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POLITICAL FICTIONS AND REPOLITICIZATION

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I

Democracy, political legitimization and public opinion

Recognition is the touchstone of political legitimization in Western democracies. Once freedom is acknowledged by political thinking and discourse to be both ground and origin of political society, the pre-eminent status of recognition is unarguable. All forms of political obligation must be based on freedom.

Freedom, however, does not function without the impress of rationality. Free recognition is a fruit of rationality. Deference to public opinion is the means by which a democratic system reaches a shared rationality that may give rise to consensus.

The political decisions taken by those in power must reflect the citizens whom they govern; indeed, the citizens must see those decisions as their own. The identity of governors with the governed marks one of the key differences between democracy and other political systems[1]. C. Schmitt holds that democracy is adopted as a form of political organization which contains no specific political content of its own[2]. Throughout its history, democracy has been the ally of diverse political ideas: socialism, liberalism, and even conservatism. Power rests with the people as a whole – that is, the will of the people as a whole. A reading of the description of democracy offered by Rousseau in *The Social Contract* appears to suggest that the need to ignore the will of the vanquished minority lies at the heart of the democratic process. The concept of "general will" is a key to Rousseau's understanding of democracy; moreover, it is clear that

[1] Cfr. Schmitt, C., *Sobre el parlamentarismo*, Tecnos, Madrid, 1990, p. 4.

[2] Schmitt, C., *Sobre el parlamentarismo*, p. 31.

this concept is not in itself quantitative but normative. Nevertheless, in the final section of *The Social Contract*, where Rousseau sets out to analyse different types of democracy, the normative power of the concept is allied to its quantitative significance in order to safeguard freedom in democratic systems: "This presupposes, indeed, that all the qualities of the general will still reside in the majority: when they cease to do so, whatever side a man may take, liberty is no longer possible" (*The Social Contract*, IV, 2). Locke also takes up this same point: a citizen in a democracy may approve of a law that runs counter to his own will, because the law responds to the general will. Thus, the citizen's approval is not granted in relation to a particular proposal; rather, it is approval in the abstract of the final outcome. If, in the end, that outcome runs counter to the will of the individual, the citizen recognises that he was in some way mistaken or wrong.

In practice, the will of the people, whose votes are decisive, must be shaped or rationalised to a certain extent before a single vote is cast if the decision is to have functional significance for the process of government. Public debate of important issues in political life is central to the correct functioning of democratic political systems. This is true not only in order to discern the popular will, but also in relation to the control of government exercised by some of the people, which is also a practical requirement of the democratic process.

In this context, contemporary democratic systems are based on a fiction: the fiction that public opinion is independent of the exercise of power. This fiction is vital if the legitimacy of political and legal decisions is to be guaranteed. Legitimate democratic government is impossible without a social consensus independent of the actions of those in power at a particular moment in time – that is, there can be no causal relation--ship between political power and public opinion in a legitimate system. The word "fiction" refers to this phenomenon; although the structure of modern society may not encompass the independence of public opinion, both the holders of political power and the citizens act as though it were so in order to safeguard the integrity of the political system[3]. In practice,

[3] The term "political fictions" has recently been used by Y. Ch. Zarka in *Figuras del poder*, (Biblioteca Nueva, Madrid, 2004); chapter 8 explores the different links between politics and fiction, an interrelationship that dates back to ancient times. My use of the term does not correspond exactly to Zarka's definition, although it is very similar to his description of instrumental fiction (p. 136). Political fictions, for the purposes of this paper, centre on the relationship between politics and fiction in the context of legitimacy in modernity, i.e. specific political realities are legitimised with respect to an ideal model of what they ought to respond to, although no actual response may in fact be carried out. Thus, for example, the fact that human rights are enshrined in the constitution of a country

however, the imposition of a political decision unilaterally taken by those in power lurks behind this generally accepted assumption of independence.

In his renowned book on the topic, *History and Critique of Public Opinion*[4], J. Habermas shows how the transformation of the State and the economy has contributed in a definitive way to the key role played by public opinion in the legitimization of democracy. The state governed by the rule of law has given rise to an abstract conception of the citizen as an individual whose only significant political characteristic is to be a point of reference for state legality. The individual's participation in the political process is almost entirely confined to the moment in which he casts his vote. This 'isolation' of the individual (which, for H. Arendt, is a sign of the growing threat of totalitarianism) leaves the public sphere under the sway of an increasingly bureaucratic and all-encompassing State – that is, the "total" state described by C. Schmitt. As a result, the individual is almost powerless and seeks refuge in his private rights, in his private life. The only way in which the growing power of the State might be curbed is if it were to be dissolved by a self-regulating form of social organization. Across the spectrum from liberal to conservative, contemporary political thought of all hues would appear to be agreed on this point: public opinion is a form of such self-regulating, a bridge between public life and private life, the condition of participative democracy. Habermas argues elsewhere that democratic theory complements the state governed by the rule of law, which would in fact be wholly insufficient without just such a complementary contribution[5].

Public opinion ceases to be independent when it becomes a means of mass communication, when it is no longer a form of an enlightened way of making something public[6]. Paradoxically, in the 19th century, when

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legitimises the state, whether or not those rights are acknowledged and respected in practice, and whether or not the socio-cultural conditions that would allow such rights to be respected exist. Political sysu¶js are legitimised by the ideal to which they claim to respond. This strategy invokes the fiction that the ideal is real and gives rise in turn to further political fictions.

[4] The edition referred to here is the Spanish translation: J. Habermas, *Historia y crítica de la opinión pública*, Gili, Barcelona, 1994.

[5] Cfr. J. Habermas, *La inclusión del otro*, Paidós, Barcelona, 1999. Cfr. "El vínculo interno entre Estado de Derecho y democracia".

[6] For further discussion of the rise of public opinion in the context of an "enlightened public" in the 18th century, see Mª J. Canel, *La opinión pública: Estudio del origen de un concepto polémico en la ilustración escocesa*, Eunsa, Pamplona, 1993. Canel's conclusion is as follows: "In the 18th century, public opinion was expressed through the institution of judicial power. (…) Thus, public opinion was defined in terms of popular

there were only a few, clearly defined media proprietors, political power was balanced by economic power. Not only is the kind of desirable independence described above lacking nowadays, but the structure of public opinion has become increasingly subject to political regulation.

Habermas notes in this regard: "The public sphere, dominated and, at the same time, structured in advance by the *mass media*, became an arena imbued with power. With the help of the choice of topics and contributions, open battle was joined not with regard to the control of influence, but also in relation to the regulation of the flow of communication that affects behaviour – regulation which, in so far as possible, sought to disguise its strategic intentions"[7].

It is clear that the masses may contribute in a spontaneous way to the shaping of public opinion and the popular will only if they are independent of both those who hold political power and those who control the media. Such independence – on either front – is, at least to a certain extent, impossible.

There would appear to be only three possibilities: public opinion is shaped by political power, as it is nowadays by political parties; public opinion represents different interest-groups with sufficient funding to make their voices heard, in which case it is difficult to break out of the circuit of influence that links political and economic power; or public opinion is safeguarded as a space in which citizens may freely express and debate different, even opposing points of view. In authentic democratic thought, this last possibility constitutes the ideal situation.

Nevertheless, mass democracies in which the decisive role of a politically active form of public opinion is taken seriously into account continue to worry at the question of how – in Habermas's words – a "critical process of public communication" might be possible. The German

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feeling with regard to what was just and unjust, and access to government is by means of an institution shaped by the accumulation of specific just actions; the outcome (the formulation of general norms of justice) was not the end-result of a deliberate project or policy. In the framework of thought developed by the Scottish Enlightenment, the means of communication contribute to the idea of public opinion by making an opinion available to others, so that the common sense of the people might have public expression" pp. 354--355. In *Crítica y crisis del mundo burgués*, Rialp, Madrid, 1965, R. Koselleck provides an enabling discussion of the evolution of enlightened opinion in continental Europe; he explores how criticism of state absolutism evolved in the secret strongholds of Masonic lodges: the moral and political spheres separated from one another, the privatization of moral concerns, and the possibility of openly critical legitimizing (or delegitimizing) processes with respect to political power.

[7] J. Habermas, *Historia y crítica*, p. 17

philosopher's primary concern centres on how public opinion that reflects the general interest of the people is to be drawn from a plurality of cultural and ethical positions. To re-frame the problem in Rousseau's terms: on what does the normative significance of the *vox populi* or the general will rest? Habermas defers to the activity of free deliberation – that is, uncoerced deliberation; he places full trust in the rational debate that takes place among free citizens. B. Manin[8] makes a similar point: the opinions of particular individuals are not the source of legitimacy; rather, the basis of legitimacy is the process by which opinion is formed through deliberation. Therefore, while a legitimate decision may not reflect the will of all, it derives from the process of deliberation carried out by all. However, this framework cannot adequately account for the critical citizen, a morally autonomous agent (as previously described by Kant); nor for the supposed neutrality of the media, which is a precondition of uncoerced deliberation in the process of opinion formation.

The procedural activity of deliberation in the shaping of the popular will is crucial to democratic legitimacy[9]; or, in other words, rational debate plays a defining role in process of legitimization[10]: hence the key significance attributed to political communication in the arguments advanced by both Manin and Habermas[11]. "Independence" – the independence of public opinion in relation to politics, and the citizen's independence with respect to public opinion – the separation of powers, and respect for the constitution are 'safety mechanisms' in a healthy democracy; that is, a legitimate democratic system in which the voice of the people is truly heard.

A further question arises in this context: what type of legitimacy is granted by public opinion? The charismatic legitimacy of former times, to use Weber's terms, does not pertain to contemporary democratic socie-

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[8] B. Manin, "On Legitimacy and Political Deliberation", *Political Theory*, vol. 15, 1987.

[9] Habermas turns to the idea of discursive – rather than elitist – democracy in this regard; elitist democracy is a localized phenomenon, derived from a privileged network comprising the specific interests of particular groups.

[10] J. Habermas, "Wie ist Legitimität durch Legalität möglich?", *Kritische Justiz*, Jhg. 20 Heft 1, 1987 (12): "Legitimacy may be derived from legality only when the juridical order responds in a reflexive way to the need to ground positive law, institutionalising decision-making processes that are open to moral discourse".

[11] "Public opinion understood as the substance of communicative conditions by which the discursive formation of the will and opinion of the people, comprising the citizens of the State, is important to a fundamental understanding of the theory of democracy" J. Habermas, *Historia y crítica*, p. 26.

ties, in which confidence in political leadership no longer exists – at least, not in a structured way. My argument is that public opinion has replaced charismatic legitimacy[12]. For R. Aron, this spiritual power – that is, the power of those who follow the mode of thinking predominant during a particular period of history, which is at the same time a principle of social order – is wielded by the established ministers of religion, the priests, as well as the more heterogeneous company of intellectuals: journalists, academics, experts, and socially-engaged writers and artists[13]: in a word, those who shape public opinion in our societies.

Public opinion is analogous to the spiritual power of former times, which could command the individual's uncritical obedience; at the same time, and as has already been outlined above, the individual may lack the critical awareness necessary to respond to life in a complex society. It would appear that belief continues to play a crucial role in the configuration of power. Indeed, in so far as the complexity of politics is regarded as standing in need of simplification, the role of belief may be even more significant now than it was in former times. To all intents and purposes, the citizen's necessary dependence an the mass media make the citizen's faith on it blind. Can it be said, however, that the media confers legitimacy because it tells the truth? Perhaps it might be more accurate to say that the media confers legitimacy because it passes moral judgement on events; or, at least, to agree with Lippmann that the media offers a moralized version of events[14].

Every contemporary democratic society must respond to conflicts of interpretation; firstly, given the complexity of different situations, there is no privileged position from which political events might be assessed; and secondly, as Habermas feared, the popular will which is deferred to as the condition of legitimization is plural, a plurality that is difficult to reconcile. The utopia of uncoerced deliberation and free debate is a distant dream in the context of these perspectives.

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[12] Cfr. N. Luhmann, *Confianza*, Anthropos, Barcelona, 1996, p. 93.

[13] R. Aron, *Las etapas del pensamiento sociológico*, I., Siglo XX, Buenos Aires, 1981, p. 90.

[14] "Orthodox theory holds that public opinion consists of a moral judgement on a set of events. However, the theory that I am outlining here holds that in light of the current state of education, public opinion is a moralized and codified version of events. My argument rests on the notion that the stereotype model that conditions our codes determines what events we see and in what light. This explains why, with the best will in the world, a newspaper's policy with regard to the news it reports tends to coincide with its editorial perspective". W. Lippmann, *La opinión publica*, Editorial Cuaderno de Langre, Madrid, 2003. p. 116.

The resolution of conflicts of interpretation and an undoing of the stereotypes to which they give rise are so important to democracy that the media and other advertising agencies may retain their credibility and continue to act as a key mouth-piece for the people in the process of political legitimization even when they have been found to pursue a specific political agenda or represent particular interests[15]. The power of the fiction described above derives from this democratic need. Moreover, this new form of charismatic legitimacy, the trust the people place in the means of communication, conditions the electoral process and the procedures of government, as well as the validity of the legal system, because all of these things are subject to interpretation by the media.

The legitimacy of the political system is constantly underwritten by the interpretation of party policies and candidate loyalties in an election campaign, and of the activity of government, offered in public opinion. This point of view suggests the possibility of a *second fiction* to which Western democracies may also defer: that legality is the necessary and sufficient condition for the legitimization of power in Western democracies. In fact, however, the charismatic power of public opinion described in this paper outweighs the law.

Public opinion also has an effect on the activity of government. Given the structural relationship between public opinion and political legitimacy in democratic societies, a politician may put this relationship to use for his own purposes, thus corrupting democracy itself in a certain sense.

II

Conflicts of interpretation and power

By its nature, power tends towards its own increase; one of the means by which it may be increased is through influence on the shaping of public opinion, of consensus. The credibility of power and its role in the activity of government are, to a large extent, sustained by the means of communication. The media lays claim to the prerogative to judge the need for or appropriateness of specific political decisions that have or should be

[15] "It is generally held that the press is our principal means of contact with the social environment beyond our direct experience; that the press ought to do spontaneously for us what primitive democracy considered each of us capable of doing, spontaneously, for ourselves is almost as widely held a belief". W. Lippmann, *op. cit.*, p. 261.

taken[16]. Luhmann, for example, describes power itself as a means of communication in a generalized symbolic sense[17]. Thus, the role of the means of communication in the exercise of power may be equal to, or even more important than, the activity of government.

The dynamics of power in every instance of government activity is heightened at times of crisis. The consolidation of power or its loss – that is, when power changes hands – is determined by what happens during critical situations. The question of what constitutes a crisis arises in this context; or, to express the same question in more classical terms: what constitutes an exceptional political situation? In its most extreme form, a crisis situation is marked by the lack of juridical order, the temporary suspension of positive law. However, a crisis does not necessarily entail the collapse of all forms of social order: the State remains, even though the law has been put into abeyance. Anarchy or chaos is not the inevitable outcome of an exceptional situation; rather, the efficacy of juridical norms is undermined – that is, there is a certain absence or lack of juridical order. No legal measure can remedy the situation. In a definitive way, the exceptional political situation is the opposite of what is normal; it is exceptional because it diverges from the norm; the crisis situation is an exception because it is short-lived, and ultimately yields to a return to normality[18].

An exceptional situation is a moment that disrupts political time; it poses a problem for which no solution exists; or, to be more precise, it poses a problem for which the solutions offered previously, in the past, are no longer valid. The exceptional situation is characterized by a lack of knowledge of why what has happened has happened; there are no criteria for decision-making, not even to guide what might best respond to one's own interests[19]. In general, decisions taken during a time of crisis

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[16] N. Luhmann, *Confianza*, p. 93: "that the old concern with political trust, which used to have special significance, especially in the period following the religious civil wars, has disappeared almost entirely from contemporary political thought should come as no surprise. In recent theories of political systems, its place as a conceptual category has been taken by the idea of *support*. Nevertheless, the relationship between the mechanism of popular representation in democratic politics, by which the conditions of trust are made operative, and the social processes which actually shape such trust is still far from clear".

[17] Cfr. N. Luhmann, *Poder*, Anthropos, Barcelona, 1995.

[18] The exceptional is historically displaced; it is unforeseeable for precisely this reason. Cfr. C. Schmitt, *Politische Theologie*, Duncker & Humblot, Berlin, 1979.

[19] Given these circumstances, it is all the more surprising that even when the crisis is at its height, the media may still feel able to offer an immediate judgement on how the situation is to be resolved. The management of the crisis, whether good or bad, might more usefully be discussed by the media after the fact, when judgement might draw on more refined distinctions.

are made in a climate of ignorance; the outcome of the measures taken cannot be foreseen. In this context, therefore, if the decision-maker's interpretation of events is accurate and his decision proves valuable, his power is consolidated.

In line with the argument articulated by C Schmitt[20], I hold that every political decision responds to a prior situation of the type outlined above. Thus, those who seek to wield power, or to consolidate the power they possess, must provoke an exceptional situation. The critical disruption of political life may be an advantageous opportunity for the powerless, for those who would like to grasp the reins of power. A crisis situation – or, at least, the fiction of such a crisis – precedes changes in the possession of power. Political opposition is carried out on this basis; thus, its stance is always critical or negative. Political life in multi-party democracies is marked by the constant contest for power. Every political leader seeks to show his competence in the resolution of a crisis situation: this is the path to power. Thus, an exceptional situation is often provoked, in order to be resolved.

Competence is a key term in crisis situations; that is, the competence of those who are to resolve the crisis is put to the test. The figure of the sovereign, the new power, is revealed in an exceptional situation. According to Schmitt's definition[21], the sovereign is the one who takes decisions in a time of crisis and returns political life to normality. In general, if power is to change hands, the identity of the sovereign must be called into question and then decided on. Thus, the logic that conditions access to power and the logic of power consolidation are different; in the latter case, the impetus of the leader is to resolve the situation while, at the same time, aiming to ensure that no disruption in political time becomes evident.

Not only is the critical disruption of political time marked by a lack of solutions, interpretations or decisions; the pace at which these exceptional situations occur in political life is also a factor. In political history, times of crisis are often referred to as emergency situations. To escape the state of crisis (experienced as chaos, a lack of order and a threat to the foundations of society) is the primary impulse in exceptional situations[22].

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[20] Cfr. C. Schmitt, *El concepto de lo Político*, *Teología Política* y *La Dictadura*.

[21] C. Schmitt, *Politische Theologie*, p. 17.

[22] Lippmann also highlights this idea, although he refers to "social time" rather than political time: "Social time is most complex. Statesmen must choose between the development of emergency or long-term plans. Some decisions ought to be made on the basis of what may happen over the course of the next two years; often, however, decisions have to be made on the basis of what will happen in a week, a month, a quarter, a decade, when the children have grown up or when our grand-children are adults. One of the most important elements of wisdom is the ability to identify, among all the available conceptions of time, the one that responds to our concerns". W. Lippmann, *op. cit.* p. 126.

This form of political logic is not merely the consequence of a succession of events and decisions; it derives, primarily, from interpretations of events. Media influence on political decisions is facilitated by the time factor. In fact, in the international arena, the speed with which information is communicated may steal a march on the leadership offered by political decision-makers. International diplomacy must draw on a single source, such as the interpretation of events proffered by the media, to guide negotiations. Given the structure of the means of communication nowadays, and especially the speed with which they work, the media inevitably has an indispensable influence on the interpretations that shape political decisions[23]. The commitment to check and confirm the truthfulness of information and the validity of opinions is complicated by the speed of communication; thus, the news given by the media is generally taken at face value. The urgency of an exceptional situation often underwrites the general credibility of such information, in order to facilitate a return to normality as soon as possible. In this context, deference to stereotypes or generalized notions facilitates the shaping of public opinion.

III

Political fictions

Politics is fuelled by conflicts of interpretation, which in turn are generated by the drive to wield power and the need for change; as a result, society is repoliticized.

The control of power and of government activity exercised by public opinion, which out to be a sign of democratic health, and is described in this paper as a political fiction in modern societies, may be corrupted, the system turned on its head, and the political sphere as whole 'fictionalized'.

In conflicts of interpretations, representatives of politics and the media may forge unhealthy alliances. The distinctive feature of this form of corruption is that the truth of things is dispensed with and the reality of political problems ignored: politicians speak for the media and media for the politicians in a vicious circle of mutually fulfilling strategic interests

[23] T. Laporte has addressed this question recently in "Información en tiempo real y diplomacia pública", in: M. Herrero, R. Alvira, H. Ghiretti (eds.), *La experiencia social del tiempo*, Eunsa, Pamplona, 2006; she argues that the speed of information strips political decision-makers of leadership in the field of international diplomacy. E. López Escobar has carried out a more empirical study in relation to the Spanish general election of March 2003, in which he examines the influence of public opinion on ambiguous situations: "Ambiguous situations and news media's influence on opinion and behaviour", presented at the WAPOR Conference, May 2004.

– to access or consolidate power in either political or economic terms. Public opinion is reduced to a faded catalogue of "so-called political problems, "so-called atrocities" or "so-called activities", which create the necessary context for the meaning of this or that particular political decision. The context of meaning in which decisions are taken is shaped in relation to the logic that conditions access to power and the consolidation of power referred to above. The politician relies on the media to bring about the consensus that legitimates his actions.

Corruption of this kind calls political realism into question. Rather than act in response to the real problems of the citizens in society, the guiding light of the political agent committed to a "political fiction" is what is published in the press or on the internet, what is broadcast on the radio or the television. In general, the basis of the opinions reflected in the media is difficult to verify. Nevertheless, despite its importance, this difficulty is attributed only secondary significance because of the structural requirements of public opinion in contemporary democratic political systems. A means of communication capable of offering a comprehensive explanation to society as a whole is required.

The information society has prompted a new understanding of politics. Political realities have given way to interpretations. Strong political decisions are ignored in favour of immediate contextual needs; public opinion is the only form of positive action available to a government that seeks to avoid making decisions, which chooses to be carried along by that fiction of the voice of the people.

History appears to write itself in this tangle of competing interpretations, composed of a wide variety of circumstances and information, while each political agent occupies different positions at different times – at opportune moments – in so far as each may best respond to his own particular interests. Democracy is undermined by unhealthy alliances between the political sphere and the media because they foment a new form of an old, illegitimate practice: deference to reasons of State[24]; that is, government activity is shaped by the political interests of those in power, rather than by the real, common good of the governed. The holders of political power, acting on their own interests and through their alliance with the media, generate the discourse, the reasons and arguments, against which that power should be put to the test – a fictional consensus that is regarded as independent, and because of its 'independence' the ground of ongoing political legitimization. Thus, as in the case of earlier appeals to reasons of State, the function of public discourse is to justify power.

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[24] Cfr. R. Águila, *La senda del mal*, Taurus, Madrid, 2000. Chapter 5 in particular discusses the democratization of reasons of State.

The desire for power is not reprehensible. To a certain extent, everybody requires power. The dynamic of power encompasses all social agents. The key question to be addressed, however, concerns the purposes of power, or – in other words – if power may be sought at any price.

The media underwrites political activity in moral terms – that is, political activity is legitimized by the media; responsibility for political decisions, however, does not rest with the media[25]. Therefore, the media may be open to the same criticism that has dogged the church down through the centuries: that it is a *potestas indirecta*, an invisible and impersonal source of influence which, as a consequence, is structurally irresponsible.

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[25] "On the other hand, the average reader, it should be noted, cannot appeal to the law when he feels he has been deceived. Only the injured party may claim calumny or defamation, and must prove the material harm that such offences have caused him. The traditional notion that general information is not of common interest is enshrined in the law, except in those cases where such news might be described in vague terms as either immoral or seditious." W. Lippmann, *op. cit*. p. 268.