are an assault on parliamentary democracy for a reason that is opposite to that of epistemic theorists because it is based on a radical rejection of individual judgment in politics. But the denunciation of rationalism is not for the sake of procedural democracy either, or in order to support a system of norms that serves to regulate conflicts and compromises in a scenario that can never be wholly rational or purged of irrationality. Proceduralist democracy

191

recognizes or does not exclude the possibility that the irrational is part of politics, not a vice to be purged but a source of energy that procedures channel so as to make it capable of generating decisions. This is what ideological partisanship is about. But denunciation of rationalism makes plebiscitarians and populists change the relationship between the domain of opinions and the domain of the will. Indeed, in procedural perspective the recognition that opinion is the content of political discourse in democracy goes together with the recognition that the authoritative will of the people must follow rules and procedures that are meant to respect or reflect individual judgment, although not to purge it of its irrational elements. This is what makes democratic rules capable of governing the temporality of politics without subjecting it to the will of the majority. The role of political parties as intermediary bodies that mediate between the plurality of political opinions and their translation of transitory majorities is crucial. But it is not in plebiscitarian forms. Indeed acclamation presumes a kind of opinion that speaks through myth and propaganda rather than arguments and dissent, acclaim rather than vote, and identifies with the elected leaders rather than asking for their representative accountability. Acclamation wants directness and a shortcut, not a regulated temporality. Plebiscitarian politics is about success (winning the majority) more than a political process of participation that only partially identifies with the elected majority; it is about the victory by a leader with the seal of people's support and consent.

We may at this point bring to a conclusion our parallel between procedural democracy and plebiscitarian democracy. The latter entails a form of people's approval that is opposite to the suffrage form of consent that characterizes the right to vote in representative democracy. This is so because beforehand it shares in a notion of the People as a pure affirmation (theatrical show of opinion) of power that an external agent only can guide or shape. Transcendence, which the argument of the appeal to the People conceals, is the theological aspect of Schmitt's theory of mass democracy insofar as, without the shaping quality of the acclaimed leader, the power of the People is mute.[78] This contrasts strongly with a liberal, constitutional conception of democracy, which declares a consistent immanent foundation of political legitimacy or authority. Procedures themselves give form to the citizens' voice. The difference between these two views of democracy is enormous because while one engrafts democracy within a notion of politics as authority celebration, the latter recognizes

disagreement (even on the interpretation of the foundational pact) as not only possible but moreover a structural condition of the democratic system of decision making. In the authoritarian format, the agent that holds the thread of politics is external to the People, although plebiscitarian propaganda may convince the people that the contrary is true. But without a set of impersonal legal instruments (Weber) or a charismatic leader (Weber and Schmitt), the people is nothing. To Schmitt, as to Weber in his later work, a leader is actually the better solution precisely because a leader is confirmation of the endogenous irrationality that belongs to the masses.[79] This is the premise of a politics of faith and trust, or the searching for a religious kind of consensus that can unify the leaders and the masses and put a stop to the otherwise fatally conflicting nature of politics.

The Crisis of Parliamentary Democracy

Faith or confidence is meant to sustain or restore authority or national harmony and does so by overcoming or silencing dissent or disagreement. As an act of trust, faith consists in an active exercise of confidence or adhesion with the ideals or precepts of the authority in which the source of trust is located. When politics is a matter of faith, belief, and trust, the person of the leader is naturally a better source of guidance than citizens' autonomous deliberation. On the other hand, the formal mechanism and procedures upon which constitutional and representative democracy relies presume a kind of behavior on the part of the people that is invariably also private and does not as such exclude instrumental rationality and calculus of interests. In a procedural view of democracy, the social is never completely cast out, although its entrance in the sphere of the state is limited by legal restraints, filtered through intermediary organizations like political parties, and subjected to the rules of parliamentary deliberation. And, although electoral campaigns aim at building trust and creating confidence in a candidate or a leader, procedures are meant to dissociate trust and consent, to let mistrust and criticism in, insofar as no elected politicians can be endowed with trust to the point of dispensing with control (and new elections). The substitution of the ethical character of the leader with procedures, of faith and trust in a leader with norms and regulations of the deliberative process, was the important contribution of eighteenth-century constitutionalism to the construction of the government by opinion. Beginning with the

193

late nineteenth century's critique of parliamentary government this has become the main target of plebiscitarianism. Its renewal in contemporary democracy signals a decline of the party system and parliamentary democracy that is chronic and cannot be ignored.

Starting with the dualism between legal constraints and constraints on opinion (which is what plebiscitary democracy does) it entails envisaging a radical opposition between a procedural regulation of the government by opinions and the visible and extraconstitutional manifestation of the opinion of the people. This is the strategy that populism and plebiscitarianism share in common. Constitutional democracy, not only representative democracy, is their target then, both because of its individualistic rendering of popular sovereignty (as the right to vote) and because of its identification of political liberty with institutional intermediation between leaders and society, and finally with the division of powers. But if representative politics replaces trust with procedures, it is not because it does not hold trust important. Elections and representation entail trust. Yet precisely because ethical and psychological aspects are central in electoral politics precautions must be taken that introduce a healthy sense of disbelief or distrust, a distance between the citizens and the institutions or political actors.[80] This implies that opinion, although it is what makes power public or under the eye of the public, is not a secure controlling power if some additional specification is not made. This additional specification pertains to a considerable amount of freedom of the press and the plurality of the means of information and communication without which the creation of trust in a leader in the view of seeking people's support turns out to be another name for despotic domination.[81]

In a pivotal text written in 1789, the first theorist of representative democracy threw on the floor some seminal concepts that would help to grasp the meaning of plebiscitarian disfiguration. Condorcet proposed a distinction between *de iure* and *de facto* arbitrary power, which corresponded to that between *direct* and *indirect* despotism. Contrary to the ancient form of "direct" despotism, "indirect despotism" renews the classical theme of domination ("that is to say, whenever they are subjected to the arbitrary will of others") in new forms, which fit a government based on opinion and a market society. Condorcet was not content with the individualistic character of the classical definition of despotism (which largely dominated in his time among the *philosophes*)[82] because he under-

stood that any discretionary power needs to rely on a class of people or an elite that supports it and makes it last. Individual leadership as individual despotism "exists only in the imagination," since any ruler needs the cooperation of a certain number of acolytes.[83] Reference to the form of indirectness is paramount. Indirectness pertained to a kind of despotism operating through "influence," which can be compatible with a public sphere and freedom of speech and association. It can develop in a free society when social classes (constituted by honors or nobility, by economic and financial power, by religious prejudices, and by ignorance) hold an unequal power to influence the law. "It is easier to free a nation from direct despotism than from indirect despotism," because it does not rest on mobilization but on individualistic dispersion. Thus, indirect despotism, Condorcet thought, may grow more easily in modern territorial states because of geographical concentration of masses of people in big cities and commercial centers and, I may add, with the unintended help of the mass media.[84]

> In countries in which intermediary organizations are few, distant from politics and most interested in the exclusive pursuing of their social objectives, while public opinion, largely atomized, is heavily exposed to the influence of televisions (as in the cases of many modern democracies), a wide room is open to a leadership that is created through plebiscitarian mechanisms. Video-politics favors the emergence of political outsiders who capture attention by exalting emotions that cross public opinion and translate into an electoral consent that is decisive to conquer power: what is 'ephemeral' becomes the right channel to reach government. If, in addition, controls on leadership are scarce and weak and the exercise of his power substantially unlimited—except for the fact he can be dismissed in the next elections—then the risks, present and future, of plebiscitarian democracy are relevant.[85]

What we witness in contemporary scholarship and actual politics is a decline of awareness of the risks that these transformations incubate.

The plebiscitarian renaissance meets with a realist rendering of politics that pretends to unmask the ideology of democratic autonomy and states candidly that in politics the people play simply a role of support for and visual check on a leader they want to watch acting from afar. "Whereas

traditional democratic theories oriented around the ideal of autonomy seek to give the People control of the means of lawmaking, plebiscitarian democracy, in pursuing candor, seeks to bestow upon the People *control of the means of publicity*," a control that, however, "is negative, since it involves wresting control from leaders rather than the People."[86] Scholars of Weber have reacted to his enthusiastic rendering of plebiscitarian democracy by proposing to use Weber's thought in reverse or in order to detect and call attention to "the risk of a charismatic-authoritarian overturning of plebiscitarian-democratic power."[87] This risk rests on plebiscitarian democracy's endogenous instability, because the crowning by people's acclamation gives the leader a strong incentive to escalate rather than moderate his power. Trust and faith are thus not safe strategies of power limitation, whereas they are extraordinary resources for the support of the leader. Because of his direct appeal to the people's sentiments and emotions, the plebiscitarian leader wavers toward an incremental concentration of power unless strong counterbalances in the constitution and the institutional organization of the state are in place and work autonomously from the world of opinion: until, in other words, the diarchic structure of democracy is recognized.

The American Renaissance of Plebiscitarian Democracy

Beginning with Weber, several generations of scholars from Mosca and Sartori to Lintz and Ackerman[88] have suggested viewing the United States as a successful example of moderate plebiscitarianism because it is a case of a realistic or pragmatic view of democracy and because it is a presidential system that, while relying on a bottom-up relation with the masses, makes room for a more energetic executive activism than a headless, parliamentary democracy. Recently, some works have been published that propose an enthusiastic interpretation of plebiscitarian politics as a revitalization of democratic governance against the ideology of constitutional checks and balances and a supine subjection of the executive to the Congress and the interests there represented, against finally the parliamentary centrality in representative democracy. Whereas to past generations of democratic scholars (within Schumpeter's tradition), the theory of elites served to express dissatisfaction with the functionality of the theory of democracy or to lament the ruling power of the few despite the proclaimed triumph of the masses,[89] contemporary plebiscitarian theorists detect and prize at the same time

196

the role of leadership in democracy,[90] while blaming the crisis of authority on constitutional legalism and parliamentary politics.[91]

Trust in Popularity

Eric A. Posner and Adrian Vermeule's *The Executive Unbound* proposes a description of the present political course and of transformation of the balance of powers in American government that aims to be also a prescription for how American democracy should work. The "is" and the "ought" merge. These authors complain that the dualism and tension between legal constraints and political opinion constraints are detrimental to the efficacy of political decisions in times of distress, like a war or international instability. They criticize the "Madisonian model" of the republic with the argument that "liberal legalism has proved unable to generate meaningful constraints on the executive."[92] They discuss the diarchic character of representative democracy in order to show it is more a problem than a guarantee for a secure liberty. Deliberative institutions along with bureaucratic strongholds that the social role of the state has produced through the years are held responsible for paralyzing decisions and jeopardizing the national interest. "Rather than deliberate, legislators bargain, largely along partisan lines."[93] Emergencies coming from international politics, the authors claim, put to the fore the poverty and weakness of a headless and collective approach to political decisions. The problem is as old as at least constitutional and representative government, although Schmitt is the author who personifies it with renewed authority. "When emergencies occur, legislatures acting under real constraints of time, expertise, and institutional energy typically face the choice between doing nothing at all or delegating new powers to the executive to manage the crisis."[94]

Posner and Vermeule seek to moderate the role of legalistic constraints and intensify another kind of constraint: public opinion, which seems to be a better force because it can be mobilized to monitor and control the established power without debilitating its decision-making proficiency. Whereas the legalistic checks and balances tie the political actor to the point of making it frail and inoperative, public opinion with its transparency requests is a better controlling agent because it makes the government more willing to act and take control than more timid and contained. In times in which international conflicts challenge national security and the very image of the nation, Posner and Vermeule show an

empathic sympathy with the ideas of Weber and Schmitt, who also dealt with issues of patriotic honor and national pride. Like their German mentors, contemporary plebiscitarians denounce the parliamentary style of politics, the game of compromise, and the extenuating debates that enervate and debilitate the government. Crisis, military or economic, highlights the powerlessness of the liberalism of moderation while making emergency an ordinary politics that demands constitutional democracies "to hand over vast open-ended authority to executive and administrative bodies widely seen as best suited to tasks of quick and immediate action."[95] This argument has achieved great momentum also in Europe in coincidence with the financial crisis that, in a few weeks, swiped away elected governments and replaced them with technical executives that parliaments supported with quasi-unanimous vote of confidence. Economic emergency blurred parliamentary politics and the very majority-minority dialectics, but showed also that it is possible for headless democracies to have strong executives without becoming presidential or directly plebiscitarian.

Posner and Vermeule deem deliberative and representative democracy as time-consuming and "ill-fitted" to quick and dramatic decisions. A muscular presidency or a Caesarist leadership is better able to keep together strong decisionism and popular support. Reelection constraints and the need to appear in front of the public in a captivating way are regarded as the most effective and in fact sufficient methods for making the executive act in and for the interest of the country without jeopardizing democracy. "Indeed, the greater the president's power becomes, both through delegation and other de jure mechanisms and through the debilities of oversight institutions, the more essential popularity and credibility become, as the public focus of the presidency goes."[96] Thus, since their primary concern is that of recognizing and propagating the interest of the nation, the means of information and communication aim at inspiring or creating a supportive public that trusts the system more than it wants to generate dissent. This makes the mass media a natural resource for an audience democracy because they are naturally attentive to steer the identification of the people with the ideal of national interests, and meanwhile set up the horizon of public discourse through a continuous production of information that makes those interests appear to be always in the making.[97]

Niklas Luhmann explained years ago that the mass media set the standard of what is acceptable and what is not, and in this way they generate a background reality—factual and normative at the same time—that con-

strains people's opinions without directly coercing them.[98] Moreover, their autopoietic structure makes them an autonomous and stabilizing system of control, which is even more effective than the traditional legal one. Based on similar assumptions, Posner and Vermeule oppose the Madisonian liberal republic with the plebiscitarian presidential one. "Even between elections, the president needs both popularity, in order to obtain political support for his policies, and credibility, in order to persuade others that his factual and causal assertions are true and his intentions are benevolent."[99] Their optimistic view of the public role of the media seems to underestimate that "newspapers and televisions have little incentive to monitor politicians and statesmen on an ongoing, issue-by-issue basis. Such reports will overwhelm the information-processing capacities of the *private* citizenry that constitutes the mass audience. What this public wants is "'news'. . . . If 'news' is what they want, 'news' is what politician/statesmen will give them."[100] An additional risk with video politics is that it turns a presidential election into "a very chancy event."[101]

Plebiscitarian democracy gives public opinion one function only, that of building authority, which is building trust on government and creating popularity for the president. It has two main ingredients: the leader's direct relation to the public for acquiring or increasing popularity and building trust, and the strengthening of the role of the leader by giving him more autonomy from the legal constraints with people's support. The *judgment* coming from the people competes with the system of legal control. With all the carefulness that any analogy commands, it is no exaggeration to recognize in this criticism of liberal constitutionalism the echo of Weber's disapproval of the uninspiring legal restrictions that the Reichstag imposed on state power as leadership, and finally to recognize in this proposal of an executive-centered government rooted in popularity the echo of Weber's call for a Caesarist leader with plebiscite approval.[102] In fact, Posner and Vermeule are more radical than these analogies suggest, since they invoke the authority of Schmitt's dictatorial leadership and never quote from Weber.

After questioning the republican "tyrannophobia," the authors of *The Executive Unbound* conclude their peroration for a strong plebiscitary executive by pointing to the anachronism of the negative myths of Caesar in Rome and Cromwell in the English civil war that inspired the American Founding Fathers. In fact, their quarrel is with the eighteenth-century tradition of constitutionalism. Thus, whereas Condorcet warned about

the new form of despotism that can emerge from electoral consent, Posner and Vermeule assure us that tyranny is a risk of the past. Whereas Condorcet surmised that a market economy and public opinion could prompt new forms of domination, they think instead that these modern forces have liberated us from the risk of tyranny. Posner and Vermeule argue that the complexity that a market economy naturally creates and the unstoppable flow of information that the modern system of opinion formation activates do not justify the worrisome appeal to those ancient tyrants that motivated eighteenth-century constitutionalism. "Modern presidents are substantially constrained, not by old statutes or even by Congress and the courts, but by tyranny of public and (especially) elite opinion. Every action is scrutinized, leaks from executive officials come in a torrent, journalists are professionally hostile, and potential abuses are quickly brought to light. . . . Modern presidencies are both more accountable than their predecessors and more responsive to gusts of elite sentiment and mass opinion. . . . On this account, presidents already receive close public scrutiny."[103] Because the costs of acquiring political information have fallen steadily in modern economy, and because a wealthy, educated, and leisured population has the time and technical tools to monitor presidential action and state institutions, it might seem that the moderns have achieved the ability to monitor their leaders without weakening them. The creation of a public sphere of opinion that media technology and the market would provide seems able to allow the modern republic to be plebiscitarian without risking tyrannical involution.

Democracy without Autonomy

The second contribution to the renaissance of plebiscitarianism in political theory I am going to analyze is even more pertinent to the theme of democracy as government by opinion since it welcomes a radical revision of the way to conceive democracy and the plebiscitarian perspective itself. In this new rendering that Green proposes, plebiscitarian democracy mirrors the visual transformation of the power of opinion as a result of the technological revolution of the means of information and communication that started in the twentieth century. Green replaces the plebiscitarian masses acclaiming the leader in the crowded squares of fascist Europe with the People's eyes that compel the leaders and other high officials "to appear in public under conditions they do not control."[104] In 1930s plebi-

scitarianism the leader controlled the crowd through orchestrated propaganda; in contemporary demo-videocracies the crowd (the taste of the audience) controls the leaders by imposing publicity on their behavior.

Unlike Posner and Vermeule, Green has no interest in asserting the centrality of the executive over the legislative (although this is the unavoidable result of plebiscitarianism); instead, he wants to reconfigure the relation between the power of the will (decisions, voting, electing, and voicing consent or dissent in the public forum) and the power of opinion or judgment (surveillance and watching supervision) so as to redefine the meaning and role of the People and moreover of political autonomy, which is the most important principle of democracy.

Relying on Weber's reading of plebiscitarianism (but sympathizing with Schmitt's theory of the public), Green surmises that, although born in the early twentieth century and then disappearing because of the bad reputation that totalitarian regimes cost it, a leadership democracy is destined to come to life again and is in fact "a nascent theory that has yet to mature."[105] The reason for this is that the age of television and the large diffusion of the use of the Internet have contributed to restoring democracy in what, according to Green, is its original figure: a regime based on a direct relation of the masses to the leaders. Once again, the individualistic foundation of political legitimacy—the sovereign of the citizen—is the eighteenth-century legacy under attack.

In the tradition of antidemocratic thought, beginning with Joseph de Maistre, who started the assault on democracy in the name of a strong personal sovereign, the mono-archic correction of political equality has been used to demonstrate the incapacity of ordinary people to act effectively as a headless collective. It is worthwhile to remember that Thucydides depicted Athenian democracy in its hegemonic moment as a principality and constructed a relationship between the leader and the masses that became paradigmatic in the theory of elites and plebiscitarian democracy. In the tradition of Montesquieu (to be soon revived by Hegel), Emmanuel-Joseph Sieyès saw monarchy as an ethical institution that embodied the unity of the nation beyond the partial interests of its members, and served as the model of political profession in that it was shaped by virtue, honor, and competence, rather than only ambition and interest.[106]

Green recovers the paradigm of democratic principality and elite emendation of the government of the many but overturns its antidemocratic meaning and argues that a leader democracy is the most consistent figure

of popular government. Democracy without demagogues is less of a democracy, rather than a bad democracy. As we saw above, in the tradition established by the great Roman historian Wolfgang Mommsen, Weber explained the reasons of Athens's greatness with the greatness of its leader and his harmonious relationship with the demos. "Pericles, because of his position, his intelligence, and his known integrity, could respect the liberty of the people and at the same time hold them in check. . . . So, in what was nominally a democracy, power was really in the hands of the first citizen."[107] This representation of democracy enjoyed robust success in the second half of the nineteenth century in coincidence with the mounting critique of parliamentary government, and had in Weber a strong supporter, whose greatest heroes were, as said, Caesar and Pericles.[108] "But the major decisions in politics, particularly in democracies, are made by *individuals*, and this inevitable circumstance means that mass democracy, ever since Pericles, has always had to pay for its positive successes with major concession to the Caesarist principle of leadership selection."[109] Today, it is technology that leads the plebiscitarian mutation of democracy: the Internet and the transformation of political language with popularized messages and easy commercials mark the decline of politics as deliberation and the growth of politics as leader-making. In this sense, Green reasons convincingly that plebiscitarian democracy may have the future in front of it.

Plebiscitary democracy joins with populism in proving the renaissance of a Roman style of politics both in modern practices and in theoretical analysis, and in particular the ideal of candor (where from the name "candidate" and "candidacy" come) or the public exposure of the leader as a person to the people in the forum that judge him, and thus the people's role as an audience that visually controls the appearance and performance of the leader.[110] The model of the forum, as we shall see below, changes the style of politics quite dramatically because it makes vision, not hearing, the core sense of participation. What is surprising is the conclusion that Green derives from this: the ocular transformation of public opinion makes plebiscitarianism less vulnerable to possible abuses by leaders. Indeed, whereas direct democracy made the people of ancient republics identify with the words of their leaders, the mass media naturally create a certain distance that is itself a reason for a more secure relationship of critical adhesion by the people with their leaders.

Like Posner and Vermeule, Green shows great confidence in the constraining power of the market economy and the modern system of information and communication, which are two conditions that allow a large and diversified society to function as one society with no need to seek deeper incorporation and cultural and social homogeneity. Moreover, in making vision, rather than hearing, central, television is said to have contributed in purging the opinion of the masses of all pretense of rationality upon which the power of persuasion of the orators relied. In the television era the eighteenth-century ideology of the progress of rationality through political participation can hardly be sustained. Video democracy confirms the fact that the politics of the masses belongs in the domain of aesthetic and theatrical, not cognitive or deliberative; it actually has nothing to do with rationality. This point is crucial.

Television, Luhmann explained, is the quintessential counterargument of the eighteenth-century idea of the public, because "the more 'that which is perceived', say, television, plays a role in this [creating the public], the more communication is based on implicit knowledge which cannot even be communicated."[111] The aesthetical function of the ocular public is meant to convey the idea that participating in watching occurs without the viewers' intention of using what they perceive as a means for acting. A "visual knowledge" is incapable of being controlled subjectively insofar as what viewers acquire in common (the same images) makes them and the fashion according to which they see things. "Whereas the Enlightenment assumed that commonality consists in a communicable interest based on reason," communication through the mass media is changed into an identification process of the viewers.[112] The ocular public is thus a public whose identity consists in judging according to the parameters of fashion within which the subjective point of view becomes an embarrassing sign of anachronism. "*Homo sapiens* is or has developed into a reading animal capable of abstraction . . . *homo videns*, a television-made animal whose mind is no longer shaped by concepts, by abstract mental constructs, but by images. *Homo videns* just 'sees' . . . and his horizon is confined to the images that he or she is given to see, thus why *homo sapiens* is entitled to say, in all innocence, 'I see' to mean 'I understand', *homo videns* sees unassisted by understanding."[113] Yet if this is the case, as also Green seems to imply, it is unclear how the ocular public with such an impoverished critical potential can have a surveillance authority.

Green argues that along with its cognitive role, the public sphere of opinion with the new system of media also loses its political role since, as I shall explain below, it does not make the citizens more competent in self-government, nor does it make them a mobilizing mass that claims sovereign power. On his account, epistemics (but also deliberativists) and populists are equally unwarranted. According to an aesthetic function of the forum, the public does not need to inspire participation in order to be political. It is political insofar as it makes the people capable of imposing visibility on their leaders, and *images* are more effective in achieving that than words. Since visibility, not "understanding," is the weapon of control, video politics is a more proficient system of control than even voting. Moreover, images contain more egalitarian implications and are more democratic than words. The parallel Green proposes between a logos-oriented form and an ocular-oriented one is interesting, compelling, and full of potentials in a society that like ours is based on and moreover made of images and visual inspection of distant leaders.

The bad side of rhetoric comes from its foundation in both speech and reason (*logos* was the Greek word to denote both of them), which makes the intentionality of the speakers a factor that is totally discretionary and remains unchecked, because it can never be made transparent to the listeners. Green makes the argument against words and for the primacy of vision by claiming that words and hearing live with (although react against) a system of power opacity; this would explain why the "public" was born along with the birth of large states that needed centralized systems of organized behavior and information, and with the birth of video technology. Accordingly, Green suggests, face-to-face democracy is primed to be more opaque than media democracy because it is most exclusively based on words or speech, and rhetoric entails concealment rather than transparency. Yet once politics operates in a forum made of images, the intentionality and even manipulation of the speaker cannot go along undisturbed for too long and without the inspecting interference of people's eyes. Green thinks that Machiavelli's maxim that the good leader should say without meaning works better in a politics that is not based on images because it does not require the leaders' actions to be exposed to the public. But images are fatal to popularity (and concealment), much more than words are. And although leaders of all times and places are driven by the temptation of manipulating people's consent, it is the use of words that gives their intention more chances of success. Images are, after all, much more at the

viewers' disposal than are words. The leaders feel the influence of fashion like everybody else, and this is what makes the power of images more egalitarian and its constraining power more effective.

Green wants to unmask the rhetoric of deliberative democracy, according to which voice or dialogue or words represents a form of democratic participation in the decision-making process. He argues instead that candor, or the plebiscitarian revelation of the person of the leader to the audience, is much more democratic, although it does not cultivate any participatory ambition. In effect, the theory of deliberative democracy with its abstract scholasticism conceals the bare fact that the few rule without giving the many any real power of influencing the political game, since the game of politics falls outside the norm of deliberation. But plebiscitary politics starts from the recognition of those bare facts and wants to make sure that "those who do have massively disproportionate authority and power in a democracy in some sense be compelled to *recompense* the public for this privilege."[114] Ocular democracy acknowledges and accepts the existence of disequilibrium in power between the governed and the governors and subjects it to the norm of trade that is *do ut des*. In other words, it barters citizens' autonomy for leader's publicity in the very moment it attempts to do away with words.[115]

Ocular democracy claims a normative value and the comparison of gaze and words is the key to grasp it. Rhetoric is responsible for creating more passivity under the pretext of propelling knowledge and reasonable arguments in public discourse. In addition, it violates equality much more systematically than visual appearance does. The case of eloquence seems to prove Green's argument. This public use of persuasive speech is geared to the many and requires equality of some basic potential, like the ability of making moral judgments, but not, however, of any specific kind of intellectual competence or skill or knowledge.[116] The public use of words does not presume a direct response or a dialogical exchange: the audience of a speaker, like that of an actor on stage, is for the most part more inclined to listen than to talk. As a matter of fact, eloquence cannot exist without an audience, and attention-getting words are more important than are logical inferences because aesthetics can move the emotions. The audience thus plays an important role because it determines the quality of arguments and the behavior of the orator.[117] Hence, Plato in *Republic* compared eloquence to poetry because it presumes an audience and a sympathetic relationship between author and speaker and reader and listener.[118] Yet its aim is to affect

the audience members' will by touching their emotions and inspiring their decisions to act, not to make them equal participants or capable of control.

Reversing the idea that lies at the core of the linguistic foundation of deliberative democracy, Green concludes that words do not protect the people from interference and manipulation more than images do, nor do they allow for more participation, nor are they more egalitarian. In sum, there seems to be no reason to believe that a public of words makes for a better democracy than a public of images. The comparison becomes even more compelling if we consider the controlling potential of these two forms of democratic public. Although plebiscitarian democracy starts with the acceptance of a relation of inequality between political leaders and everyday citizens' gaze, it allows for a "corrective" strategy as deliberative theory does not, which makes democracy a philosophical ideal (characterized by the normative values of autonomy, reciprocity, and universalizability) but has nothing to say about the way in which democracy operates. The hiatus between ideal and real makes the deliberative theory of democracy ineffective and toothless.

The "remedial" strategy that plebiscitarian democracy proposes is not inspired by the goal of augmenting people's power, or opposing one positive power (participation) against another one (decision). It is instead based on the idea that revealing arcana is equivalent to taking away from them the arbitrary component which lies in secrecy. Green is in perfect agreement with Schumpeter that decision stays with the few because it cannot be the domain of the unorganized many. But he then gives "the People" a power that the few do not have: that of unveiling. The remedy to the unavoidable unbalance of power that politics entails (democracy is no exception) comes from a power of a "*negative* type: one that imposes special ocular burdens on the selected few whose voices have been specially empowered to represent others, to deliberate with fellow elites, and to engage in actual decision." Candor imposes "extra burdens on public figures" while equalizing the viewers and the viewed in something important: public exposure of their deeds, or the ocular power.[119]

Green exalts the democratic and egalitarian potentials of gaze by referring to, among other things, the existential aspect of control and agency that the spectator exercises on the leader. Despite the unpleasant and even perverse implications that the power of gaze may have, it is certain that it sets up a direct confrontation between the viewers and the viewed, and this, as opposed to hearing, adds to its more egalitarian implications. The

206

disciplinary power of gaze recognizes "the spectator as potentially occupying a position of power vis-à-vis the individual who is being seen."[120] The Bentham/Foucault paradigm of a viewer that increases its power in proportion to its invisibility inspires Green's model of ocular democracy, in which the masses have the same all-powerful invisibility as the guardian of a prison whose architecture is predisposed so as to make its presence unseen (Bentham, whose defense of representative government earned him Schmitt's accusation of being a "fanatic of liberal rationality," proposed to make the people powerful in judgment, much like the prison guardian, when he defined public opinion as "the power of a tribunal").[121]

In relocating people's power of judgment from words to visions Green wants to make "the tribunal of opinion" truly effective and thinks that the revolution of the means of information and communication supports his case because it gives the People its own function, which is not that of acting (a mass, as Weber showed, cannot act without a leader) but that of observing and judging. Plebiscitary democracy reconfigures the diarchic structure by creating two actors: people as voters (with ideologies, interests, and the intention and desire to compete for power) and the People as an impersonal and totally interest-free unity that inspects the game of politics by imposing publicity. Citizens' political participation is minimal and consists in the electoral selection of the elite. The real place of the People is the forum, in which, however, it does not play the role of forming opinions because it is not in the form of a plurality of interests or views but rather in the form of an anonymous mass of viewers. The People is the supreme inspector that "only watches" but "does not win" because it does not participate in the competing game of politics, a task only for the few.[122]

The Cost of Publicity

Becoming a political leader in plebiscitarian audience democracy must be made a costly business: this is the only resource of control the audience has. The cost a leader pays in exchange for holding the tools of state power in his hands is the renunciation of most of his individual freedom. The leader is wholly in the hands of the people because he is permanently under the people's eyes. This is the "extra burdens on public figures" that ocular plebiscitarian democracy provides. Green's proposal is compelling because it is undeniable that those who compete for power should be

aware they do not enjoy nor can they claim the same latitude of negative liberty as ordinary citizens. More power entails more responsibility and thus less liberty of concealment. Political power longs for the ring of Gyges, or the power to be invisible in order to be able to do what it otherwise could not.[123] Secrecy is a basic good in the private life of the individual but may be an intractable obstacle in the case of public officials. Of course, a minister or a prime minister is protected in his basic rights as anybody else is; however, in order for his private life to be proved transparent and lawful, some extra inspection may be needed. In this case, trust does not come *ex ante* as a blank check but entails and actually requires corroboration of evidence. As a matter of fact, running for a political post is a free choice of the candidate whose outcome comes with a mix of honor and burdens.

What is less convincing in Green's peroration for making the leader the object of the viewers is the assurance that putting the leader on stage will *eo ipso* entail making his power more constrained or checked; that in substance, the public can substitute for the constitution in limiting power, thus fulfilling the goal of making politics more democratic because it is less subjected to the control of nondemocratic institutions. But the "politician's motive for wearing a socially acceptable mask did not disappear with the advent of modern democracy,"[124] and Green's argument for the controlling power of an ocular public is unconvincing and unwarranted. It is based on abstract considerations of the role of the ocular public that the actual experiences seem to disprove.

Prime Minister Silvio Berlusconi was permanently under the eyes of the media, who intruded in his life not necessarily for revealing his lawless behavior but for satisfying the public's thirst for scandalous news, which in turn created the market of scandals and made public opinion into tabloid format.[125] Putting the private life of the prime minister under people's eyes did not serve either to control or limit his power; moreover, it did not even deter him from living his life as he preferred. The fact that Berlusconi owned or controlled six national television stations was of course an aggravating factor, but it was not the only reason that made Italian audience democracy a passive democracy that could hardly control him. Indeed, even more than the ownership of the means of information, the empire of the ocular or the inflation of images is the factor that makes vision an especially inept power of inspection.

The paradox of exasperating the aesthetic factor of public opinion at the expense of understanding and participating in the making of political

judgment is that it does not consider that images are the source of a kind of judgment that evaluates tastes more than political or moral facts. Taste, Kant explained, exalts rather than contains the rhetorical potentialities of vision, and moreover isolates but does not foster communication. Indeed, while it is possible "to argue about taste" it is impossible "to dispute" about it because no beyond-disputation conceptual determination is available in the domain of taste. The most we can do is to have *faith* that "there must be hope of coming to mutual agreement" and to work for making it possible. Taste is a subjective opinion and can hardly be a vehicle for mutual agreement among viewers. To the contrary, it is hypothetical reasoning (imagination in Kant's words) that has the power and capability to arouse the will and does so by leading our reason to devise strategies that could attract consent: "there must be hope of coming to mutual agreement; hence one must be able to count on grounds for the judgment that does not have merely private validity and thus are not merely subjective, which is nevertheless completely opposed to the fundamental principle *Everyone has his own taste*."[126] Ideology is the daughter of hypothetical reasoning and imagination; it makes us prefigure the future so as to mobilize our will to action in the present in order to fulfill it. Giving ideological accounts is a rational behavior in a domain that, like politics, deals with future-oriented behavior or decisions that are supposed to make things happen. But what is the outcome of images and taste? "The upshot is this: that the priorities of television are the scoop, the shoot (a good image), and the ratings (the largest possible audience)."[127] The predictable outcome is that information does not in and by itself empower the faculty of judgment.

The hegemony of the ocular would drive the public in exactly the opposite direction as intended by Green. The audience does not control the leader but suggests to the leader what he should do or avoid doing in order to meet with people's favor (which is not necessarily identical to the interest of society), and actually to forge their favorable opinion. Moreover, the empire of the visual inevitably ruins the tenor and style of political discourse. The Italian experience confirms this diagnosis because in the years Berlusconi reigned as a de facto plebiscitarian leader of an audience democracy, the issues of political conversation were dictated by the logic of commercial marketing and publicity. Political issues that the mass media led were expunged from the public discourse simply because they were not attractive to television assets or to the viewers.[128] The paradox of the total video public, or putting an "extra burden" on public figures, is that

political decisions do remain unseen and unrevealed because they are most of the time unattractive to the aesthetic taste and the spectacular desires of the televised crowd. Knowing very little of what elected politicians were doing was the cost Italian citizens paid by becoming an all-powerful ocular audience that was fed with a kind of information that was driven by the goal of impressing people's minds with images that stirred compassion or anger. "The effect is not the function where the mass media seems to lie; this functions seems to lie in the reproduction of non-transparency through transparency, in the production of *non-transparency of effects* through *transparency of knowledge*."[129] Thus, making the life of the leader visible and an object of spectacle may engender new opacity under the pretense of publicity.

The Italian case proves that the transformation of the base of politics from party programs to audience has made the People not only less in control but actually unable to watch and the domain of politics more vulnerable to corruption. Years ago, Alessandro Pizzorno interpreted the paradox unfurled by this transformation as a sign of the decline of political language and judgment and its replacement with the language and judgment of subjective morality and taste. The centrality of symbols over programs, of the personality of the leader over the collective of party supporters, translates into the centrality of moral qualities over political qualities in the formulation of political judgment by citizens. Political virtues (prudence, competence, etc.) decline and personal virtues (aesthetic, sexual, etc.) become central. A proved outcome of this transformation is the increase of corruption, because what should be an object of public visibility is not as interesting to the viewers and the media experts as the person of the leader. Politics becomes more professional in the sense that it becomes an activity that lives from concealed exchanges. In fact, the plebiscite of the audience facilitates corruption.[130]

What Is the Point of Watching?

Giving the People an exclusive ocular power does not give them any guarantee that what they are going to see are the most important things government and the politicians deal with or what the society needs and wants.[131] For opinions to be public it is not enough that they are diffused among the public; it is also necessary that they pertain to "public things," to the *res publica,* and the judgment on this pertinence is something that

the citizens develop freely when they participate in the making of their will and judgments as citizens, not simply as viewers.[132] They do so when they do other things besides watching, such as participating in movements, associations, and elections; making their representatives aware of their problems and interests; contesting them; and voting them in and out. It is not, however, only the content and the doer that make a fact a public fact but also the form in which it was achieved. Citizens contribute in making the public when they induce the state to do what Kant thought it should do: submitting its deeds to the citizens' judgment in order to be evaluated according to the principles of the public use of their reason, which is equality of consideration and liberty. The public use of citizens' reason demands that the state's acts are public. But at what point does the publicity of a public deed start? Does it start when it is still in the form of a plan in the mind of the politicians,[133] or when it is under debate in public institutions, like an assembly?[134]

In commenting on the Kantian maxim of public reason, Noberto Bobbio asked the following questions: If a government's concealment of its deeds is in and by itself an admission that those deeds are grounds for a scandal, "what is it that constitutes a scandal?" and "at what point is a scandal born?" How exposed to the public must a deed be in order to count as being under people's eyes? In other words, no decision can be made in a fully transparent way, particularly when, as in a democracy, individual freedom is the principle that guides political behavior (not only private), because it is the condition thanks to which bargaining and compromise among plural parties and interests can be achieved.[135] The way in which public deeds are made public (when? in what form? by means of what kind of images? etc.) is in and of itself not a transparent issue.

The answer of plebiscitarian democracy does not seem to take away opacity: "Candor is useful because it seeks to regulate this secondary set of concerns: not the policies that are legislated, but the leaders empowered to legislate."[136] The ocular power of the People operates on the person of the leader rather than policies. This is what makes it a chapter in plebiscitarianism. "Presidential debates, public inquiries, and press conferences" are the strategies of ocular democracy, which pertains essentially to the "watchability" of behavior.[137] But as Luhmann argued convincingly, opacity is implied in the paradigm of the public as total viewer because "being offered from the outside, entertainment aims to activate that which we ourselves experience, hope for, fear, forget—just as narrating of myth

once did."[138] The ocular public stimulates identification and empathy, two phenomena that are hardly conducive of a critical or controlling attitude.

Thus, although the visual transformation of the public generates a "constant presence" of the public, this may not be a controlling presence. Seeing more and constantly does not necessarily imply seeing all and seeing what is important to see in order to judge or hold accountable the leaders for their decisions. Most of all, it does not make the citizens more powerful than when they vote in a political election, as Green thinks. "The plebiscitarian approach to democratic reform is valuable precisely because it deprivileges both the specific act of voting and the general conception of the everyday citizen as a decider."[139] But elections, which are the opposite of a "constant presence," have the power of kicking an unpleasant leader out of office; on the other hand, watching the leader through the information or images provided by the mass media and the press agents every day may make the citizens feel powerless—unless ocular democracy is interpreted as a tool for more participation, or even the breaking of ordinary politics. Yet this is not what Green's plebiscitarian people are supposed to aim at or do because audience is meant to substitute for participation rather than inspire participation.[140]

At this point a question comes up spontaneously: Since the People is assumed to be only a visual audience that has no role whatsoever in the process of decision, which only the few have, what is the point for it to watch? Stripping the people of its "capacity to author norms and laws" entails making the public sphere play merely an aesthetic role, the impact of which is more entertaining than it is controlling. The statement according to which "in modern democracy *minorities* rule" would thus need to be completed with the statement that they rule after the people have elected them. Without including the moment of participation or "the will" in the definition of the People, ocular democracy has no goal, or more precisely, it has no other goal than watching. The diarchy of will and judgment is what makes the democratic people a controlling actor because it contemplates a structural communication (regulated by procedures and constitutional norms and operated by intermediary associations like parties and civil society organizations) between political action and political judgment. This diarchy is disfigured if the will is given to the few that make the procedural and institutional game (as elected elite), and the judgment is given to the people, but in the sole form of visual or aesthetic.

Thus, I would propose we reverse the plebiscitarian argument and stress that being under the people's eyes may be a cunning strategy the leader or simply media experts use to diminish the people's control over the power of the leader if some provisions are not made that do not simply pertain to the regulation of his or her appearance in public. As we just saw, Green suggests that for the executive or the president to hold regular press conferences or for candidates to engage in a frank and open debate on television—in sum, to make the arena of politics a gladiatorial experience—is enough to expose him or her to people's ocular power. These events, he surmises, are in tune with the identity of the People as a unity that is not fragmented in partisan parts. Elections give the verdict of the majority and reflect partisan battles. They are means in the hands of political groups, not a procedure the democratic sovereign uses to create, control, and limit state power. In Green's rendering, elections or the authoritative voice is outside of the People's competence, which is only one: watching and judging from a position that is above all partisan views and with no active goal ahead. The political sovereignty of the people disappears. The sovereign is only an audience.[141] The aesthetic and theatrical public forum replaces both the political and the deliberative function.

Audience Democracy

It has been said that video politics registers the end of the citizen in mass society, a transformation whose consequences are not yet wholly clear to us because "television is in the process of reshaping our way of being" and the Internet adds to this change.[142] The acceptance of this fact is propaedeutic to a new theory of democracy made "in light of the specific pathologies and dysfunctions" that mass communication technologies, and especially television, have produced, yet not in order to find remedies against those pathologies and dysfunctions.[143] Democracy of the audience marks the acknowledgment of the decline of the ideal of political autonomy. In a classical work on mass society, William Kornhauser asked many years ago the question of how we can distinguish between good and bad plebiscitarianism in a democracy in which the masses play the role of a receptive engine of leadership. Kornhauser proposed an answer that is still valuable (and worrisome): the crucial factor we have to pay attention to is how the leaders relate to the masses and to other leaders. In plebiscitarian

politics, the factor of control is situated in the person of the leader rather than in procedures and the institutions. The reference point for judging whether we have a good or bad plebiscitarian leader is the character of the leader himself, thus an accident or a condition that can hardly be controllable by the audience. Audience democracy is a politics open to hazards.

This finds a confirmation in Green's argument that candor and transparency are the only containing strategies we dispose of in mass democracy. Yet candor and transparency cannot be fully enforced through institutions and norms unless the basic rights to privacy and individual freedom of speech are not blatantly violated. Thus, although, as I said above, being accountable to the audience entails the leader enjoys less privacy, his acceptance of exposing his life to the audience depends mostly on his morality or the calculus of prudence he and his staff make.[144] Hence, the renaissance of plebiscitarianism confirms the relationship proposed by Kornhauser of mass society as easily manipulatable and mobilizable by the decline of the citizen.[145] In addition, as authors in the liberal tradition from Mill and Tocqueville to Walter Lippmann have abundantly warned us, the "mass man" is not only vulnerable to the leaders but to the masses themselves. To these warnings, Green answers that this intricacy of dependence shows that all the power of the democratic masses is in opinion, an opinion that, moreover, has been gradually transformed in images and visual attention. The mass media place the government under a permanent inspection by the people who do not for this reason need to vindicate participation in politics to be active like a sovereign. Plebiscitarian democracy completes the transformation of the political people in the public and fulfills the promise of the government by means of opinion as one that pivots on the negative power of judgment, a form of political participation that wants to check rather than make decisions, that has no longing for making things happen and is not very much concerned with delegated powers. The power of the viewer is the only power the People retain, and moreover the only checking power.

Mass media and the electronic system of direct communication are an unprecedented support to the democracy of the audience and the collapse it entails of the distinction and mediation between the private person and the citizen.[146] The disappearance of the general actor (or the artificiality of the political identity of the citizen) means that judgment itself is going to change by becoming more adherent with the point of view or the idiosyncratic taste of the individual person and in direct reaction to the events

214

or occurrence of facts the person sees. "The citizen who converses with other citizens on the Internet does not exist."[147] As Lippmann anticipated some decades ago, the perfection of the democracy of the public corresponds to the creation of a world that has no external reference point to the mind and life of the private person, in which the evidentiary perspective is no longer possible.[148] The world created by the mass media is the world itself, a total and only reality. According to Luhmann it is not a world of communication to begin with because with these instruments interaction between senders and receivers of images is ruled out. And it is precisely this interruption of direct contact that ensures a high level of freedom of the media, with the implied coda that the receivers are truly passive recipients.[149] Yet this is likely to change the meaning of publicity and the public sphere, while undermining Bentham's idea of the public as a tribunal. The diarchy of will and judgment empowers the public thus because it incorporates a regulative idea (the citizen as an identity that belongs to all equally and is not identical to the social reality of the private person) that makes judgment itself a "public" act because it is a parameter that every citizen knows how to use, and thanks to which state actions and decisions are judged as right and wrong.

As we have seen above, Schmitt reinterpreted plebiscitarian democracy from the perspective of the change in the meaning of the "public" from something that is defined in a juridical-normative sense (what pertains to the civil state) into something that is exposed to vision or exists in a theatrical sense (what is done in front of others' eyes). This is the view of the public that returns in contemporary plebiscitarianism. The resurrection of the ideas that piloted the criticism of parliamentarianism in early twentieth-century Germany is an interesting indication of a new worrisome trend in democratic theory. Bernard Manin's book on representative government is perhaps the most important document of this trend. A central theme of Manin's book is a diagnosis of the decline of party democracy and the emergence of the democracy of the public in which trust in the leader and the acceptance of an increasing call for discretionary power by the executive meet with a change in the organization of political elections from party leaders and militants to experts in communication. "Audience democracy is the rule of the *media expert*,"[150] or the celebration of the ocular power, as Green observes in completing Manin's diagnosis. Although during party democracy elections were heavily based on the vocal and the volitional aspect of politics—participation was the central marker

of popular sovereignty—appearance in public now defines the art of politics. Words, discussion, and conflicts between ideas and interests are central in the one case and candor or transparency in the other, in which the organ of popular power is "the gaze rather than the decision, and the critical ideal of popular power [is] candor rather than autonomy."[151] Manin's audience democracy is an insightful and influential step toward participation as spectatorship.

Manin did not intend to sponsor the movement in that direction. Indeed, his diagnosis was based on the idea that the spectating audience is a sovereign judge, hence presumed the traditional idea that consent and discussion are essential to legitimacy, but that judgment alone is not a mark of self-government. Thus, Manin evaluated the transition from party democracy to audience democracy in terms of a decline of sovereign power of the people because it was a disempowerment of the decision-making power of the citizens. When people used to vote for parties with a platform they exercised their judgment on future politics; their votes did not contain simply their trust in the person of a notable, as it used to happen at the beginning of representative government, when the candidate-notable was the figure of representation. In party democracy, the image of the candidate did not substitute for the future expectation of the voters as in plebiscitarian democracy, in which elections occur on the basis of the image of the candidate, and reference to programs and platforms is almost irrelevant. The consequence is that accountability itself becomes meaningless since electors do not have any control on issues and policies, not even during the electoral campaign. Clearly, Manin judged the transition from debating and participating to attending and gazing as a sign of "malaise," not an improvement. Indeed, he concluded his book with discomforting words: "representative government appears to have ceased its progress towards popular self-government."[152]

But once we drop Manin's evaluative judgment on the transition from party democracy to audience democracy and take the latter to be a fait accompli to cope with, we see that the normative scenario changes. What a consistent audience perspective propels, Green argues, is the final overcoming of the "hegemonic status of the vocal model" and its idea that peoples' participation is "an active, autonomous, decision-making force."[153] The plebiscitarian project consists in overturning this hegemony and liquidating deliberative and procedural democracy, which considers plebiscitarian democracy a "profanity" because of the passive role it ascribes to

the people. The arguments that deliberativists and proceduralists advance against it are mainly ethical and moral; they are made either in the name of the universalizability of rational arguments or in the name of preference aggregation and the periodical change of the elected as the only pragmatic way to resolve the lack of rationality that the government by opinion contains. Habermasian theorists and proceduralist theorists conceive democracy as a political order that is based on autonomy and voting, a view of political activity that is centered on decision and voice. They treat the opinion of the private individual as a matter that cannot enter the political domain without going through a transformation. The former do so by filtering opinions through rational deliberation, the latter by extracting from those opinions the numerical unit of calculus. This is what ocular democracy wants to confute and change when it opposes intermediation of judgment with visual reaction to images.

A Roman Model

Lawrence K. Grossman wrote several years ago that telecommunication technology has reduced the traditional barriers of time and space and redirected politics back to direct democracy. The decline of the Madisonian model, he surmised, goes hand in hand with this process of narrowing distance and blurring the traditional checks and balances and separation of power that accompanied the first two centuries of constitutionalism. A new season of direct democracy seems to be awaiting the moderns if it is true that even the judges of the Supreme Court feel the pressure of the audience instead of defending their independence.[154] However, the scenario I have been painting in this chapter is not that of direct democracy but of a new form of oligarchy that develops from the centrality of vision over voice. Indeed, when the norms of political autonomy give way to those of spectatorship, democratic procedures are demoted to methods for elite selection, with the understanding that this does not give any power to citizens. It is possible to say that in exchange for the power of influencing politics, ordinary citizens exit the space that institutions and procedures organize. Recovering the visual role of *doxa* is in this case for vindicating the irrational power of the people through gaze, rumors, cheers, and boos. The distance from the cognitive myth of the public as the space for the formation of an enlightened public opinion cannot be greater. Equally great is the distance from the political role of opinion as verisimilar judgment

that, to paraphrase Aristotle, characterizes an isonomic democracy in which reasoned arguments and votes are the tools (and rights) that all citizens have and can use. The tradition in which plebiscitarian democracy belongs is thus neither the enlightenment nor Athenian direct democracy. It is instead the Roman forum in which the plebiscitarian presence of the masses acted functionally in support of the leading role of the few. In this concluding section of the chapter I would like to suggest the renaissance of the plebs and their audience activity as the best representations of the new figures or characteristics of democracy in the age of technological and mass media.

As we saw in the previous chapter, the *Populus Romanus* was *both* a crowd and the lawmaker that shared in the sovereign power with the Senate. The crowd in the forum was not identical to the *populus*, which acted inside of the tribes (*tributa curiata* and *tributa centuriata* according to the different gatherings made for voting on laws or for magistrates).[155] The crowd was active in its own way, and "not limited to demonstration of public opinion" (that is, *extimatio* or voting). It was the active protagonist (as a whole, not a sum of individuals) of the political functions held in the forum, which was judging and on some occasions voting by plebiscite for candidates or on laws. The crowd "functioned as a public political theater" that all public figures recognized, appreciated, and feared.[156] It was its presence en masse that exercised its powerful influence on the leaders; gaze, shouting noise, and rumors were the weapons branded in the forum. The effect on the leaders had to be certainly stronger than that of today's televised public, which is performed in collective isolation, if I may say so, or within private homes. The ocular was in Rome a stronger and more direct power in comparison to which our power of television attendee pales. Although the differences are enormous, the analogy with the forum is important in order to better understand the consequence for democracy that comes from exalting the function of the informal audience or the public over the citizen. To anticipate my argument, the Roman experience shows us that the crowd acquires more relevance in proportion to the decline of the relevance of the people's voting power, at the twilight of the republic.

The physical presence of the Roman public and the visual spectacle it performed was a force that strongly impressed the "eyes and mind" of the performer.[157] To paraphrase Bentham, the forum was the most frightening judging tribunal in the republic. It was hard to discern who led and who was led because emotions ruled the forum. Emotions, which Cicero

described as the agents of a contagious disease, were the irrational factor that made all the Romans recognize and feel the forum as a unique place. Le Bon's analysis of the crowd in mass society translated Cicero's description into a language that fits modern plebiscitarianism.

The crowd, Le Bon explained, has an "invincible" power because it is not a power that can be translated into quantity. It is "invincible" because it is not the sum of individual wills but a surplus value, so to speak, that exists only when the people become an indistinct unit. It is characterized by a lack of individual responsibility for one's decision that makes it all the freer to act and produces a contagious phenomenon that makes people act by imitation and think in a way they cannot, if interviewed later on, explain. It is finally run by the power of suggestion which comes from the fact that each individual feels the presence of the others and cannot resist them. Le Bon described a crowd as a falling back to the spontaneity of the tribe: possessing the "spontaneity, the violence, and the enthusiasm" and even "heroism" of "primitive beings."[158] Aggregative calculus but also strategic rationality was wholly inept to represent the power of the forum or the crowd. Le Bon used the argument of the invincible power of the crowd, its contagiousness and emotional power of suggestion, to explain how it was that the nobles in France renounced their privileges and decided against both their class and their individual interests. "The renunciation of all its privileges which the French nobility voted in a moment of enthusiasm during the celebrated night of August 4, 1789, would certainly never have been consented in by any of its members taken singly."[159] "Inferior" to the "insulated individual" (and to the individual-citizen thinking in the solitude of his or her mind as when he or she votes) in terms of rationality, according to Le Bon, the crowd is well superior to the individual in terms of feelings, and above all in terms of emotions. The strength of the public sight or the style in which opinions are voiced is what makes the crowd, ancient and modern, so unique and special.

The Roman crowd also had a checking function. This was the important power of being under the people's eyes, or being in public. Jon Elster wrote that the effect of public debate (of being before an audience) on assemblies in which decisions are to be made is that of inducing the speakers to replace the language of interests with the language of reason or an impartial reason.[160] This does not of course imply that proposals under consideration are cleansed of partial motives or interests, since it is the

skill of a good speaker to be able to employ words that cover his or her intention. That the presence of the public makes it difficult for orators to appear motivated merely by self-interests does not mean that orators or politicians are unable to succeed if they appear sincere without being so, if they are purely hypocrites.[161] Machiavelli spent important pages to show precisely this possibility, which means indeed turning the public from a controlling devise into a spectacle and an engine of legitimacy.

This is the sense in which Miller speaks of "the ideology of publicity that pervaded every aspect of Roman communal life."[162] Publicity entailed first of all that all actions or proposals or events that pertained to the functions of the republic were made and shown in public so as to give all the *populus* an effective chance to be informed, to judge, and to make decisions. Law proposals, the names of jurors or Tribune candidates, and all other kinds of information were daily updated in public on boards or hung on lists. Publicity meant making "the details" of any prospective action available to all citizens who passed or stood by in the forum. "Writing, public action, and spoken words all played a part if guaranteeing publicity."[163]

The use of the public was thus more important for the symbolic character it had than for the actual effect it might have had on decisions. Thus, withdrawing from the public, acting behind closed doors marked an extraordinary change in Roman politics, which traditional republicans opposed and feared. The reconstruction in Cicero's speech of how Verres conducted his electoral campaign is an important document because "for the first time in Roman politics, we hear of *divisiores* meetings [party meetings] at the home of a candidate, with the aim of distributing bribes from him to different tribes."[164] Before it was "privatized," political influence was exercised in the open, in the forum.

Yet public exposure was able to protect the republic from bribery and corruption because political leaders *felt* the burden of appearing dishonest (not necessarily being so). The public was able to deter corruption for as long as the city was virtuous. Transparency held an effective power of surveillance as long as the Roman citizens felt the sense of shame in showing their vices to their fellow citizens. Clearly, procedures that regulated the law-making power of the *populus* were not perceived as enough protection, and virtue needed to be mobilized to strengthen them. Acting in public was a supplement of protection in a city in which the ordinary currency was honor and virtue—the risk of being seen by the public of

Rome and being publicly denounced was a deterrent power that both constrained and stimulated the leaders. "Public" was thus an adjective that entailed "being under the eyes of the crowd." For it to have a checking function, some ethical factors needed to be presumed and effectively working.

Corruption deterrence on human weakness is certainly one of the most important legacies of the Roman republic. As a matter of fact, all those who ran for offices, if elected and then once they stepped back from their offices, had to take an oath in the forum, and if "they would not take such an oath, they had to resign."[165] In the logic of Bentham's idea of the public as tribunal, we may say of the Roman case that whereas the tribunal of sorted judges judged, the crowd judged the judges with the invisible power of opinion. The formal judge felt the pressing influence of the informal judge. To be *under the eyes of the people* was thus both a condition for competent participation on the part of those who so wanted (and assembled in the comitia to vote) and a condition for controlling political deeds (in the forum). The check on the performers did not need to be in the form of speech or words. The *passive* activity of attending, seeing, and hearing was also very influential on decisions; it was a powerful form of passivity insofar as it could induce a public officer or a jury or an orator or a candidate to say or desist from saying something. The crowd, we read in Sallust, was "active" even when "apathetic and listless."[166]

Reflecting upon the Roman forum, we might say that the crowd or the indistinct public has two powers: a containing power and a releasing power. It exercises the function of chastising and instigating—at any event, directing those who have the power to act (in Rome, the citizens in their voting function and the candidates). It is important to understand this double function if we want to assess the complexity of procedural democracy, which, although it may have a plebiscitarian moment, is not plebiscitarian.

Speech in the Forum

Why can the Roman forum alone not figure as a model of democracy, although it is a model of popular presence, and even a strongly egalitarian one, when considered in its dynamic relation to the leaders? In order to answer this question I will be focusing on the right to free speech the Romans enjoyed in the forum. A subsequent question to be posed is whether

the Roman people in their sovereign capacity had the right to speak also in public or if, like the Athenians when assembled in the *ekklēsia*, they could speak when gathered in the voting assemblies or the comitia. *Isēgoria* and *parrhēsia* were the names of the individual right to speak that each Athenian citizen enjoyed when gathered in the assembly: the former "a positive, procedural freedom that guaranteed Athenian citizens an equal opportunity to address the *ekklēsia*," and the latter "a positive, substantive freedom that shaped the content of each *rhētor*'s speech."[167] As explained in Chapter 1, freedom of speech as an equal opportunity of the citizen to take part directly or indirectly in the process of decision has been at the core of political liberty since the inception of democracy. According to Roman historians, *isēgoria* and *parrhēsia* was not an opportunity the Roman citizens enjoyed equally: some enjoyed it in the forum (the few who ran for political posts), while none enjoyed it when met in their assemblies (the comitia).[168] This does not mean, however, that the Roman citizens did not enjoy the right to influence the decisions and to speak in the open or in public (as they did in the forum). It means that their influence in the forum was exercised by them as private individuals, not sovereign citizens. Let me try to explain this important distinction.

Holding an office (by election) or belonging to the senatorial class and thus having the right to run for office gave to only some Roman citizens the individual right to address the people and talk.[169] *Isēgoria* was only for the few in Rome. Ordinary Romans did not enjoy it. It is impossible to say that in Rome there existed "a formal right for every citizen to speak" in the place in which decisions were made.[170] When acting as a sovereign, "any citizen who wished to do so could hear opposing views on any topics, either at different *contiones* held by different officeholders or, sometimes, at the same *contio*."[171] Electoral campaigns were extremely lively, more than they are today. All persons in the forum enjoyed the right to free speech, but the Roman citizens did not enjoy it when meeting in the comitia within which they voted or acted as sovereign *populus*. They enjoyed it as private citizens and thus in the form of a right to "private speech"—a right that was extended also to the noncitizens or all those individuals who traveled to Rome and went freely to the forum. Both ordinary citizens and noncitizens enjoyed the right to free speech in the forum. What they did not enjoy—not all of them—was the equal right to public speech or the right to address the people or discuss in

the comitia, a right that only the patricians or the potential magistrates enjoyed.

When Green observes that vision, not voice, is the sense that makes the People as one crowd that "only watches" but does not "compete for power," he means to stress precisely the power not of making decisions but of influencing by acting as spectators. The kind of right to free speech that the spectator enjoys is in the form of a private right. To elaborate from the argument I made in Chapter 1 concerning the meaning of free speech in a democratic society, two different rights to free speech entail two different kinds of people: one that speaks but does not decide, and one that speaks and also decides. This distinction is at the core of the mixed government model that scholars use to describe contemporary representative government in order to stress the fact that, although ordinary citizens can hope to influence their representatives by voicing their opinions freely, they have no certainty that their voice will be listened to (the separation between assemblies that vote without talking and senates or councils that only talk without voting was endorsed by modern republicans in the Roman tradition, from Harrington to Rousseau). As citizens in the decision-making function, the Romans had "passive" kinds of rights: for instance, the right to hear and see and to be sensed as a judging audience by "active" leaders. In order to make that right effective, the Roman system made sure that all oppositional views were always expressed in public by the leaders and that all the information on candidates, magistrates, law proposals, and passed laws were divulged and made known to the public. But in their sovereign function, the citizens talked through their shouted votes (plebiscite) and, when in the forum, through the words of the speakers. The debates and *conciones* they attended daily in the forum were made by speakers (candidates and magistrates) with whom people would identify and, in this empathetic sense, participate or identify with, as according to Schmitt's plebiscitarian notion of representation.

At any event, the Roman people could exercise a *reactive* kind of power: the power of impeding or exalting, of judging or chastising, in the forum as well as in the voting tribes. They did not have the right of being *fully* active like the patricians (who, however, did not have the right to vote). In sum, a clear-cut division between speaking and voting, proposing and resolving (which Harrington would then theorize as an argument for

bicameralism) dominated Roman political life. Along with a silent voting in the tribes, the Roman people also had a vociferous presence in the forum, yet not as citizens who debated *and* voted (as in Athenian democracy) but as a collective public that influenced and constrained the speakers en masse.

In contemporary parlance, it is the individual right to speak as a private right (not as a right of the citizen) that is for us important to consider. Ordinary Roman citizens talked freely and directly as private individuals in the forum and everywhere they wished, but not in the voting assemblies or comitia. It was as private individuals that they made up the crowd. The crowd was thus a public (as visible) actor made of private individuals. This was true in Rome as it is true in today's audience democracy. The citizens who converse with me and other citizens on the Internet or watch the television do not exist, properly speaking, as citizens; we interact as private individuals who utter personal views and see the same images in the immediacy of the time that informal communication allows, when we want and like.

In Rome, the crowd, not the sovereign people, had the right to talk in public forum. Precisely because of this, public talk was not in the form of a rational argument or a deliberative kind of speech but of a *collective reaction* to what the candidates or leaders said: a shout against a speaker, a noise of approval, and silence itself, as we saw. This was the *populus* against which Cicero launched his disparaging words when he compared it to a storming sea with the tribunes as the winds agitating it.[172] Cicero gave this people the name of *democratic people* against which he threw his invectives. In the eighteenth century, that image of "democratic" turbulence and folly of the populace in the forum would inspire the fear of democracy in the speeches of revolutionary republicans seated in the constitutional assemblies of Philadelphia and Paris.[173] On the other hand, it would inspire antiliberals to mock (or exalt) democracy as a mass regime.

In the Roman scenario, within which plebiscitarian democracy found its nourishment, the public was a theater, and like in a theater, it acted as a "group" (to use the appropriate word of Cicero) whose members had the right to voice loudly, yet they did not have the same rights that the actors had. Indeed, a theater is not a place for individual discussions or reasoned speeches but a gathering of attendees who can voice their views in the form of a reaction to what they hear or see. But only the actors speak and

perform. "This theater was available at a fixed traditional location to those who were interested, and in it the crowd (which itself could be described as a *contio*) was not necessarily a passive audience but could intervene with shouts or an explicit dialogue with the speaker or could show its opinion simply by drifting away. The same crowd could moreover be transformed into a sovereign assembly of voters simply (in principle) by being instructed by the presiding magistrate to separate *(discernere)* into its voting *tribus.*"[174] Thus, in Rome (as in plebiscitarian democracy) the public was not an abstract "public opinion" but a physical context in which magistrates shaped their words anticipating the reaction of the crowd. As with a play, all Romans knew the rules of that game, whose performance was also a form of amusement.

Conclusion

While populism blurs democratic diarchy because it wants to make the opinion of the larger majority the will of the whole people, plebiscitarianism keeps the function of decision (the few) and that of visual judgment (the people) separate and ascribes them to two groups of citizens. Here, the negative or reactive character of politics is the only determinant factor that counts as democratic. It was Schmitt more than Weber who opened the path to this radical revision of democratic politics when he acknowledged that acclamation is the voice of the collective (the many), the only act that proves the empowerment of the people, while decision is the prerogative of the few. Contemporary theorists of the plebiscite of the audience embrace Schmitt's definition of democracy in which the People is the "nonpolitical part [of the state], keeping within the protection and shadow of political decisions."[175] As a matter of fact, Schmitt's view is excessively decisionist when compared with this new rendering of plebiscitary politics as fully consonant with the paradigm of "a nonvocal, ocular ideal of candor."[176] Whereas Schmitt took reason and individual participation in deliberation away from democracy, Green takes away from it, as we saw, the last vestige of a discursive character by making opinion no longer the sphere of discourse but that of vision and ocular judgment. Autonomy is no longer part of the democratic vocabulary, not even in the form of a mass that shouts its collective will.

The democracy of the audience has the Roman model of the forum as its reference point. The difference between a plebiscitarian gathering and

a democratic citizenry resides essentially in the character and function of speech. In the latter, speech is a prerogative of the individual citizen as a political right that the person exercises together with others in the view of influencing, proposing, and evaluating decisions. Speech is the organ of political autonomy, whether in the form of direct or indirect participation. In the plebiscitarian gathering, speech is instead the prerogative of the crowd that is made of private persons who react to what they see and are made to see, and is not for the sake of forming a political view or taking part in a debate but observing the doers act. This is the freedom of the audience. It captures the difference between the action of a crowd that can follow or stimulate a speaker or several speakers and the action of citizens who speak through their voting power and their diverse political opinions and interests.

A crowd practices free speech as a private right because its members are a public of bystanders or individuals who can drift away if not amused, not yet a public of citizens whose behavior is guided by procedures. The rule of the street, like that of the Internet or television, is the rule of the crowd; its freedom is unleashed, but this does not make it in and of itself the freedom of an autonomous people. The force of the crowd does not yet testify to political freedom, although it is a manifestation of individual freedom. When the Roman people were stripped of their right to vote on laws after Sulla's push against the power of the tribunes, the crowd did not lose its visual and effective influence in the forum: "it may seem paradoxical to argue that crowd politics in the Forum was at its most effective precisely in the only period when the unconditional power to legislate had been lost."[177]

The contemporary theory of plebiscitarian democracy is an illustration of the renaissance of the power of rumors in a forum that is shaped by the means of mass communication. Yet in the Roman republic (when it was not yet in decline) the forum and the comitia, the opinion and the will, were equally strong powers. Contemporary representative democracy faces instead a decline of electoral and political participation to which corresponds the growth of the aesthetic and theatrical function of the public, a voyeuristic machine that serves to gratify people's longing for political spectacle more than their liberty from arbitrary power. Indeed, the diarchic feature of representative democracy entails not only that the sovereign is made of two functions but also that these functions communicate so that opinion does not remain ineffective and the will does not remain

unchecked. A public sphere that plays an essentially aesthetic role can hardly be a means for control and critical judgment, even less so if it is complemented by a disaffected citizenship and the decline of the meaning of the political right to vote. This illustrates the paradox of today's democracy in which movements of protest arise that are as strong in their appearance as they are weak and powerless in their impact on political decisions.