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A cura di
Annamari Nieddu e Francesco Soddu

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Introduzione
Introduction

Annamari Nieddu, Francesco Soddu*

Introduzione

I saggi raccolti in questo volume sono il frutto della rielaborazione di una parte significativa delle relazioni presentate al 59° Congresso dell'International Commission for the History of Representative and Parliamentary Institutions, che si tenne ad Alghero nel luglio 2008.

I temi affrontati nelle singole relazioni coprono nel complesso un arco temporale e spaziale molto ampio: ricostruiscono vicende che rimandano ad epoche diverse, dal Medioevo all'età contemporanea, con riferimento a contesti essenzialmente limitati al continente europeo. Sono tuttavia riconducibili a tre grandi tematiche: 1) il tema delle fonti e delle metodologie per lo studio della storia dei Parlamenti; 2) il tema delle culture politiche che hanno condizionato l'evoluzione delle assemblee rappresentative; 3) il tema del ruolo decisivo delle istituzioni rappresentative nella definizione delle identità e delle autonomie territoriali.

Il volume è, però introdotto da tre contributi che rivestono finalità e obiettivi diversi. Col primo, Manlio Brigaglia intendeva fornire ai convegnisti 'Un'idea di Sardegna', dei suoi caratteri più profondi, prodotti dall'isolamento determinato dal mare, come è evidente, ma anche dall'orografia del suo territorio, che i viaggiatori di ogni epoca e gli studiosi hanno costantemente riscontrato. Quello di Valerie Cromwell, invece, è stato in realtà un saluto e un augurio affettuoso per i novant'anni di un grande studioso come Helmut Koenigsberger, alla guida dell'ICHRPI dal 1980 al 1985. E ad un altro indimenticato presidente della Commissione, il sardo Antonio Marongiu, alla guida dell'ICHRPI dal 1970 al 1980, l'attuale presidente Maria Sofia Corciulo, sua allieva, ha dedicato un articolato saggio che ripercorre i temi cari al Maestro e ne illustra le metodologie di ricerca ancora attuali, applicate magistralmente al caso dei Parlamenti sardi in un'opera che Marongiu scrisse a soli 29 anni.

La prima parte del volume, come si diceva, affronta il tema delle fonti e delle metodologie per la storia dei Parlamenti. Il primo contributo, di Maria Rosa Cardia, esamina infatti un caso concreto di valorizzazione delle fonti: ricorda come nel tempo si siano succeduti diversi tentativi di dare alla luce le edizioni degli antichi Parlamenti sardi, soffermandosi in particolare sul progetto di edizione critica promosso, dai primi anni Ottanta, dal Consiglio regionale della Sardegna e che ormai può contare sui volumi riguardanti undici Parlamenti (altri sono ancora in corso di stampa), da quello di Pietro IV d'Aragona (1355) agli

Stamenti della 'sarda rivoluzione' (1796-99). Alla valorizzazione della documentazione delle assemblee rappresentative è dedicato anche il saggio di un gruppo di studiosi catalani (coordinati da Eva Serra i Puig), i quali illustrano le caratteristiche e le finalità di un progetto, promosso dal Comitato tecnico di testi giuridici catalani, che guarda all'utilizzo di una pluralità di fonti, in particolare di quelle che chiamano 'documentazione complementare'; il progetto ha come scopo l'edizione e l'indicizzazione dei dati relativi ai processi della *Cort general de Catalunya*, aspetti decisivi per facilitare l'accesso agli studiosi delle istituzioni rappresentative. (Lo stesso gruppo di lavoro ha di recente pubblicato un volume con questa impostazione, dedicato alla *Cort General de Montsó*, 1585).

Ad una ottimizzazione dell'utilizzo della documentazione relativa alle riunioni parlamentari è dedicato anche il contributo del gruppo di ricerca guidato da Maria Rosa Muñoz Pomer, che ha lavorato per molti anni all'individuazione, catalogazione e raccolta delle fonti relative alle *Cortes* valenzane. Questi dati sono stati resi disponibili sul web attraverso un sito con hyperlinks che consentono l'accesso a una pluralità di informazioni, dalla descrizione del luogo dell'incontro del Parlamento ai motivi della convocazione, dalle deleghe alle effettive presenze dei convocati, etc. L'importanza dell'accessibilità delle fonti garantita da internet è al centro anche del contributo di Fernando Venturini, che descrive il progetto BPR (Bibliografia del Parlamento Repubblicano), nato in origine come un'iniziativa destinata a realizzare un repertorio cartaceo degli studi sul Parlamento italiano, e che si sarebbe poi anche tradotto in un database di riferimenti bibliografici e in una biblioteca digitale con oltre 1300 documenti, tra monografie e articoli di rivista.

Sull'importanza della conoscibilità delle fonti, in particolare di quelle relative alle notizie su quanto accadeva nell'assemblea rappresentativa siciliana all'epoca della prima stagione costituzionale, insiste anche Patrizia De Salvo: l'acquisizione di notizie non solo di quanto deciso, ma anche dei modi con cui si era arrivati alle decisioni (e cioè del meccanismo parlamentare), sia attraverso fonti ufficiali (gli atti parlamentari), sia attraverso l'informazione dei giornali e delle pubblicazioni periodiche, è stato un elemento decisivo per determinare il grado di attenzione dedicata alle attività dell'assemblea siciliana dall'opinione pubblica del periodo.

In questa prima parte del volume sono ricompresi anche contributi che guardano maggiormente all'aspetto metodologico nel processo di ricerca sulle assemblee rappresentative. È il caso del contributo di Guido D'Agostino. Lo studio delle istituzioni parlamentari richiede un approccio pluridisciplinare e comparativo – osserva d'Agostino, ricordando in particolare la lezione di Emile Lousse – che tenga conto, non solo dei fondi documentari da cui si possono dedurre precisi indizi relati-

vi alla vita e all'attività dell'istituzione, ma anche di tutta la serie di dati che si è originata e che emerge dal contesto sociale e politico all'interno della quale l'istituzione ha preso consistenza e ha operato. L'organizzazione politica di un territorio, del resto, è articolata su diversi piani istituzionali, le cui strutture si rapportano in vario modo con le necessità e gli interessi della stessa comunità.

Partendo dall'utilizzo di tre fonti (regolamenti, capitoli di corte, e protocolli notarili) Josè Manuel de Bernardo Ares spiega il metodo scientifico utilizzato per lo studio delle assemblee rappresentative locali della Corona di Castiglia, che ha come scopo quello di studiare le comunità locali negli aspetti sociologici, economici, culturali, dalla prospettiva interattiva dei tre livelli di organizzazione politica: il potere sovranazionale della monarchia, il potere territoriale dei regni e il potere locale dei consigli.

Focalizzato su una dimensione territorialmente delimitata è anche il contributo di Antonio Ruiu, che indaga il ruolo decisivo delle oligarchie cittadine toscane (con meccanismi di stratificazione e mobilità sociale) nell'evoluzione delle istituzioni politiche e rappresentative. Così anche Alex Cowan analizza i meccanismi di inclusione ed esclusione nell'oligarchia della Repubblica di Venezia nella prima età moderna, sottolineando la rilevanza delle strategie matrimoniali e delle necessità patrimoniali per la definizione dei comportamenti della classe dominante. Quest'ultimo caso (che abbiamo inserito nella seconda parte del volume) ci consente una precisazione più generale sulla dislocazione dei contributi. Essa ha voluto ricalcare per quanto possibile l'articolazione dei lavori del convegno, nella quale aveva avuto un ruolo decisivo anche la scelta dei singoli relatori, che si è deciso di rispettare, anche se non mancano casi che stanno a cavallo tra le tre diverse aree tematiche individuate, e che si sarebbero potuti legittimamente collocare anche in altra parte del volume.

Sempre con riferimento al tema della valorizzazione delle fonti vengono messe a fuoco le vicende relative a diversi casi nazionali. Quello portoghese è esaminato da due relazioni che esplorano epoche diverse. Maria Helena da Cruz Coelho, attraverso una puntuale rassegna degli studi finora prodotti e delle fonti a disposizione, ricostruisce la vicenda delle *Cortes* medievali del Portogallo con un saggio ricco di dati, di grafici e cartine che aiutano a localizzare e comprendere meglio i luoghi e le dinamiche istituzionali delle assemblee rappresentative alla vigilia dell'età moderna. All'età liberale, invece, si riferisce il contributo di Maria Manuela Tavares Ribeiro sul materiale iconografico relativo alla storia elettorale e parlamentare conservato alla Biblioteca Nazionale di Lisbona.

Al caso olandese sono dedicati due contributi che rimandano all'attività dell'Institute of Netherland History, volta in particolare alla valo-

rizzazione delle fonti documentali. Nel primo, Jan Burgers guarda a quelle utili per ricostruire le dinamiche delle modalità di governo (con al centro il *commune concilium*) ma anche aspetti della vita quotidiana nel medioevo olandese. Si tratta di registri predisposti dai collaboratori di Guglielmo III, sui quali era riprodotto il contenuto di atti come concessioni e autorizzazioni, ma con note aggiuntive che consentono di apprezzare le caratteristiche dell'azione di governo, così come degli attori che spesso risultano essere esponenti della piccola nobiltà più che membri delle famiglie più titolate. Nel secondo, Karin van Leeuwen descrive un progetto dedicato al ruolo delle 'constitutional committees', vale a dire gli organismi consultivi, nominati dall'esecutivo (ma sostanzialmente rappresentativi di tutte le tendenze politiche), che si avvalevano di competenze diverse e predisponevano materiali utili per le modifiche costituzionali, poi determinate dal procedimento parlamentare nelle 17 occasioni in cui queste variazioni furono introdotte tra il 1883 e il 1983. Sempre al caso olandese, nella seconda parte del volume, è dedicato il contributo di Jouke Turpijn, che sceglie di esaminare l'esperienza della 'camera bassa' nella seconda metà dell'Ottocento analizzando il comportamento parlamentare dei suoi membri, con l'obiettivo di ricostruire l'origine e l'evoluzione di regole, costumi e rituali attraverso i quali i parlamentari intendevano fondare l'autorità propria e dell'istituzione rappresentativa.

La Camera alta irlandese è invece al centro del contributo di Coleman Dennehy, che si sofferma sulle caratteristiche di quell'assemblea nel XVII secolo, sottolineando il fatto che sia un tema piuttosto trascurato dalla storiografia che ha sempre privilegiato la Camera elettiva.

La relazione tra le culture politiche e le dinamiche dei Parlamenti, oggetto della seconda parte del volume, è ricostruita in alcuni saggi a partire da singoli protagonisti. È il caso del contributo di Tomas de Montagut dedicato allo studioso del diritto e della storia catalani, Antoni de Capmany, il quale, recuperando l'esperienza parlamentare della Corona d'Aragona cercò di influire sulla configurazione del futuro parlamentarismo costituzionale spagnolo che iniziava a muovere i primi passi nelle *Cortes* di Cadice (1810-1814); e di quello di Jaume Ribalta i Haro che usa la vicenda di un altro personaggio poliedrico (giurista, giornalista, scrittore) Ramon Lopez Soler, per raccontare di un'operazione culturale che auspicava il recupero della tradizione parlamentare catalana di antico regime individuandone le potenzialità per il nuovo regime liberale ottocentesco. L'esperienza di due parlamentari irlandesi offre a Carla King l'opportunità di descrivere una vicenda segnata dal passaggio da una militanza nel radicalismo nazionalista e repubblicano verso un approccio al problema irlandese che

confidava sulle potenzialità delle soluzioni parlamentari.

Anche il saggio Roland Kleinheinz, inserito nella prima parte del volume per la rilevanza che assumono i carteggi personali (nel caso specifico le lettere inviate regolarmente dal deputato John Tucker al fratello) come fonte per la ricostruzione delle vicende della Camera dei Comuni inglese a metà '700, è una conferma dell'importanza che assumono la cultura e l'esperienza del singolo parlamentare per la comprensione delle dinamiche dell'istituzione rappresentativa.

Il rapporto tra culture politiche e dinamiche parlamentari è anche al centro dei contributi dedicati caso scozzese. Quello di John Young fornisce una diversa prospettiva delle vicende della *glorious revolution* analizzate dal punto di vista scozzese in particolare attraverso quella forma di 'mini Parlamenti' che furono le Convenzioni di Stati, in genere convocate per ragioni di imposizione fiscale o per il verificarsi di circostanze eccezionali, in alcuni casi – come quello del 1689 – trasformate in 'veri' Parlamenti. Young si sofferma sul ruolo che ebbe l'assemblea rappresentativa nella difesa, anche militare, del nuovo regime guglielmino e sul ruolo giocato dalla Chiesa scozzese, anche sul fronte ideologico.

Il saggio di Mann, invece, esamina le implicazioni ideologiche e simboliche dei rituali e del cerimoniale che accompagnavano l'apertura del Parlamento scozzese, volutamente strutturato, alla sua riapertura nel 1999, in una sorta di compromesso tra continuità e cambiamento (a cominciare dalle influenze del rituale inglese), rispetto ai Parlamenti precedenti il 1707.

Sulla rilevanza degli aspetti simbolici si sofferma anche Marcella Aglietti, che esplora alcuni stereotipi del linguaggio politico spagnolo a partire dal più noto mito negativo, la *leyenda negra*. Lo scopo è mostrare le dinamiche che portarono all'individuazione dei fondamenti ideologici del regime liberale nel XIX secolo tra cui l'identità nazionale, che proprio la *leyenda* poteva in qualche modo pregiudicare, e che invece aveva nelle istituzioni rappresentative una solida ancora. Aglietti mette in luce, tuttavia, il differente approccio che in quegli anni progressisti e conservatori ebbero riguardo al rapporto con le assemblee rappresentative del passato.

Sempre alla Spagna è dedicato il saggio di Leonida Tedoldi, che indaga sul ruolo che ebbe il Parlamento nel progetto di costituzione federale durante il passaggio alla prima repubblica spagnola nel 1873. In seguito alla deposizione del sovrano venne nominata una commissione (formata da 25 membri), incaricata di lavorare al progetto costituzionale. Dai lavori di questa commissione nacque un testo costituzionale che proponeva una federazione di 17 stati, compresi Cuba e Portorico, ma con l'assenza di León.

I saggi dedicati al Parlamento italiano offrono l'occasione per affron-

tare specifici problemi legati alla composizione o alle diverse funzioni dell'istituzione rappresentativa. Al tema delle incompatibilità parlamentari, con particolare attenzione al ruolo e alla presenza di pubblici dipendenti nella Camera elettiva durante l'età liberale, è dedicato il saggio di Gianna Manca. I contributi di Alessandro Isoni, Bruno Ziglioli e Francesco Soddu riguardano forme diverse di esercizio della funzione ispettiva e di controllo esercitata dal Parlamento. Isoni e Ziglioli si occupano del tema delle Commissioni parlamentari d'inchiesta, il primo ricostruendone le vicende durante l'età liberale con una puntuale analisi della dottrina giuridica sul tema, il secondo guardando ad un caso particolare dell'età repubblicana (quello del disastro di Seveso della fine degli anni Settanta). Soddu, invece, affronta il tema delle commissioni di vigilanza, cioè degli organismi attraverso i quali le Camere esercitavano, in modo più o meno efficace, una speciale sorveglianza in campi che presentavano implicazioni particolarmente delicate e complesse nei rapporti tra l'amministrazione pubblica e rilevanti settori della società, a cominciare dalla Chiesa.

Guardano alla Francia contemporanea, sia pure in un'ottica diversa, i contributi di Pascal Touhari e di Sandro Guerrieri. Il primo prende in esame gli equilibri costituzionali prodotti dalla riforma costituzionale del 1958 che diede origine alla Quinta repubblica francese, sostenendo che il Parlamento, a differenza di quanto abitualmente ritenuto, non fu la vittima di quella riforma, il cui vero obiettivo era stato piuttosto un'equilibrata separazione dei poteri che limitasse l'eccessivo potere che il Parlamento aveva acquisito durante la Terza e la Quarta repubblica. A metà degli anni Sessanta il problema della preminenza dell'esecutivo sul potere legislativo si presentò anche nel Parlamento europeo: la crisi fu scatenata dall'atteggiamento di De Gaulle il quale tendeva a contenerne fortemente il ruolo confermando la necessità, anche nelle istituzioni comunitarie, di un equilibrio costituzionale che valorizzasse l'esecutivo. Guerrieri racconta le difficili e contrastate vicende che portarono alla definizione dell'istituzione rappresentativa europea, a cominciare dalle incertezze nella sua stessa denominazione. La Francia di De Gaulle era infatti restia ad accogliere le proposte riguardo all'introduzione di un nuovo sistema di finanziamento della Comunità economica europea, nell'ambito del quale il passaggio ad un regime di 'risorse proprie', fondato su prelievi e dazi delle importazioni agricole e industriali da paesi terzi, sarebbe stato accompagnato dall'attribuzione al Parlamento europeo di un potere di controllo sul bilancio. La centralità della funzione finanziaria del Parlamento è al centro anche del contributo di Giuseppina Carboni, che esamina l'evoluzione e le caratteristiche del problema sia sul fronte comunitario che su quello nazionale, in particolare il caso degli Stati federali. Secondo Carboni, il processo di bilancio dello Stato comunitario si presenta co-

me l'esito della sovrapposizione tra il diritto di bilancio del singolo ordinamento e il diritto di bilancio europeo.

In questa seconda parte, infine, sono ricompresi contributi che indagano sulla partecipazione politica femminile, sull'influenza dei modelli parlamentari europei nei paesi precedentemente oggetto di dominazione coloniale, sulla peculiare vocazione di alcune figure di parlamentari. Silvia Benussi affronta il tema della partecipazione politica delle donne afroamericane al Congresso degli Stati Uniti. Vengono analizzate le tematiche inerenti all'accesso delle minoranze etniche e delle donne alla rappresentanza, ma anche le questioni affrontate in sede legislativa volte perlopiù a integrare dal punto di vista sociale ed economico i ceti più deboli. Antonio Maria Morone ripercorre invece le tappe del trapianto del modello parlamentare italiano in Somalia. La Carta somala del 1960 discende infatti direttamente dalla Costituzione della Repubblica italiana. Il sistema multipartitico del Parlamento somalo rappresenta un caso unico nel Continente africano, dove gran parte delle ex colonie europee raggiunsero l'indipendenza con un modello presidenziale e un sistema a partito unico. La crisi del travagliato trapianto istituzionale del modello parlamentare italiano nella Somalia sotto tutela internazionale fu determinata dalla imposizione di un modello giuridico-istituzionale troppo sofisticato rispetto al contesto socio culturale nel quale si doveva incardinare. Alla 'diplomazia parlamentare' è dedicato il contributo di Elena Baldassarri, che sottolinea la difficoltà degli studiosi di rapportarsi con questo concetto per la molteplicità dei suoi aspetti e significati. Ne esemplifica la portata con il caso di due parlamentari italiani, Valerio Zanone e Giorgio Napolitano.

La terza parte del volume sviluppa il tema *Identità territoriali, autonomie e istituzioni rappresentative* .

L'analisi comparativa delle relazioni di potere fra i regni italiani e peninsulari della Corona d'Aragona nel Basso Medioevo è al centro dell'indagine di Ester Martí Sentañes con particolare riferimento al caso della Sardegna e della Catalogna. L'intento è quello di conoscere più a fondo sia il funzionamento interno dei Parlamenti (e dunque anche le dinamiche municipali di cui sono protagoniste le oligarchie cittadine), sia la posizione del sovrano in questo processo, sottolineando il suo grado di ingerenza nelle gestione dei municipi e delle assemblee rappresentative. Lluis Guia Marín ci racconta che i mutamenti dinastici che intervennero nel Regno di Sardegna agli inizi del XVIII secolo interruppero la tradizione del Parlamento sardo che per più di due secoli era stato convocato ogni dieci anni. Contemporaneamente alla guerra di successione spagnola infatti si inaugurava un nuovo intreccio di relazioni politiche fra il sovrano e gli Stamenti privilegiati che rese inutile la convocazione dei Parlamenti. In questo nuovo impianto

si inserisce Cagliari 'prima voce' dello Stamento Reale che ebbe un ruolo decisivo nelle vicende politiche che seguirono; si sarebbe infatti scontrata a breve con le pretese dell'assolutismo sabaudo. Alle riflessioni sulla mancata convocazione del Parlamento di Giovanni II di Aragona (1461) è dedicato il saggio di Sara Chirra. Nonostante fossero state effettuate tutte le fasi preliminari della convocazione, compresa la spedizione delle lettere di convocazione e fossero stati redatti i capitoli più importanti da discutere in assemblea, il Parlamento generale del 1461 non venne celebrato. L'ultima riunione stamentaria celebrata in Sardegna (1698-1699) si svolse in un periodo di grave crisi istituzionale della monarchia spagnola. Questa vicenda è stato esaminata da Carla Ferrante con l'utilizzo di un metodo di ricerca che ha fatto emergere la reale composizione dell'assemblea sarda di fine Seicento e la posizione degli schieramenti; dalla distribuzione delle procure si evince che nell'isola esistevano due fazioni contrapposte: una filoasburgica o carlista in aperta polemica con l'istituzione viceregia alla quale avrebbe creato vari problemi nel corso dei lavori parlamentari, l'altra filo borbonica o filippista che invece appoggiava pienamente la politica viceregia, alla vigilia della Guerra di Successione spagnola.

Il contributo di Vittoria Calabrò intende invece ricostruire l'importante ruolo politico e istituzionale giocato, nel complesso rapporto che intercorreva tra Monarchia e Parlamento, dalla Deputazione del Regno di Sicilia, creata sulla base dell'analogo modello catalano, e istituita per vigilare sia sull'attuazione delle delibere adottate dallo stesso Parlamento, sia per occuparsi della ripartizione del donativo.

Valeria Ferrari e Antonio Chiavistelli analizzano due momenti particolari delle esperienze costituzionali nell'Italia della prima metà del XIX secolo e il ruolo che vi giocarono (o avrebbero dovuto giocare) le assemblee rappresentative. Ferrari analizza e compara i due modelli di Parlamento previsti dalla Costituzione murattiana (concessa da Murat nel 1815) e dallo Statuto giuseppino (Statuto di Baiona del 1808) nel 'Decennio francese', rilevando la tendenza di entrambi a sminuire la funzione parlamentare a favore della prerogativa regia, ma riconoscendo alla prima di essere portatrice di importanti novità sia nell'organizzazione dei poteri locali sia sul terreno delle libertà civili, sia infine nell'ambito dello stesso modello parlamentare sciolto ormai da ogni legame con l'antica rappresentanza cetuale. Chiavistelli affronta il tema delle costituzioni e dei Parlamenti nell'Italia del 1848 a partire dal rapporto tra identità locale e appartenenza nazionale. In particolare ricostruisce il definirsi dell'idea di rappresentanza, che prese le mosse dal dibattito dei decenni precedenti e i diversi modelli che ne erano emersi, riconoscendo anche l'impossibilità di effettuare una efficace comparazione dei loro assetti materiali per la brevità di quelle esperienze costituzionali. Per Chiavistelli proprio 'l'equivoco di fondo'

tra l'opzione 'locale' e 'nazionale' condizionò la breve esperienza statutaria degli Stati regionali preunitari.

Al caso basco sono dedicati due contributi collettanei. La relazione di Joseba Agirreazkuenaga, Eduardo J. Alonso, Mikel Urquijo, riguarda la costruzione del sistema fiscale autonomo dei Paesi Baschi. In particolare esamina l'origine e l'evoluzione di quell' 'Accordo economico' che per circa un secolo, dalla fine degli anni Trenta dell'Ottocento all'avvento del regime franchista, segnò il sistema della fiscalità della provincia basca. Fu in sostanza confermata la tradizione dell'autogoverno fondata sul sistema *foral*, e di fronte ad un processo di progressiva centralizzazione statale e di permanente debolezza della società civile organizzata crebbe il ruolo dei corpi politici intermedi, sia sul versante governativo (*Diputaciones*) che su quello delle assemblee rappresentative (*Juntas Generales*).

La relazione del gruppo di ricerca 'Biografia e Parlamento' del Dipartimento di Storia contemporanea dell'Università del Paese Basco (guidato da Mikel Urquijo e Joseba Agirreazkuenaga) analizza la rappresentanza parlamentare nei Paesi Baschi negli anni l931-1939. Il saggio, che si inserisce in una linea di ricerca pluridecennale, si basa sull'analisi prosopografica dei 44 parlamentari che rappresentarono le circoscrizioni basche nel corso della seconda repubblica, con l'obiettivo di estendere in futuro questa analisi all'intero territorio spagnolo. Il sistema politico basco, peculiare di quel territorio, era strutturato in forma trilaterale: un partito nazionalista, un partito conservatore di tradizione carlista, una sinistra radicale concentrata nelle zone urbane e industriali. Non a caso l'autonomia e la religione furono i temi che caratterizzarono il dibattito politico e determinarono le alleanze. L'età matura dei parlamentari baschi alla prima elezione (in ogni caso inferiore all'età dei rappresentanti degli altri territori) era dovuta (per quasi la metà di loro) a precedenti esperienze nell'amministrazione locale. Altri elementi interessanti che emergono dalla ricerca sono l'alto livello di istruzione e la consistente presenza di imprenditori tra i banchi del Parlamento basco rispetto alla media nazionale. I dati confermano anche il forte radicamento territoriale dei deputati e la loro significativa presenza nelle attività parlamentari.

Il contributo di Montserrat Bajet Royo (collocato nella seconda parte del volume ma pertinente anche al tema oggetto di questa terza parte) ci descrive il processo legislativo utilizzato nelle *Corts de Montsó* del 1585 per uniformare pesi e misure che nel Principato di Catalogna erano diverse a seconda del luogo. Con l'approvazione della *constitució n°89,* la norma di unificazione diviene un testo normativo di diritto generale per tutto il territorio, rispondendo così a un programma politico di controllo economico della società mercantile catalana. A questa vicenda si può in qualche modo accostare – per gli aspetti che potrem-

mo chiamare di 'ingegneria' parlamentare, vale a dire forzature al normale processo normativo delle assemblee rappresentative dell'epoca che produssero effetti legislativi di rilevante importanza – anche quella descritta da Elena Rosselló Chérigny: l'inconsueta redazione del 2° articolo del R.D. del 'Desamortizador de Mendizábal'. Il decreto di alienazione dei beni di Mendizábal fu significativo perché, sebbene avesse avuto diversi antecedenti, ebbe un *iter* di approvazione eccezionale. Fu infatti il risultato di una serie di eventi e venne emanato direttamente da Mendizábal senza discussione nelle *Cortes,* ma con la richiesta alle stesse del voto di fiducia. L'obiettivo principale sembrerebbe essere il recupero di denaro per mantenere e sostenere le forze armate e concludere in poco tempo la guerra civile.

Dalibor Čepulo e Milan Hlvačka esaminano due casi inseriti nel contesto dell'articolato impero asburgico. Il primo ricostruisce le specifiche caratteristiche assunte dall'istituto dell'*impeachment* in Croazia, dove fu introdotto nel 1868 nell'ambito di un processo che portò alla ridefinizione dei margini di autonomia che la Croazia aveva visto minacciati dal consolidamento del Regno ungherese. Il compromesso croato-ungherese del 1868 (figlio del più ampio compromesso austriaco-ungherese del 1867) garantiva l'autonomia croata, con un suo esecutivo responsabile di fronte all'assemblea rappresentativa. Il vertice del potere esecutivo in Croazia, tuttavia, era di nomina regia ma su proposta del primo ministro ungherese. La resistenza alla piena affermazione della responsabilità ministeriale si fondava sul fatto che il governo centrale insisteva sullo stato di provincia della Croazia e considerava il *Sabor* come un'assemblea provinciale e il vertice dell'esecutivo come un alto ufficiale amministrativo, più un governatore che un ministro responsabile. Hlvačka, invece, si sofferma sul caso boemo. A differenza della Croazia la Boemia non ottenne gli spazi di autonomia sperati. Tuttavia Hlvačka ritiene che si possano rinvenire i segnali di come le forme di autogoverno garantite a livello locale costituissero (o gettassero le premesse per) una sorta di anticipazione della sovranità statale ceca.

Un caso particolare di assemblea parlamentare di un popolo senza Stato (o meglio senza territorio) è analizzato da Luigi Compagna, che dall'esperienza storica e politica del movimento sionista, immaginato da Théodore Herzl sul finire del XIX secolo, deriva la convinzione che l'identità di questo movimento (e della sua organizzazione istituzionale attraverso i Congressi sionisti, a partire da quello di Basilea del 1897) fu essenzialmente quello di una assemblea rappresentativa di una nazione che chiedeva alla comunità internazionale di poter diventare uno Stato, senza avere un riferimento territoriale preciso.

Lorella Cedroni indaga, all'interno del sistema delle democrazie occidentali, il rapporto problematico tra rappresentanza territoriale e rappresentanza funzionale. La questione in parte nasce dalla natura

stessa della rappresentanza politica (generale) legata all'identità territoriale e le forme di rappresentanza funzionale legate agli interessi organizzati (particolari): due dimensioni che sembrerebbero apparentemente inconciliabili. Tuttavia, secondo Cedroni, la pratica più che il concetto astratto di rappresentanza politica consente di superare questa inconciliabilità. Nello scenario della società postindustriale, del resto, la rappresentanza come espressione della unità nazionale e politica risulta sempre più depotenziata, anche se 'la rappresentanza territoriale e la forma politica che la incarna', ossia lo Stato, 'è tutt'altro che destinata a scomparire'. In particolare fa riferimento all'elaborazione di Joseph Kaiser sulla rappresentanza degli interessi organizzati per indicare nella concreta esperienza storica una conferma della possibilità che il rapporto tra rappresentanza territoriale e rappresentanza funzionale si traduca in una 'relazione non conflittuale', in cui i due termini non si escludano a vicenda . Più che di crisi della rappresentanza politica Cedroni perciò preferisce parlare di trasformazione.

Cristiana Senigaglia analizza il tema del rapporto rappresentanza/territorio con riferimento alle posizioni di Max Weber nel dibattito politico-costituzionale degli anni 1917-19. Le tematiche messe in rilievo da Weber partivano dall'idea che non fosse possibile distruggere l'identità dei territori ma contemporaneamente occorresse salvaguardare alcuni principi democratici rappresentativi fondamentali. Il problema che poneva Weber era come coordinare e rappresentare adeguatamente le differenze territoriali inducendo le diverse componenti alla cooperazione anziché alla difesa negativa della loro esistenza. I suoi sforzi mirarono a trovare soluzioni istituzionali capaci di integrare parlamentarismo e federalismo, individuando forme di rappresentanza che esprimessero allo stesso tempo la specificità territoriale e la partecipazione democratica, e che sapessero coniugare l'autonomia dei territori con il loro intervento attivo nel processo decisionale e nella legislazione del Paese.

Due contributi, infine, sono dedicati all'esperienza delle assemblee rappresentative regionali nell'Italia repubblicana. Enza Pelleriti racconta l'apporto culturale e politico di Guarino Amella, noto giurista ed esponente della corrente autonomistica siciliana, al momento in cui stava nascendo l'Assemblea Regionale Siciliana. Il saggio mostra l'utilizzo di una vasta documentazione archivistica relativa alla figura di Amella, deputato, consultore regionale, amministratore locale e dirigente di partito.

Il contributo di Simone Pajno guarda, più in generale, alle relazioni tra Stato e Regioni nel sistema costituzionale italiano, con particolare attenzione per i casi delle Regioni a statuto speciale (soprattutto quella siciliana) e al ruolo giocato dalla Corte costituzionale nel delineare la concreta declinazione dei principi costituzionali. In particolare si

sofferma su una delle questioni più delicate delle relazioni Stato/Regioni, cioè l'interpretazione del limite dell'*interesse nazionale*, leggibile vuoi come questione giuridica, vuoi come questione politica, ripercorrendo le diverse posizioni degli studiosi e la concreta giurisprudenza della Corte. Si interroga anche sul concetto di 'popolo' e sulle differenza tra la concezione propria della cultura americana e quella europea che inevitabilmente condiziona il concetto di rappresentanza politica. Larga attenzione viene infine data alle prospettive e ai problemi aperti dalla riforma costituzionale che nel 2001 ha profondamente rivisto la parte della costituzione dedicata ai rapporti tra Stato e Regioni; ha ridefinito la sfera dei poteri legislativi; ha eliminato l'interesse nazionale come criterio generale nella gestione dei rapporti tra i diversi livelli di governo; ha accentuato l'autonomia fiscale; ha parificato lo *status* dei diversi livelli di governo superando la precedente supremazia statale. Il nuovo modello è quello del pluralismo istituzionale paritario. Questa nuova condizione pone l'urgenza – conclude Pajno – di aggiornare anche l'esperienza delle Regioni a statuto speciale.

Nel chiudere questa introduzione desideriamo ringraziare le istituzioni che hanno reso possibile la realizzazione di questo volume e del congresso da cui esso prende le mosse. Innanzitutto la Fondazione Banco di Sardegna, nella persona del suo presidente Antonello Arru, che ha finanziato questo volume e una parte molto significativa delle spese necessarie per lo svolgimento del congresso. Per il contributo destinato a queste ultime desideriamo ringraziare i presidenti della Regione autonoma della Sardegna, Renato Soru, e del Consiglio regionale, Giacomo Spissu, allora in carica. Il congresso non si sarebbe potuto realizzare senza l'attenzione dimostrata da diverse istituzioni a cominciare dal Comune di Alghero, nella persona del sindaco Marco Tedde, dell'assessore Mario Conoci, del presidente del Consiglio comunale Antonello Muroni, per il sostegno, anche logistico, che hanno voluto garantire. Al preside della Facoltà di Architettura, Giovanni Maccioco, al preside della Facoltà di Scienze politiche, Virgilio Mura, e al dirigente scolastico dell'Istituto di istruzione superiore 'Manno' di Alghero, Nicola Salvio, va la nostra gratitudine per l'ospitalità offerta nelle strutture da loro guidate; così al rettore emerito Alessandro Maida e all'allora prorettore Attilio Mastino per la disponibilità dell'Aula magna dell'Università di Sassari e per l'attenzione all'iniziativa.

[*] Questo saggio introduttivo è frutto della stretta collaborazione tra i due curatori. Tuttavia Nieddu si è occupata prevalentemente dei saggi relativi all'età medievale e moderna, Soddu di quelli relativi all'età contemporanea.

Annamari Nieddu and Francesco Soddu*

Introduction

The essays gathered in this volume are the result of the revision of a significant part of the papers presented to the 59° Conference of the International Commission for the History of Representative and Parliamentary Institutions, which took place in Alghero on July 2008.
The subjects which are developed in these essays cover a very wide temporal and spatial range: they describe events that refer to different ages, from Medieval to contemporary ones, and different contexts mainly limited to European countries. Nevertheless they are ascribable to three themes: 1) sources and methodologies for the study of parliamentary history; 2) political cultures which influenced the evolution of representative assemblies; 3) the central role of the representative institutions in the definition of territorial identities and autonomies.
The volume is introduced by three papers which have different purposes. With the first, Manlio Brigaglia intended give to the Conference's participants 'An idea of Sardinia', of its deeper characters, produced by the isolation caused by the sea, as it is evident, but also by the orography of its territory, which the travellers of every age as well as the scholars have always noted. The brief paper by Valerie Cromwell, instead, aimed to present warm regards and wishes to the eminent scholar Helmut Koenigsberger, who led the ICHRPI from 1980 to 1985, for his 90th birthday. The present president Maria Sofia Corciulo dedicated a complex essay to another unforgettable president of the Commission, the Sardinian Antonio Marongiu, who led the ICHRPI from 1970 to 1980. Maria Sofia Corciulo, who has been his pupil, went over the subjects that were dear to the Professor and illustrated his still relevant methodologies, which he applied in a masterly manner to the case of the Sardinian Parliaments in a work which he wrote when he was only 29 years old.

The first part of the volume, as we said, deals with the subject to the sources and methodologies for the history of Parliaments. The first paper, by Maria Rosa Cardia, examines a precise case of sources' enhancement: she reminds us that in the past several attempts were made with regards to the ancient Sardinian Parliaments' edition, in particular she goes into details for the project of critical edition promoted by the *Consiglio regionale della Sardegna* in the first 1980s

which at the moment counts on the volumes regarding 11 Parliaments, from that of Peter IV of Aragon (1355) to the *Stamenti* of the 'Sardinian revolution' (1796-99) and others are in printing.

The essay by a group of Catalan scholars (coordinated by Eva Serra i Puig) is also devoted to the enhancement of representative assemblies' sources. It explains the characteristics and aims of a project, promoted by the Technical Committee of Catalan juridical texts, which looks at the use of a plurality of sources, in particular of those which they called 'complementary documentation'; the project aims at the publication and the indexing of data concerning the proceeding of the *Cort general de Catalunya*, which represent decisive elements for making the access to these sources easier in favour of the scholars (the same group has recently published a volume whit this setting out, regarding the *Cort General de Montsó*, 1585).

The paper from the research group led by Maria Rosa Muñoz Pomer is devoted to the optimization of the use of the documentation concerning the parliamentary sessions. The group has been working to locating, cataloguing and gathering sources concerning the Valencian Cortes for several years. These data have been made available on the web through a site with hyperlinks which allow the access to a plurality of information, from the description of the place of the Parliament's meeting to the reasons of the summons, from the proxies to the effective attendance of the persons who had been summoned etc.

The importance of the sources' accessibility assured by internet is central also in the paper by Fernando Venturini, who describes the project BPR (Bibliografia del Parlamento Repubblicano), which was originally destined to realize a paper catalogue of the studies regarding the Italian Parliament but later on became a database of bibliographical references and also a digital library with more than 1300 documents, from monographs to articles.

Regarding the importance of the sources' knowability a research had been developed by Patriza De Salvo, with particular attention to the sources reflecting the information around what happened in the Sicilian representative assembly in the period of the early constitutional season. The acquisition of information not only on what had been decided but also on the ways through which the decision had been assumed (that is the parliamentary mechanism), both through official sources (the parliamentary papers) and the information from journals and newspapers, is a decisive element to determine the degree of attention which the public opinion of that period devoted to the activities of the Sicilian assembly.

The first part of the volume also includes essays which look more at the methodological aspect in the research process about the representative assemblies. It is the case of the essay by Guido D'Agostino. The

study of the parliamentary institutions implies a multidisciplinary and comparative approach – D'Agostino notes remembering the lesson of Emile Lousse – which considers not only the documentary sources from which precise indications about the life and the activity of the institution can be deduced, but also the wide series of data which originated from the social and political context in whose circle the institution developed and worked. The political organization of a territory is articulated on different institutional levels, whose structures related to the needs and the interests of the community in different ways.

Taking as point of departure the use of three sources (regulations, parliamentary provisions, notarial registers) Josè Manuel de Bernardo Ares explains the method used for the study of the local representative assemblies of the Crown of Castilla, which aims to study the local communities in their sociological, economic and cultural aspects from the point of view of the three levels of political organization: the supranational power of the monarchy, the territorial power of the reigns and the local power of the Councils.

The essay by Antonio Ruiu is alike focused on a local dimension. He examines the decisive role of the Tuscan urban oligarchies (their mechanisms of social stratification and mobility) in the development of political and representative institutions. In a similar manner Alex Cowan analyses the mechanisms of inclusion and exclusion regarding the oligarchy of the Venice Republic in the early modern age, stressing the importance of marriage strategies and of financial needs in the definition of the ruling class's behaviours. The latter (a case we have included in the second part of the volume) allows us a more general clarification about the essays' distribution. We chose to follow, as much as possible, the articulation of the Conference's works, in which also the choice of the participants had played such a decisive role, that we decided to respect its order. Nevertheless there are cases which straddle three general subject of the volume and could be rightly placed in a different part of the volume.

The events of several national cases are focused on the subject of the sources' enhancement. The Portuguese case is examined by two essays with concern different ages. Maria Helena da Cruz Coelho, thanks to both an accurate survey of the studies which had been produced and of the available sources reconstructs the story of the medieval *Cortes* of Portugal in a paper rich in data, graphics and maps which help to locate the places and to better understand the institutional dynamics of the representative assemblies on the eve of the modern age. To the liberal age, on the contrary, is devoted the essay by Maria Manuela Tavares Ribeiro who deals with the iconographical material concerning the electoral and parliamentary history which is kept in the National Library of Lisbon.

Two essays are devoted to the Dutch case. These refer to the activity of the Institute of the Netherlands History which has been developing a particular attention to sources'enhancement. In the first one, Jan Burgers examines those useful to reconstruct the dynamics of the governance (centred on the *commune concilium*) but also the aspects of daily life in the Dutch Middle age. In particular there are the registers prepared by the commissioners of William III, which contained replicas of documents like grants and warrants, but also marginal notes which allow us to value the characteristics of the governing as well as of the actors who were more often members of the lesser gentry than of the high nobility. In the second essay, Karin van Leeuwen describes a project devoted to the role of the 'constitutional committees', that means the consultative organisms, appointed by the executive (but in fact representative of all the different political opinions), which had recourse to different expertises and prepared materials useful for constitutional changes which would have been determined through the parliamentary process, in the 17 occasions during which these changes were introduced between 1883 and 1983. In the second part of the volume, the essay by Jouke Turpijn is also devoted to the Dutch case. He examines the experience of the 'lower house' in the second half of XIX century analyzing the parliamentary behaviour of its members, with the purpose of reconstructing the origin and the development of rules, customs and rituals through which the members of Parliament intended to establish their own authority as well as that of the representative institution.
The Irish upper house is the object of the essay by Coleman Dennehy, who insists on the characteristics of that assembly in the XVII century, stressing the fact that it has been a subject rather neglected by the historiography that has always preferred the elective chamber.

The relationship between political cultures and parliamentary dynamics, object of the second part of the volume, is examined in some essays starting from the individual protagonists. It is the case of the essay by Tomas de Montagut, devoted to the scholar of Catalan law and history, Antoni de Capmany, who, rediscovering the parliamentary experience of the Crown of Aragon, tried to influence the configuration of the Spanish constitutional parliamentarism which was moving its first steps in the *Cortes* of Cadiz (1810-1814); similarly the essay by Jaume Ribalta i Haro who uses the story of another polyhydric figure, Ramon Lopez Soler (lawyer, journalist, writer), to narrate the cultural action which aimed at the recovery of the Catalan parliamentary heritage of Ancient Regime, in which Lopez Soler attempted to identify the potential for the new liberal regime of the Nineteenth century. The experience of two Irish politicians offers to Carla King the opportunity

to describe an event marked by the passing from a militancy in the nationalist and republican radicalism to an attitude regarding the Irish problem that was more confident on the potentiality of the parliamentary remedies.

The essay by Roland Kleinheinz is included in the first part of the volume because of the importance which the personal correspondence (in this case the letters that the MP John Tucker regularly sent to his brother) has as a source for reconstructing the story of the English House of Commons in the mid Eighteenth century. Equally it confirms the importance that the culture and experience of the single figure have for understanding the dynamics of the representative institution.

The relationship between political cultures and parliamentary dynamics is also at the centre of the essays devoted to the Scottish case. John Young gives a perspective of the *glorious revolution* from the Scottish point of view, in particular considering those kind of 'mini-parliaments' that were the conventions of estates, generally summoned for taxation purposes or for extraordinary circumstances, in some cases – like that of 1689 – then transformed into a 'full' parliament. Young insists on the role that the representative assembly played in the defence, even military, of the new Williamite regime and on the role of the Church of Scotland, also with regards to the ideological front.

The essay by Alastair Mann, on the contrary, examines the ideological and symbolic implications of rituals which accompanied the openings of the Scottish Parliament, which was intentionally organized, in the occasion of its new opening in 1999, with a kind of compromise between continuity and changes (starting from the influence of the English ritual) in comparison with the pre-1707 parliamentary experience.

Marcella Aglietti also invests her attention in the importance of the symbolic aspects. She examines some cliqués of the Spanish political language, starting from the most known negative myth, the *leyenda negra*. The purpose is to show the dynamics that brought to the individuation of the ideological basis of the liberal regime in XIX century, among which the national identity that the same *leyenda* could prejudice; on the contrary, that identity had a solid anchor in the representative institutions. However, Aglietti points out the different attitude towards the relationship with the representative assemblies of the past which marked liberals and conservatives in those years.

The essay by Leonida Tedoldi is also devoted to the Spanish case. He examines the project of federal constitution during the passage to the first Spanish republic in 1873. As a consequence of the deposition of the king a commission (composed by 25 members) was appointed. It was charged with preparing a constitutional project. From its work a constitutional text came out: it proposed a federation of 17 States, in-

cluding Cuba and Puerto Rico, but excluding León.
The essays devoted to the Italian Parliament offer the opportunity for dealing with specific problems connected to the composition and the different functions of the representative institution.
To the subject of the parliamentary incompatibilities, with particular attention to the role and the presence of civil servants in the elective chamber during the liberal age, is devoted the essay by Gianna Manca. Those by Alessandro Isoni, Bruno Ziglioli and Francesco Soddu deal with different ways in which the Parliament exercised its function of surveying and checking. Isoni and Ziglioli deal with the subject of the Parliamentary Commission of inquiry. The first one reconstructs its history during the liberal age with an accurate analysis of the legal studies regarding this subject; the second one looks at a specific case which occurred during the republican age (the disaster of Seveso at the end of the 1970s). Soddu, instead, deals with the subject of the 'commissioni di vigilanza', that were organisms through which the Parliament exercised, in a more or less effective way, a special control in fields that had delicate and complex implications in the relationships between the public administration and important sectors of the society, starting from the Church.
Although from a different point of view, the essays by Pascal Touhari and Sandro Guerrieri look at contemporary France. The former examines the constitutional balances produced by the constitutional reform of 1958 which gave origin to the French fifth republic. He argues that the Parliament, unlike what is generally believed, was not the victim of that reform, whose real aim was rather a balanced division of powers, which could limit the excessive power that the Parliament had exercised during the third and the fourth republic. In the mid 1960s the problem of the pre-eminence of the executive on the legislative power emerged also in the European Parliament: the crisis was provoked by the attitude of De Gaulle who aimed to restrain the Parliament's role confirming the need, also in the Community institutions, of a constitutional balance that would exploit the executive. Guerrieri recounts the difficult and controversial events that brought about the shaping of the European representative institution, starting from the uncertainties around its name. The France of De Gaulle, in fact, was reluctant to accept the proposals with regards to the introduction of a new system of financing of the European Economic Community, which implied the passage to a regime of 'own resources', based on levies and duties on the agricultural and industrial imports from other countries, that would be accompanied by awarding the European Parliament the power of controlling the budget. The centrality of the budget's functions of the Parliament is examined also by Giuseppina Carboni who considers both the European and the national characters of this prob-

lem, in particular in the case of federal states. She believes that the budget's process of the European Community is the result of the overlapping of the single state's budget law and the European budget law. Finally, this second part includes essays which deal with the female political participation, the influence of European parliamentary models in countries which were previously the object of colonial domination and the peculiar characteristics of some parliamentary figures. Silvia Benussi explores the subject of the political participation of the Afro-American women in the United States Congress and more in general the theme of the access to the representation of ethnic minorities and women, as well as the problems faced in the legislative process with the object of integrating the weakest class from a social and economic perspective. Antonio Maria Morone, on the other hand, reconstructs the steps of the transplanting of the Italian parliamentary model in Somalia. The Somali Charter of 1960 derived directly from the Constitutional Charter of the Italian Republic. The multi-party system of the Somali Parliament represents an exclusive case in the African continent, where most of the former European colonies gained the independence with a presidential model and a single-party system. The crisis of the trouble of institutional transplantation of the Italian parliamentary model in Somalia, when it was under the international tutelage, was caused by the imposition of a legal-institutional model much too sophisticated compared to the social and cultural context in which it was set up. To the 'parliamentary diplomacy' is devoted the essay by Elena Baldassarri, who stresses the scholars' difficulty in relating with this idea for the variety of its aspects and meanings. She exemplifies this significance with the cases of the Italian politicians, Valerio Zanone and Giorgio Napolitano.

The third part of the volume deals with the subject of *Territorial identities, autonomies and representative institutions*.
The comparative analysis of the power relationships among the Italian and peninsular reigns of the Crown of Aragon in the late Middle Age is explored by Ester Martí Sentañes, with particular reference to the case of Sardinia and Catalonia. The purpose is to focus both on the internal functioning of Parliaments (and therefore also the municipal dynamics which involved the municipal ruling classes) and on the king's position in this process, stressing his influence on the management of the municipalities as well as of the representative assemblies. Lluis Guia Marín tells us that the dynastic changes that occurred in the Kingdom of Sardinia at the beginning of the XVIII century broke the tradition of the Sardinian Parliament that for more than two centuries had been summoned every ten years. At the same time as the war of the Spanish Succession, in fact, a new plot of political relation-

ships between the king and the privileged estates was inaugurated. It made the Parliaments' convocation useless. Cagliari fits in this new system, 'prima voce' of the Royal Estate, it had a decisive role in the political events which followed: it would clash with the pretences of the Savoy absolutism. To the missed convocation of the Parliament of John II of Aragon (1461) is devoted the essay by Sara Chirra. Although all the preliminary phases of the convocation had been made, including the dispatch of the letters of summons, and the most important provisions to be discussed in the assembly had been prepared, the general Parliament of 1461 was not carried out. The last Estates' meeting that was carried out in Sardinia (1698-1699) occurred in a period of critical institutional crisis of the Spanish monarchy. This event has been examined by Carla Ferrante using a research method that revealed the real composition of the Sardinian assembly at the end of the XVII century and the position of the fronts. From the proxies' distribution it can be deduced that in the island there were two opposed fronts: the one pro-Habsburg or Carlist was openly in dispute with the viceroyal institution to which it would create several problems during the parliamentary works; the other one pro-Bourbon or pro-Philip which instead completely supported the viceroyal policy at the eve of the war of the Spanish Succession.

The essay by Vittoria Calabrò aims to reconstruct the political and institutional crucial role played by the *Deputazione del Regno di Sicilia* in the complex relationship between the monarchy and the Parliament. This organism had been established following the analogous Catalan model with the intention of supervising both the realization of the Parliament's decisions and the *donativi's* distribution.

Valeria Ferrari and Antonio Chiavistelli analyse two particular moments of the constitutional experiences in the Italy of the first half of the XIX century and the role that the representative assemblies played (or should play). Ferrari analyses and compares the two models of Parliament respectively established by the Murat Constitution (granted in 1815) and by the Bayonne Statute (1808) during the 'French decade'. She notes that both of them tended to cheapen the parliamentary function in favour of the royal prerogatives, but she recognize that the former contained important novelties in the organization of local powers, in the field of the civil liberties and in the same parliamentary model that was by this point released from every bond with the previous form of representation. Chiavistelli faces the theme of the constitutions and the Parliaments in 1848 Italy starting from the relation between local identity and national belonging. In particular he reconstructs the defining of the idea of representation, which took shape from the debate of the previous decades and from the different models which emerged, whilst recognizing the impossibility of making an effective

comparison between their real dispositions since the shortness of those constitutional experiences. Chiavistelli believes that just the 'basic misunderstanding' between 'local' and 'national' option influenced the short constitutional experience in the preunitatian regional States.

Two collective essays are devoted to the Basque case. The paper by Joseba Agirreazkuenaga, Eduardo J. Alonso, Mikel Urquijo, concerns the making of the autonomous tax system of the Basque Country. In particular he examines the origin and the evolution of that 'Taxation Agreement' which for nearly a century, from the end of 1830s to the beginning of Franco's regime, characterized the fiscal system of the Basque province. Essentially the tradition of the self-government based on the foral system was confirmed. In front of a process of progressive state centralization and permanent weakness of the organized civil society, the role of the local political bodies, both on the executive (*Diputaciones*) and the representative (*Juntas Generales*) powers raised. The paper from the research group 'Biography and Parliament' of the Department of contemporary history of the University of the Basque Country (led by Mikel Urquijo and Joseba Agirreazkuenaga) analyses the parliamentary representation in the Basque Country in the years l931-1939. The essay, which originates from a research program of many years, is based on the prosopographical analysis concerning 44 members of Parliament who represented the Basque constituencies during the second republic, with the aim of expanding this analysis to the whole Spanish territory. The Basque political system, peculiar of that territory, was structured in a trilateral form: a nationalist party, a conservative party of Carlist tradition, a radical left concentrated in the urban and industrial areas. It wasn't by chance that autonomy and religion were the themes that characterized the political debate and determined the alliances. The mature age of the Basque MPs at their first election (still younger than the representatives of other territories) was due to previous experiences in the local government (this is the case for about half of them). Other interesting elements come out from the research: the high level of education and the substantial presence of entrepreneurs in the benches of the Basque Parliament compared to the national average. The data also confirm a strong territorial rooting of MPs and their significant presence in the parliamentary activities.

The essay by Montserrat Bajet Royo (included in the second part of the volume but pertinent also to the subject of this third part) describes the legislative process used in the *Corts de Montsó* of 1585 to unify weights and measures which in the Principality of Catalonia were different according to each place. With the passage of the *constitució n°89,* the rule of unification became a general law for the whole terri-

tory, answering in this way to a political program of economic control of the Catalan merchant society. To this story – for the aspects that could be called of parliamentary 'engineering', that is the straining of the normal legislative process of the representative assemblies of that period which produced legislative results of great importance – can be associated even that described by Elena Rosselló Chérigny: the unusual drawing up of the article 2 of the R.D. 'Desamortizador de Mendizábal'. The Mendizábal's decree of alienation of properties was significant because, although it had several antecedents, it had an exceptional process of passing. It was in fact the result of a series of events and was enacted directly by Mendizábal without discussion in the *Cortes,* but obtaining from them a vote of confidence. The main purpose seemed to be the recovery of money to maintain and support the Army and conclude the civil war in short time.

Dalibor Čepulo and Milan Hlvačka examine two cases inserted in the complex Habsburg Empire. The former reconstructs the specific characteristics which the institution of the *impeachment* took in Croatia, where it was introduced in 1868 within the process which brought to the redefinition of the autonomy's margins that Croatia had seen threatened by the consolidation of the Hungarian Kingdom. The Croatian-Hungarian compromise of 1869 (which derived by the Austro-Hungarian wider compromise of 1867) guaranteed the Croatian autonomy, with its executive liable to the representative assembly. The head of the executive power in Croatia was appointed by the king after the proposal of the Hungarian prime minister. The resistance to the full achievement of the ministerial responsibility was based on the fact that the central government insisted on Croatia's status of province and considered the *Sabor* like a provincial assembly and the executive's head like a high administrative officer, more a governor than a minister. Hlvačka, instead, deals with the Bohemian case. Contrastingly from Croatia, Bohemia did not obtain the autonomy's margin wished. Nevertheless, he believes that signals can be traced to show how the forms of self-government, which had been guaranteed at a local level, constituted (or created the condition for) a kind of a anticipation of the Czech state sovereignty.

A particular case of parliamentary assembly of a people without State (or, better, without territory) is analysed by Luigi Compagna, who, from the historical and political experience of the Zionist movement conceived by Théodore Herzl at the end of XIX century, derives the belief that the identity of this movements (and of its institutional organization through the Zionist congresses, starting from that of Basel in 1897) was essentially that of a representative assembly of a nation which asked the international community to have the chance to become a State, although it still did not have a territory.

Lorella Cedroni examines, among the system of western democracies, the problematic relationship between territorial and functional representation. The problem partly arose from the same nature of the political (general) representation linked to the territorial identity and from the forms of functional representation linked to the organized (particular) interests: two perspectives that would seem incompatible in appearance. Nevertheless, according to Cedroni, the practise more than the abstract idea of political representation allows to overcome this incompatibility. In the background of the post-industrial society, however, the representation as expression of the national and political unity proves to be more and more weakened, even though 'the territorial representation and the political form that embodies it', that is the State, 'is anything but to be destined to disappear'. In particular she refers to Joseph Kaiser's elaboration concerning the representation of the organized interests to show, in the concrete historical experience, a confirmation of the possibility that the relationship between territorial and functional representation turns into a 'non conflictual relation', in which the two terms do not exclude one other. More than about the crisis of political representation Cedroni prefers to speak about its transformation.

Cristiana Senigaglia analyses the relationship representation/territory referring to the positions of Max Weber in the political-constitutional debate in the years 1917-19. The themes stressed by Weber started from the idea that it was not possible to destroy the territories' identity but, at the same time, that some fundamental, democratic and representative principles had to be safeguarded. Weber poned the problem of how the territorial differences could be adequately coordinated and represented inducing the different elements to cooperation rather than to a 'negative' defence of their existence. He tried to find institutional solutions that were able to integrate parlamentarism and federalism, identifying forms of representation that could express both the territorial specificity and the democratic participation, and were also able to combine territories' autonomy and their active intervention in the decisional process and in the legislation of the Country.

Finally, two essays are devoted to the regional representative assemblies' experience in the republican Italy. Enza Pelleriti explores the cultural and political contribution of Guarino Amella, a lawyer and leading figure of the Sicilian autonomistic group, when the Sicilian Regional Assembly was starting. The essay shows a wide use of archivistic material concerning the figure of Amella, member of the National Parliament as well as of the Regional and local government, and also party leader.

The essay by Simone Pajno looks, more generally, to the relationship between State and Regions in the Italian constitutional system, in particular to the cases of the Regions with a special status (mainly to

the Sicilian case), and to the role played by the Constitutional Court in defining the concrete application of the constitutional principles. He dwells upon one of the most delicate questions in the relationship State/Regions, that is the interpretation of the national interest's limit, which could be seen like a juridical or a political matter. He examines the different positions of the scholars and the concrete jurisprudence of the Court. He dwells also on the concept of 'people' and on the differences between that concept in American and European cultures, which inevitably influences the concept of political representation. He also gives attention to the perspectives and the problems that have been opened by the constitutional reform that in 2001 deeply changed the part of the constitution devoted to the relationship between State and Regions. It redefined the legislative powers' ambit; eliminated the national interest as general rule governing the relationships among the different levels of government; increased fiscal autonomy; gave the same status to the different levels of government giving up the previous state supremacy. The new model is an 'equal institutional pluralism'. This new condition – Pajno concludes - puts the urgency of updating also the experience of the Regions with special status.

Concluding this introduction we wish to thank the institutions that made the realization of this volume possible as well as of the congress from which it originated. First of all the Fondazione Banco di Sardegna, and its president Antonello Arru, which financed this volume and a large part of the expenses necessary for the congress. For the grant devoted to the latter we wish to thank the presidents of the Autonomous Region of Sardinia, Renato Soru, and of the Regional Assembly, Giacomo Spissu, at that time in charge. The congress could not have been achieved without the attention granted by several institutions starting from the Municipality of Alghero, the major Marco Tedde, the councillor Mario Conoci, the president of the municipal assembly Antonello Muroni, who gave their support, also logisticaly. To the dean of the Faculty of Architecture, Giovanni Maccioco, of the Faculty of Political Sciences, Virgilio Mura, and to the manager of the Institute of superior education 'Manno' of Alghero, Nicola Salvio, goes our gratefulness for the hospitality they offered in the structures they lead. The same gratefulness goes to the former rector Alessandro Maida and the vice-rector at that time, Attilio Mastino, for granting the use of the main hall of the University of Sassari and for the attention to the initiative.

[1] This introduction resulted from the strict collaboration between the two editors. Nevertheless Nieddu dealt with the essays related with the medioeval and early modern age; Soddu with those concerning XIX and XX centuries.

Indirizzi di saluto
Opening Addresses

Antonello Mattone
Direttore del Dipartimento di Storia dell'Università di Sassari

A nome del Dipartimento di Storia dell'Università di Sassari desidero portare il saluto dell'Ateneo turritano al presidente, al direttivo e a tutti i componenti dell' International Commission for the History of Representative and Parliamentary Institutions, ringraziandoli per aver voluto scegliere la nostra università come sede per il 59° Congresso dell'associazione.

In Sardegna c'è un'antica tradizione di studi di storia parlamentare, iniziata già dal 1856 da Vittorio Angius con le sue *Memorie de' Parlamenti sardi* per il XVIII quater volume del *Dizionario storico-geografico degli Stati Sardi*, di Goffredo Casalis. Nel Novecento bisogna ricordare la fondamentale opera di Antonio Marongiu, *I Parlamenti di Sardegna nella storia e nel diritto pubblico comparato* (Roma 1931) e gli importanti lavori di Antonio Era, cattedratico di Storia del diritto italiano nella nostra facoltà giuridica, fra cui spicca l'edizione de *Il Parlamento sardo del 1481-85* (Milano 1955).

Dal 1986 il Consiglio Regionale della Sardegna ha avviato un ambizioso progetto, in fase avanzata di attuazione, l'edizione critica dei parlamenti sardi nella collana 'Acta Curiarum Regni Sardiniae' che attraverso la trascrizione di tutti gli atti parlamentari, dalle convocazioni alle deleghe, dalle commissioni alle petizioni, dai capitoli di corte alla ripartizione del donativi, presenta la documentazione completa corredata di esaustivi regesti in italiano, note esplicative e ricchi saggi introduttivi. Sono finora apparsi undici volumi, in più tomi, che tracciano le vicende delle Corti generali del Regno dal primo Parlamento, celebrato da Pietro IV d'Aragona nel 1355, alle ultime sessioni stamentarie della 'Sarda Rivoluzione' del 1793-96.

Ringrazio in particolare i colleghi Maria Sofia Corciulo, Presidente della Commissione, e Francesco Soddu, ordinario di Storia delle istituzioni politiche della nostra università, nonché organizzatore di questo 59° Convegno, per l'apporto che hanno dato a questa iniziativa caratterizzata da un elevato spessore scientifico e da una qualificata partecipazione di relatori italiani e stranieri.

Aldo Accardo
Coordinatore del Comitato sardo per le celebrazioni dei 150 anni dell'Unità d'Italia

A nome del Comitato sardo per le celebrazioni del 150° dell'Unità d'Italia desidero salutare il Presidente, il Direttivo e tutti i componenti dell'International Commission for the History of Representative and Parliamentary Institutions, ringraziandoli per aver voluto scegliere Alghero come sede per il loro 59° Congresso.

Il Comitato sardo per le celebrazioni del 150° dell'Unità d'Italia è stato il primo dei comitati regionali costituiti in Italia dopo l'appello rivolto alla nazione, nel marzo del 2001, dal Presidente Ciampi al fine di preparare il paese, ed in particolare le nuove generazioni, a celebrare in modo adeguato, senza retorica ma con autentica e profonda riflessione, l'importante scadenza. La riunione di insediamento si è tenuta nel Palazzo Viceregio di Cagliari nel giugno del 2004 ed è stata resa solenne dal messaggio del Capo dello Stato.

Nel corso di questi anni, il Comitato ha promosso numerosi convegni di carattere nazionale ed internazionale, seminari ed incontri di studio, corsi di formazione, ricerche e pubblicazioni; particolare attenzione abbiamo rivolto alla scuola e alle nuove generazioni. Ricordo, tra gli altri, il convegno per il centenario dei fatti di Buggerru, il convegno internazionale sulle rivoluzioni patriottiche di fine Settecento, la pubblicazione di studi su Giuseppe Manno e su Renzo Laconi.

Quando il prof. Francesco Soddu, autorevole componente del Comitato, ha proposto di dare il patrocinio al 59° Congresso annuale della ICHRPI, da parte di tutti è stata manifestata una piena e convinta adesione per una iniziativa dalla quale si attende un contributo di alto livello su temi che riguardano momenti ed aspetti attinenti ai complessi intrecci tra Stato nazionale ed autonomie regionali, oggi al centro dall'attenzione del mondo della politica e della cultura.

Il 150° anniversario dell'Unità cade in un momento in cui il dibattito sul federalismo, sullo Stato nazionale, sui rapporti tra regioni del nord e regioni meridionali, ha assunto toni anche molto accesi e polemici, talvolta inaccettabili per violenza e rozzezza.

Il vostro convegno, per il riconosciuto prestigio internazionale della vostra associazione, per l'autorevolezza scientifica di tutti voi, costituirà un momento importante e un contributo di altissimo livello nell'impegno che tutti dobbiamo mettere per trovare nelle polemiche e nelle discussioni del presente linee guida serie, scientificamente fondate ed argomentate sul piano storico e giuridico, per salvaguardare e sviluppare la nostra democrazia.

Maria Sofia Corciulo
Presidente dell'Internationl Commission for the History of Representative and Parliamentary Institutions

Nella mia qualità di presidente dell'International Commission for the History of Representative and Parliamentary Institutions sono particolarmente lieta e onorata di inaugurare il 59° Congresso dell'ICHRPI nella terra di Sardegna alla quale mi sento molto vicina, grazie alla comunità di intenti che mi ha legato per anni al mio Maestro, Antonio Marongiu, originario dell'isola. Egli, noto, eminente studioso delle istituzioni parlamentari europee, medievali e moderne, è stato a suo tempo Presidente dell'ICHRPI, negli anni 1970-1980. Marongiu mi introdusse nel cenacolo scientifico dei membri dell'International Commission for the History of Representative and Parliamentary Institutions, conducendomi assieme alla sua famiglia, nel lontano 1972, al mio primo convegno internazionale in Ungheria, che raggiungemmo in macchina attraversando le disastrate strade dell'ex 'impero' sovietico.

Pertanto mi è data oggi la felice occasione di presenziare a questo convegno – il primo della mia presidenza – che simbolicamente rappresenta un omaggio ad Antonio Marongiu ed alla sua amata Sardegna. In questo senso, coerentemente con quanto affermato, presenterò una relazione sugli studi parlamentari isolani del Maestro.

L'onore che mi hanno fatto i colleghi della Commissione affidandomi la carica di Presidente della stessa, mi impegna fortemente ad operare al meglio per far sì che gli studi di storia parlamentare vengano sempre più conosciuti ed incrementati; in ciò proponendomi di raccogliere – nell'ambito delle mie capacità – il testimone passato nelle mie mani da quelle del mio illustre Maestro.

Per questi motivi il mio ringraziamento va soprattutto all'amico Francesco Soddu – ed ovviamente a quanti hanno contribuito ad organizzare tale evento –, ma si estende molto al di là delle parole, spesso rituali, che a volte si pronunciano in tali occasioni; sono infatti commossa e, nello stesso tempo, felice di essere qui, nel ricordo di Antonio Marongiu e di quegli studiosi che hanno contribuito al successo dell'ICHRPI, tra i quali voglio ricordare l'eminente storico inglese Helmut Koenigsberger, al quale vanno i miei auguri per i suoi 90 anni.

Ringraziando tutte le autorità, i colleghi, ed il pubblico per la loro presenza, dichiaro aperto il 59° congresso della International Commission for the History of Representative and Parliamentary Institutions.

Relazioni introduttive
Opening Speeches

Manlio Brigaglia

An Idea of Sardinia

1. *An island*

The word 'island' is easy enough to say, but there is quite a difference between the small or tiny isles clustered together in thousands like a roundabout (hence the word Cyclades) and those huge, solitary islands that cannot be visited in one day, veritable continents that have broken off from the rest of the world and have 'grown up,' as it were, by themselves. Sardinia is one of the latter: almost a continent, someone once said. This definition caught on and became a slogan that at times lost meaning by dint of being repeated. Indeed, the word 'almost' could easily be eliminated, since Sardinia is removed, in every sense, from any other piece of terra firma in the vicinity. And should one mention Corsica, it is only to remind us that the two islands were once united, before the limestone of Bonifacio and the granite of the Gallura coastline became the object of God knows what huge telluric movement.

The island is made up of two elements: the land and the sea surrounding it. However, I could also add the inhabitants, because living on an island is never like living on a continent (and not even like living on what the Sardinians call the Continent when speaking of the Italian peninsula). Two centuries ago, referring almost exclusively to the Piedmont region, they called continental Italy *Terramanna*, the 'great land'; and it is precisely the overwhelming awareness of other geographic dimensions that create in the islanders the eternal sense of their 'insular' nature.

Psychologists have studied what the Germans call *Inselfremde*, the state in which the heart and mind withdraw themselves into, assailed by a sense of solitude, of isolation from the rest of the world. But this unacknowledged fear, like a primordial memory of the geological fracture in the depths of the collective unconscious, is an integral part not only of the individual psyche, but also of the entire nervous system of a people. Going to an island does not mean only enjoying the natural scenery. It also means searching for the signs of that separation in the severe expressions of the people, in their ever-attentive glances, as if they were scrutinizing strangers. Once (perhaps a bit less now, it must be said) no one closed their front door, especially in the villages. Strangers were always welcome. But no sooner than once crossed the threshold they could note that those who welcomed them, even in the

most affable manner, were also scrutinizing them. To say that this is a manifestation of the ancestral fear of the thousand invasions from the sea in the past is tantamount to creating facile populist mythology. But it is true that islanders realize that even when the sea brings civilization in its wake, it does so at gunpoint, so to speak, or in any case it does violence to the truth and customs that have emerged from the islanders' isolation. Now the era of bearing arms is over, but the invasions continue: sharing this destiny with so many other exotic parts of the world, and being able to drag away, like ants, the crumbs that have fallen off the tables of our present-day hedonists, does not compensate for the risk these invasions entail.

2. *The Sea*

Should we blame the sea for everything, now that it seems to have become the Sardinians' friend and helps them to eke out a living? There are local proverbs that warn us of the dangers that may arrive from the sea. Indeed, I don't know if there are any that speak well of the sea. After centuries of mistrust, which however also consists of watching and observing, if only from the top of a hill or the tip of a cliff (the Spanish used the word *punteros* – from *punta* or 'tip' – to describe the smugglers who stood on the tips of the cliffs to spot the boats on the Straits of Bonifacio looking for business), after all those years, we have never come up with anything less than a negative opinion of the sea.

There is the mystery of the small bronze ships one often sees in the museums in Sardinia that always bring a question to mind: how is it that the nuraghic population (1500 BC), which we have always imagined as a strictly terrestrial people, produced so many images of ships? (It must be said that these people must have arrived in Sardinia from the east by ship; not to speak of those mysterious Sea Peoples mentioned in ancient Egyptian inscriptions, who were strong, well armed, courageous and very skillful, and whom we have always considered our ancestors.) The nuraghic civilization produced these images in models that, although varying in decoration and in the use of animal figures, seem to respond to a technique that is basically the same, and therefore most probably corresponds to a widespread prototype that really existed. If this is true, those ancient people were navigators who did not fear the sea but on the contrary had the courageous familiarity with the sea needed to sail even on small boats. Giovanni Lilliu, who is a master for all Sardinians, affirmed that the nuraghic population not only knew the art of navigation but also navigated at least up and down the Tyrrhenian Sea, which would explain why these sculptures of small ships–votive offerings of thanksgiving for having been saved from some treacherous winds or

storms–are to be found not only in Sardinia but also in Etruria and Calabria. Perhaps that was the only time when the *Mare nostrum* was truly *nostrum*. Then the Phoenicians began to land on these beaches around 1000 BC and, thanks to their strong commercial organization, replaced the nuraghic vessels with their ships, which I suppose were larger and more powerful.

From that time on, perhaps, no Sardinian ship crossed the sea. The following period lasted almost 700 years, from the Roman conquest of the island in 238 BC to AD 476, the year of the fall of the Roman Empire, when the island was probably separated from the mainland power even on an institutional level. The formidable Roman trireme warships took soldiers and praetors to break the resistance of the obstinate tribes that fought so hard for their independence, and large cargo ships were loaded with wheat from the Campidano region (Cicero called Sardinia one of the three 'breadbaskets' of the Republic together with Sicily and the North African coast). Perhaps the *Giudici* (local lords) had some ships, if only because they were related to the powerful maritime families on the peninsula that were used to navigating the seas in their quest for riches and even thrones (however precarious they might have been). For that matter, the maritime republics of Pisa and of Genoa were quite active in Sardinia, transporting men and goods (and becoming rich in the process), and also building many majestic, as well as small and elegant, Romanesque churches.

Around the 8th century the redoubtable Arabs had made their appearance on the island, and although in 1016 Pisa and Genoa, forced by the pope to join forces under the Crusader flag, defeated one of the most formidable enemies – Mugahid, the prince of Denia in the Balearic Islands – the Barbary pirates continued to make raids on the Sardinian coasts for eight centuries. In the second half of the 16th century Philip II of Spain sent one of his captains from Iglesias around the island to ascertain how many towers were necessary to protect it. The captain did so and sent in his report. Although the Turkish fleet had just been routed at Lepanto and that threat was virtually eliminated, Philip had a series of forts built around the coastline in only a few years–an incredibly short time for us in this age of public bureaucratic sluggishness–many of which are still standing. The chronicles of the following years are filled with accounts of Barbary pirate attacks and the desperate defense of heroic commanders and tower guards, who often gave their lives in order to gain time for the inhabitants to escape (when indeed they managed to do so). '*Ohi su Moro, ohi su Moro*' ('*Beware of the Moor*') is a cry heard in many popular songs. This dread was long-lived: the pirate who hoisted the flag of Islam was for centuries

the bogeyman of island fables, up to that terrible night of 3 September 1798, when a thousand Tunisian pirates raided Carloforte and kidnapped 830 citizens. Negotiations for their release lasted five years, and almost all the victims returned home safely, bringing with them the Madonna dello Schiavo, which is perhaps a ship figurehead found on an African beach that became the venerated protector of the town.

The Sardinians returned to the sea only in 1950. Until then, fear of invasions and raids had led them to abandon the coastline and move to the interior, which was one of the major factors in the transformation of the coasts into swampland that in turn became a breeding ground for the malaria mosquito, the deadliest enemy the Sardinians had ever had. As recently as 1946, on an island that had a population of a little more than one million, 74,000 persons were struck by malaria for the first time. But precisely that year witnessed an extraordinary technical-scientific experiment that was promoted by the Ente Regionale per la Lotta Anti-anofelica in Sardegna (Regional Body for the Anti-malaria Campaign in Sardinia) and conducted by Italian and American scientists on thousands of Sardinian workmen. In the end malaria was eliminated and the sea was liberated, allowing people to return to it.

To tell the truth, they had begun to do so a few years earlier, right after World War Two, when a group of courageous entrepreneurs got together to provide Sardinia with the ships that the Italian government seemed either unable or unwilling to furnish. Thus was born the 'Sardamare' ship line with two vessels that were christened with names filled with hope. The *Angioj* referred to the 'father of the Sardinian nation,' Giovanni Maria Angoij, who in the late 1700s had led the farmers and shepherds in the struggle against Savoyard feudalism; he was defeated and died in exile, but his exploit would be deeply rooted in Sardinians' souls. The other vessel, the *Azuni*, honored the Sardinian jurist who was an expert in the laws of international maritime trade. The 'Sardamare' went bankrupt in a short time, but it had taken the first step in the right direction.

The return to the sea also marks the return of the sea.

The sea is once again a living presence; or better, for the first time it has become a resource. It is the sea and the seaside localities that trigger tourism in Sardinia. The newborn autonomous region created an organization, ESIT, the Sardinian Tourist Board, which was put in charge of this sector; in 1955 an English firm organized charter flights that took the first vacationers to Alghero, and in 1962 the Costa Smeralda Syndicate was founded. The silence of the Sardinian coastline had come to an end.

3. *The Land*

There is a statement made by the most famous 20th century historian, Fernand Braudel, that goes more or less as follows: 'The mountains are more responsible for the isolation of Sardinia than the sea.' This was an observation that another Frenchman, Maurice Le Lannou, had made when he went to the island in the 1930s to write his university thesis on geography. In his *Shepherds and Farmers of Sardinia* (1941), which became a classic overnight, Le Lannou says that the island is a huge geological puzzle with which a player amused himself by mixing the pieces helter-skelter. This explains the huge fractures separating the mountains and tablelands, which are responsible for those difficulties in communications that have been instrumental in preventing the islanders from breaking free from the 'cantonal civilization' so typical of the nuraghic period in order to establish a true body politic. When the Spanish judged the Sardinians scornfully as *pocos y locos* (few and crazy) as well as *mal unidos* (poorly united) they perhaps laid less stress on the historic shortcoming of a lack of unity, the difficulty in going up the long, steep road to nationhood (though it must be said that the expression *naciò sardesca* or Sardinian nation was used by the Catalan-Aragonese, lords of the island from the 1300s on, to distinguish the conquerors from the natives).

True, for centuries the Sardinians were few in number (not more than 200,000-300,000 from the Roman period to the Middle Ages, and not much more than 500,000 in the modern age). And they certainly must have seemed crazy to their various foreign rulers–afflicted with that madness that consists in being madly jealous of one's diversity and in finding it hard to accept anything worthy of bartering for their freedom.

As a matter of fact, the freedom of the Sardinians, especially those who lived in the mountainous regions, the center of small anarchist rural republics, as Braudel says, was more the objective result of the isolation of the interior than the outcome of a subjective effort to conquer vital space. In fact, what we call 'geocracy,' the dominion of the earth (and the landscape) over the sea (and the coastal scenery) has always been considered a characteristic feature of Sardinia. And, due to a curious psychological reflex, the Sardinians themselves think of themselves more as a population of shepherds and mountain dwellers than as a population of farmers and plains dwellers. Only one-third of the 24,000 square kilometers of the island consists of plains, and almost all of them are concentrated in the vast Campidano plain, which opens a corridor over 100 km wide between Oristano and Cagliari. Today the plain is traversed by the Carlo Felice highway (the only one we have), named in 1829 after the king who

had promoted it, but it was once the heart of the large 'breadbasket' that constituted the island.

The mountains, on the other hand, were the world of the flocks. To this day the islanders have over 3,000,000 sheep, which were formerly raised outdoors all year long, subject to the regimen of transhumance, when from November to May they grazed in the lowland pastures, which triggered arguments, conflict and even bloodshed. 'In Sardinia,' wrote the Piedmontese count Alberto Lamarmora in the early 1800s, 'one notes that spectacle so characteristic of all European history: the great struggle between shepherds and farmers. The only difference is that in the rest of Europe this ended 150 years ago, while it still continues in Sardinia.' This problem was not solved by the most famous of the laws legislated (by non-Sardinians) on the island, the so-called fence edict of 8 October 1820, which allowed landowners to enclose their property with walls, bushes or ditches to save them from the ruinous passage of the sheep and at the same time aimed at stimulating the formation of a rural lower middle class. As the great Sardinian anthropologist Michelangelo Pira said, the project failed because the landowners fenced in their land (thus giving rise to the *tancas* or enclosures, from the Catalan verb *tancar*, 'to enclose'), but then they would sit on their walls–perhaps even armed–waiting for the shepherds to pass in order to make them pay more for the grass consumed.

Those 3,000,000 sheep make up almost half of the entire ovine population in Italy. This statistic helps to explain why the Sardinians like to represent themselves as a population of shepherds, or, as one often notes in popular tourist literature, 'shepherd kings'.

The earth and sea are the components of the Sardinian landscape. And since the sea and the land of an island cannot be isolated, the scenery is the focal point in which the elements (not only geographic ones) merge and integrate.

There are seascapes (in the sense that they consist *more* of sea than land) and there are landscapes. But always behind the sea one senses the presence of land–and sometimes it is there in plain sight, marking limits and defining short boundaries–and always beyond an earthen barrier there is a marine horizon. Sardinian natural scenery is indivisible, despite its numerous variations. Indeed, these latter are so numerous that the alternation of unmistakable configurations not only earmarks the different historic-geographic regions of Sardinia (there are at least twenty, much more than the eight administrative provinces in which the island was recently divided), but the extraordinary variety of its most evident features has given rise to the expression used at the beginning of this introduction–'almost a continent.'

What can we choose from this scenery as a sort of synthesis or emblem of the island? The nuraghi for sure, one would say. There are 7,000 of them, according to what people say and write (but a few years ago a geographer took it upon himself to count them one by one, and the number he came up with did not amount to much more than 4,500). Standing solitary on the ridges and often on the edges of the roads that cross the island, the nuraghi seem to follow visitors. And even though these visitors may even be Sardinians, they do not know–as the archaeologists perhaps do not know–the purpose of these stirring constructions built with architectural skill that is certainly equal to that of the great builders of the leading prehistoric Mediterranean monuments. It is no accident that an ancient historian imagined they were the inventions of a Daedalus who had fled from Crete after the tragic death of Icarus.

Are the nuraghi the houses of the rulers, the symbols of tribal power, models of an island *heroon* or hero's shrine, of temporary fortresses in a land that, due to its lack of unity, must have been the victim of feuds and wars? Whatever purpose they served, their *raison d'être* lies in their very existence, in rising up so majestically that they seem to be nothing less than palatial constructions. Of the two largest and most articulated nuraghic complexes, the one in the northern part of the island is traditionally known as the 'Nuraghic Palace', while the other one, in the southern part (on the UNESCO World Heritage List), is known as *Su Nuraxi*, as if it were the quintessence of the nuraghe, the 'most nuraghe' of all–as indeed it is.

Almost all the nuraghi (but there is one at Armungia, the birthplace of the war hero, author and politician Emilio Lussu, that lies right in the middle of the town, with the houses clinging to it like sheep hovering around their shepherd) are located in the isolated countryside. Silence is the 'noise' of Sardinia. Consequently, the landscapes of solitude–the vast plains that are veritable seas of grass that undulate in the wind, and the higher mountainous areas, such as around the Perdaliana, which stands out like an altar in the very heart of the Gennargentu massif, the capitol of a pastoral civilization that has remained virtually intact for thousands of years–constitute the 'most authentic' natural scenery of the island. There is one 'landscape' that stands out most in the memory of the Sardinians: the single tree, its trunk bent by the wind, its compact foliage driven in one direction, which is the same for every tree in every part of the island. Geographers say that it is the mistral (or even the sirocco, but in any case a typical wind of that northwestern area), blowing in only one direction for nine months a year, which causes that bending, so that every tree is like a sort of compass that always points to the southeast. The foliage, on the other hand, which from the northwest is cropped like

grass grazed by sheep, is sculpted in that shape not so much by the constant force of the wind, they say, but rather by the effect of the salt from the sea. Even in a tableland in the interior, the tree in the middle of a field, bent like a grey-green reed, is a manifestation of the sea even when this latter is too far away to be seen.

Valerie Cromwell

Helmut Georg Koenigsberger 1918-[1]

Helmut Koenigsberger, known for many years to his family, friends and colleagues as 'Helli', celebrated his ninetieth birthday on 24 October 2008. He came to England with his family from Germany in the 1930s. Several members of his family, who like him were all refugees, were to become distinguished in different fields in the UK and elsewhere. He adapted well to the British school system and to undergraduate and graduate life in Cambridge. Following war service in the Royal Navy, his academic career really began in 1948 in the Economics department at Queen's University Belfast and, from 1951, at the Economic History department at the University of Manchester. In 1960, he was appointed Professor of History at the University of Nottingham, having published extensively on the history of the Spanish empires of Charles V and Philip II. Following a period from 1966 to 1973 in the chair of Early Modern History at Cornell University in the United States, he returned to the chair of History at King's College, University of London, from which he retired in 1984. Although originally considered an economic historian, his expertise had come to cover many aspects of government and politics in 16th and 17th century Europe, specializing in Spain and the Netherlands.

As his career developed, he began to work more extensively on the comparative history of representative institutions in Europe. It was while at the University of Manchester, that one of his senior colleagues, Dr John S. Roskell,[2] then Secretary General of the International Commission, became aware of his work on the parliament of Piedmont during the Renaissance and recruited him to the Commission. His work in this area was thus soon well known to Professor Helen Maud Cam, an important member of the Commission from the Second World War until her death. She had been elected President in 1950. They began to exchange news of each other's publications and reviews. He became heavily involved in the Commission's work. She valued his efficiency, as did successive Presidents, Professors Emile Lousse and Antonio Marongiu, under whom he served as Assistant Secretary from 1955 and as Secretary-General from 1960. In this role he sought to broaden the membership of the Commission by recruiting younger scholars and by welcoming experts in more modern periods of European parliamentary history.[3]

His fluency in many European languages eased the interchange of ideas at Commission sessions. He worked hard to maintain links with the Societé d'Histoire du Droit, which, in the 1960s and '70s, invited Commission members to their annual May meetings. In 1975 he was elected a Vice-President of the Commission and served as President from 1980 to 1985 and is now an honorary President. During his presidency, the practice of holding annual conferences usually in September was established. He encouraged proposals for the launch of a twice-yearly journal, *Parliaments, Estates & Representation / Parlements, Etats & Représentation*: the first issue of which came out in June 1981. The journal became an annual yearbook in 1995. He was a regular attender at the Commission's annual conferences, usually accompanied by his wife, Dorothy, and often read papers. Many members of the Commission became warm friends of them both. Their last appearance was at the Commission's conference in Camerino in 1993.

Helli's published work reflects his support for the comparative work of the Commission, which had been pioneered by Helen Cam and Emile Lousse and supported by Antonio Marongiu. His two volumes published in the series of Studies presented to the Commission, XL *Estates and Revolution: Essays in Early Modern History*, (Ithaca/London, 1971) and LXIX *Politicians and Virtuosi: Essays in Early Modern History*, (London, 1989) demonstrate the enormous range of his research. His published papers in Commission volumes cover comparative studies on all parliaments and estates in early modern Europe and include specialist studies such as that on the Parliament of Sicily and the Spanish Empire, on the powers of deputies in 16th century Europe and on the States General of the Netherlands before the Revolt. His magisterial professorial inaugural lecture at King's College London, *Dominium Regale or Dominium Politicum et Regale? Monarchies and Parliaments in early Modern Europe* (1975),[4] with its powerful analysis of the complexity of factors influencing the relationships between monarchies and their parliaments, was to prove enormously influential. While acknowledging the value of applying various theories and models in the interpretation of political relationships between kings and their parliaments over time, it signposts the difficulties for the historian in employing them. He was fortunately able to bring together the fruits of his wide ranging research in European parliamentary history in his most recent book, *Monarchies, States Generals and Parliaments* (Cambridge, 2001).

He was elected a Fellow Emeritus of the British Academy in 1989, appointed to an Encomienda, Order of Isabel the Catholic (Spain) in 1997 and elected a Fellow of King's College, London in 1999.

Notes

[1] This article appeared in *Parliaments, Estates & Representation*, 28, (2008), pp. 1-3.

[2] After wide consultation in 1948, John Roskell was asked to join Helen Cam's subcommittee and to serve as Secretary. He was to became Professor of Medieval History at the University of Manchester in 1962. In June 1953 Manchester University Press agreed that his book *The Commons in the Parliament of 1422* (1954) should be 'presented to the International Commission'. [Helen Cam papers, 4/1/1, Girton College Cambridge].

[3] I should mention that he kindly invited me to join the Commission in 1962. I attended my first Commission conference in Dublin in 1963, bravely giving a paper 'The Private Member of the House of Commons and Foreign Policy in the Nineteenth Century', which was to be published in *Liber Memorialis: Sir Maurice Powicke: Studies presented to the International Commission for the History of Representative Institutions* XXVII (Paris/Louvain, 1965).

[4] Published in Karl Bosl and Karl Möckl(eds.), *Der Parlamentarismus und seine Grundlagen in der ständischen Repräsentation* (Berlin, 1977) pp. 43-68.

Maria Sofia Corciulo

Antonio Marongiu e il Parlamento di Sardegna

'On revient toujours à ses premiers amours' – scriveva Antonio Marongiu nella breve prefazione alla seconda edizione del suo volume, dedicato al Parlamento di Sardegna, arricchita, certamente – come egli stesso precisava – 'da una grande crescita culturale' dell'autore (erano infatti trascorsi ben 47 anni dalla precedente, apparsa nel 1931,[1] ma che, in sostanza – cito ancora le sue parole – 'contiene molto meno di nuovo di quanto ci era parso lecito attenderci').[2]

Egli faceva riferimento al suo primo volume su *I Parlamenti di Sardegna nella storia e nel diritto pubblico comparato,* apparso nel 1932 nella collana di studi dell'Istituto di Diritto Pubblico e Legislazione Sociale della Facoltà di Scienze Politiche dell'Università 'La Sapienza' di Roma. L'A., nella prefazione ad esso, ricordava il maestro, Francesco Brandileone che aveva espresso 'benevole parole di approvazione per la prima parte dell'opera' che altro non era che la sua tesi di laurea, conseguita nel 1924, presso la Facoltà di Giurisprudenza della stessa università. Nel volume l'A. ringraziava anche 'con devota gratitudine' l'illustre professore Luigi Rossi – direttore dell'Istituto di Diritto Pubblico della Facoltà di Scienze Politiche, con il quale aveva conseguito la seconda laurea nel 1926 – per aver usufruito 'della sua costante guida e dei suoi preziosi consigli ed aiuti'.[3]

Il giovane Marongiu (aveva ventinove anni) precisava immediatamente le finalità che si prefiggeva in questa sua prima opera: una verifica storica e comparativa – condotta su documenti d'archivio – dell'effettiva incidenza socio-politica del Parlamento sardo sulle vicende della popolazione isolana. Si trattava, pertanto, di fare il punto – come egli precisava – sulle due contrapposte teorie degli studiosi di tale istituzione alla luce di più approfondite ricerche storiche da lui effettuate ed alle quali egli intendeva fare riferimento in maniera il più possibile imparziale. In effetti egli prendeva immediatamente le distanze da tali precedenti interpretazioni, a suo parere basate soprattutto su motivazioni contingenti alla realtà politica contemporanea; e, di conseguenza, non si schierava né con gli eccessivi laudatori del ruolo esercitato dall'antico parlamento, né con i denigratori di tale assemblea, a loro avviso priva di qualsiasi incidenza politica; infatti entrambe le posizioni erano dettate – a suo parere – soprattutto dalla volontà di giungere ad un risultato, più politico, che veritariamente storico; e cioè la prima per esaltare la funzione della camera elettiva

nella sua continuità storica, la seconda – al contrario – per enfatizzare l'importanza politica delle istituzioni parlamentari contemporanee rispetto a quelle dei secoli precedenti.

Dopo questo *incipit,* il Marongiu cominciava a esporre con estrema regolarità metodologica una vastissima documentazione, in gran parte archivistica, comparativisticamente inquadrata, per cominciare a dipanare il filo rosso che collegava il Parlamento di Sardegna alle similari istituzioni rappresentative dell'età medievale e di quella di mezzo.

Correttamente egli iniziava la trattazione partendo dalle prime cause che avevano portato alla nascita ed evoluzione delle assemblee rappresentative europee, soffermandosi giustamente sull'esperienza iberica, nelle tipologie aragonese e catalana, al cui interno rientravano quelle della Sardegna e della Sicilia allorché erano divenute dominî della corona spagnola. Lo scopo di Marongiu era essenzialmente quello di dimostrare se vi fosse stato un 'concreto intervento, un'attività politica' – sono parole sue – che avesse inciso soltanto su peculiari interessi locali escludendo quelli comuni a tutta la Sardegna; in sostanza se il Parlamento avesse agito – allorché persistette in taluni atteggiamenti di forte opposizione al Viceré e ai funzionari reali dell'Isola – con 'manifestazioni prive di organico nesso tra loro' o invece non si fosse trattato piuttosto 'di una continua e sistematica posizione di principio'.[4]

Per comprendere correttamente tali importanti aspetti storico-istituzionali dell'assemblea sarda, egli metteva, a questo punto, in guardia lo studioso o, comunque, il lettore affinché non incorresse nel grave errore metodologico di guardare alla costituzione e alle funzioni delle assemblee parlamentari dei tempi passati, con occhi, diciamo così 'contemporanei', poiché molte problematiche che oggi ci poniamo su di esse non erano allora non solo conosciute, ma neanche immaginate. Si trattava di un' importante precisazione metodologica sulla quale l'A. ritornerà altre volte nei suoi scritti 'parlamentari'.

Marongiu, dopo questa premessa, cominciava a trattare in dense e dotte pagine due fondamentali aspetti delle assemblee legislative: quelli della rappresentanza e del conseguente tipo di mandato conferito ai rappresentanti. Quanto alla prima egli annotava, con una certa ironia, 'che la tendenza dell'attuale momento storico è favorevole ad individuare casi di rappresentanza disgiunti da elezione'.[5] Per la verità, aggiungendo subito dopo, che lo stesso suo maestro, Luigi Rossi aveva sostenuto che l'aspetto elettivo era uno 'dei modi più probabili per far nascere la rappresentanza di tipo sostanziale' – definita tale soprattutto in base alla funzione esercitata – indipendentemente, peraltro, dalle modalità con le quali era stata creata (per esempio le camere alte, di nomina regia, appartenevano ugualmente, e senza alcu-

na *diminutio,* alle istituzioni parlamentari). Si trattava di una rappresentanza 'sostanziale', poiché invece – sempre secondo le affermazioni del Rossi – non poteva esservi rappresentanza 'formale', priva del momento elettivo.[6]

Marongiu applicava questa considerazione anche ai Parlamenti dell'età di mezzo, nei quali le elezioni avvenivano in maniera imperfetta, discontinua e spesso confusa; per quello sardo – composto da tre Ordini o Stamenti – l'elezione prevista, sin dalla sua prima convocazione, nel 1355, riguardava soltanto i rappresentanti delle città reali, cioè non feudali, in quanto per gli altri due, quello militare, composto dai nobili, e quello ecclesiastico, l'ingresso in Parlamento avveniva grazie alla loro condizione cetuale, cioè *ad personam*, senza che ciò significasse una *diminutio* della loro funzione rappresentativa, essendo a quel tempo il sovrano considerato *caput et finis totius parlamenti*. Pertanto, essi erano convocati in quanto rappresentanti ognuno o una signoria o un beneficio ecclesiastico, con il corrispettivo diritto di esercitarne la rappresentazione in Parlamento, ove i tre Stamenti, nel momento dell'inizio dei lavori assembleari, si denominavano Bracci, e facevano riferimento non solo agli abitanti dei rispettivi territori, ma anche a tutti quelli del Paese, inclusi anche coloro che non avevano diritto ad inviare propri membri nell'assemblea.

La complessità dell'organizzazione del Parlamento – a cominciare dalle convocazioni dello stesso (ogni 10 anni) – derivava dalle precise e pompose modalità mutuate *in toto* dalle Cortes aragonesi e, soprattutto, catalane (ove peraltro gli Ordini rappresentati erano 4). Marongiu le analizzava minuziosamente, mettendone in risalto gli aspetti istituzionali-organizzativi 'politicamente' più rilevanti: primazia, solo formale, dello Stamento ecclesiastico, effettiva di quello militare-nobiliare, soprattutto attraverso la figura del suo *leader*; rilevanza qualitativa e non quantitativa delle votazioni, ove era prevalente il ruolo socio-economico dei primi due ordini rispetto al terzo; per cui l'approvazione di una delibera non avveniva se mancava gran parte dei consensi dei due primi Bracci, i cui rappresentanti più esperti si tenevano in continuo contatto con le cosiddette 'commissioni' – formate da funzionari regi – che affiancavano i lavori dell'assemblea, fornendo, se necessarie, delucidazioni e chiarimenti *ad hoc*; ciò avveniva in sedi separate poiché le discussioni parlamentari si svolgevano nella più assoluta segretezza (all'interno dei singoli Bracci le votazioni avvenivano a maggioranza). Ci troviamo qui di fronte ad un fondamentale punto nodale sul quale molto si sono confrontati gli storici parlamentari: quello relativo al tipo di mandato attribuito ai rappresentanti. Su tale aspetto, Marongiu si scontrava fortemente e, quasi con veemenza, con coloro che avevano sostenuto l'esistenza negli antichi parlamenti di una rappresentanza soltanto giuridica, quindi

molto limitata, in contrapposizione a quella politica, più ampia, in virtù della considerazione che si trattasse di un mandato imperativo. Marongiu confutava tale affermazione e, procedendo come una macchina da guerra, illustrava teorie, pratiche, documentazioni archivistiche, cioè tutto quello che poteva servire – come egli scriveva – 'a chiarire la realtà della vita pubblica dell'epoca', al fine di dimostrare l'infondatezza di tale presunto mandato imperativo. Pertanto egli faceva notare che, fin dalla lettera convocatoria da parte del sovrano – inviata alle città affinché provvedessero ad eleggere i loro rappresentanti – si chiedeva che questi avessero i requisiti per trattare, con ampi e legittimi poteri, i maggiori problemi dell'Isola. La formula testuale era: 'per decidere il bene del Regno ed il servizio regio'[7] (cioè la concessione del donativo). In essa si dichiarava esplicitamente che veniva esclusa ogni limitazione all'autonomia ed indipendenza dell'eletto. Inoltre, poiché il sovrano indicava soltanto in quel momento e per sommi capi, i principali argomenti oggetto della trattazione parlamentare, questi, non essendo noti precedentemente, non avrebbero potuto in alcun modo essere limitati da istruzioni restrittive imposte ai rappresentanti. Esse esistevano soltanto per i cosiddetti gravami, una specie di *cahiers de doléance*, nei quali venivano elencati gli eventuali soprusi e illegalità, commessi dalle autorità governative nei confronti della popolazione isolana, affinché il sovrano concedesse l'eventuale riparazione dei torti, negata dalla giustizia ordinaria. Ma neanche per queste più precise istruzioni esisteva un obbligo giuridico *ad hoc*. Persino nell'attribuzione del donativo (la legge finanziaria di allora) gli eletti non ricevevano alcuna limitazione del loro mandato.[8] Quanto al rifiuto a volte attuato dai rappresentanti di approvare un donativo troppo alto, trincerandosi dietro l'affermazione di non averne mandato, ciò era considerato da Marongiu solo un abile pretesto per sottrarsi alle pressioni reali intese ad avere quanto richiesto (che, se accordato *sic et simpliciter*, avrebbe sicuramente esposto i rappresentanti alle ire della popolazione).

Pertanto anche questa presunta *diminutio* dell'ampiezza mandataria attribuita al Parlamento Sardo veniva dal Marongiu rispedita al mittente, soprattutto a Francesco Sulis che aveva con baldanzosa certezza affermato la totale soggezione politica di tale istituzione ai *desiderata* della corona iberica. L'A. sgretolava completamente le argomentazioni dello studioso, che, professore all'Università di Sassari di Elementi di Diritto Pubblico e deputato liberale al Parlamento Subalpino aveva, non solo svuotato di ogni benché minimo potere decisionale i Bracci della Sardegna, ma per di più anche accusati di una gestione faziosa ed interessata degli 'affari' isolani.[9]

Indubbiamente, il funzionamento del Parlamento sardo – come affermava Marongiu – fu certamente limitato dalla situazione geografi-

co – logistica dell'isola, all'interno della quale le comunicazioni erano estremamente difficoltose per quanti dovessero recarsi alle convocazioni assembleari (motivo per cui era previsto anche l'istituto della rappresentanza personale). Tali limiti incidevano soprattutto sulla capacità di interferire sulla politica generale dei monarchi spagnoli, comunicata agli Stamenti, per grandi linee, dal Vicerè soltanto nel momento del discorso inaugurale di apertura della sessione parlamentare. Ma nella realtà storica di quei tempi – notava il Marongiu – per tutti i parlamenti europei 'la possibilità di influire efficacemente sulle direttive del governo era completamente al di fuori di ogni pratica considerazione'.[10]

Ove invece l'assemblea sarda si attivò e prodigò sempre fu per la difesa dei diritti dei propri rappresentati, per la riparazione dei torti da essi subiti, non esitando, per queste finalità, ad agire anche con risolutezza ed energia, come avvenne in occasione dei gravissimi contrasti sorti fra di essa e le autorità reali dell'isola negli 1665-1668 (reggente Maria Anna d'Austria per il figlio Carlo II); in quel periodo si giunse addirittura allo scioglimento dell'assemblea stessa, con gravissime conseguenze politiche per la popolazione, a causa dei dissensi tra la Corona e il Parlamento, culminati con l'assassinio del marchese di Laconi, *leader* del braccio militare (che si era recato nei mesi precedenti alla corte di Madrid per perorare i diritti della Sardegna presso il Supremo Consiglio di Aragona) e dello stesso Viceré, marchese di Villasor; fu allora – e per la prima volta nella storia del Parlamento isolano – che venne violata la libertà di un componente il Braccio militare con l'arresto ed il confino ad Alghero 'dell'avvocato d'ufficio' di tale ordine.

Il Parlamento sardo, in effetti, allorché si trattava di confrontarsi con i sovrani di Spagna su quanto considerava giusto ottenere, non dimostrò mai incertezza e debolezza: e ciò avvenne sia quando richiese l'esclusività delle cariche isolane, sia quando perorò la parificazione della Sardegna agli altri Stati della Corona spagnola, dove aragonesi, catalani, navarresi, valenziani, baschi, avevano da tempo ottenuto il diritto, sia di avere funzionari propri *in loco*, sia di inserire propri uomini nelle più rilevanti cariche nazionali. Sotto questo aspetto il Parlamento sardo si comportò sempre con estrema tenacia e determinazione (ciò avrebbe comportato, fra l'altro, anche un notevole introito locale di stipendialità); tanto che, nonostante i consigli contrari a tali concessioni, espressi dai Viceré ai sovrani, l'assemblea, con la sua tenacia, riuscì ad ottenere, alla fine del XVII secolo, la quasi totalità degli uffici civili e militari, fra i quali le importantissime cariche di Governatore e Procuratore reale.[11]

Nella parte finale del volume, Marongiu non poteva non entrare nel merito della cosiddetta funzione 'legislativa' esercitata dal Parlamen-

to, facendo correttamente notare che – a quei tempi – più che la creazione di nuove leggi, interessava l'osservanza fedele di quelle in vigore, onde evitare abusi e vessazioni da parte dei funzionari reali. Essa, coerentemente alla evoluzione comune alle grandi assemblee rappresentative europee, con il trascorrere del tempo, divenne sempre più formalmente corretta e sostanzialmente estesa: si era infatti passati dalle assemblee pre-parlamentari a quelle parlamentari, secondo il noto schema metodologico del Marongiu.[12] Pertanto, anche in Sardegna, intorno alla metà del '400, così come avveniva nel resto d'Europa, l'iniziativa delle proposte di legge di legge fu assunta dai Bracci.

Gli atti emanati dal Re, su istanza parlamentare, si denominavano *capitula e acta curiarum* e cominciarono da allora ad essere redatti con regole fisse da entrambe le parti. Fu proprio a causa del mancato rispetto di tali normative che nacquero i disordini del 1655-56 (che abbiamo precedentemente ricordato), dei quali Marongiu scriveva: 'il quadro degli avvenimenti è di una vastità e di una imponenza tali da non trovare riscontro neppure in molti altri Parlamenti europei'. Si trattò, infatti, non soltanto di un violento scontro tra i Bracci e il Viceré (in parte anche per motivi personali) ma soprattutto della lotta tra i sostenitori di un governo più rappresentativo e quelli, invece, fedeli alle teorie assolutistiche. Il terreno della lotta fu costituito dal diverso modo di valutare e di intendere i poteri consentiti agli ordini parlamentari nel campo legislativo. L'urto perciò fu gravissimo e per quanto la vittoria restasse in definitiva al potere regio (il Parlamento, come precedentemente detto, fu sciolto) ne ebbe inizio quel graduale distacco dei Sardi dalla Spagna che fruttò poi – quantunque troppo debolmente secondato dai primi governi sabaudi – l'ingresso della Sardegna nella grande famiglia italiana'.[13]

Le conclusioni a cui giungeva Marongiu mettono – a mio parere – un punto fermo sulle funzioni ed attività parlamentari variamente rientranti nella sfera politica dei tempi dell'età di mezzo. In quest'ottica, egli inquadrava tale istituzione entro l'orbita di ampio respiro di quelle parlamentari europee ad essa coeve: 'il Parlamento sardo operò attivamente nei limiti concessigli dalla costituzione politica e dalle realtà storiche contingenti, e non lasciò intentata alcuna via per giovare agli interessi generali dell'Isola. Non riuscì, certamente in tutto ciò che si era proposto…ma la sua opera complessiva ritornò certamente utile a difesa del paese'.[14] Di sicuro il Parlamento concorse notevolmente a moderare l'assolutismo spagnolo che in Sardegna, infatti, non raggiunse gli eccessi iberici; inoltre, cooperò efficacemente all'emanazione di leggi equilibrate che posero le fondamenta di rilevanti ordinamenti giuridici, anche successivi.

Si può, pertanto, concludere che, grazie al Parlamento, l'espressione dei generali interessi della Sardegna fu sempre resa nota e conosciu-

ta a Madrid, ove veniva presentata e difesa con dignità e fermezza, riuscendo in tal modo, come si è visto, ad ottenerne sovente un riscontro estremamente vantaggioso per il governo dell'Isola.

Di conseguenza, concludeva il Marongiu: 'per tutto il tempo in cui il Parlamento ebbe vita, i Bracci rappresentarono regolarmente, anche se costituiti in maniera non 'democratica', non soltanto gli interessi settoriali dei più elevati gruppi sociali, ma la stessa popolazione isolana. Il Parlamento fu pertanto organo rappresentativo, non soltanto sotto il profilo giuridico, ma anche sotto l'aspetto sociologico e propriamente politico';[15] ed esso, a suo parere, certamente contenne il seme delle future e perfette assemblee parlamentari.

Marongiu fece rifluire quasi completamente – come si è detto – nel suo successivo volume, pubblicato nel 1979, questo del 1931 soprattutto affinché l'opera – come scriveva l'A. – venisse inserita 'in quella vasta corrente di studi, nella quale ha un posto di primo piano la International Commission for the History of Representative and Parliamentary Institutions, che io stesso ho l'onore e la responsabilità di presiedere';[16] ma anche perché – ammetteva l'A. con l'usuale sincerità – nella sua decisione di dedicare un secondo volume ai Parlamenti di Sardegna non era certo stata ininfluente l'osservazione di Dante (*Inferno I libro* pp. 89-90) circa l'amore dei sardi per la loro terra: 'a dir di Sardigna le lingue lor non si sentono stanche'.[17]

E così scienza e sentimento erano da Marongiu mirabilmente congiunti nel nome del Parlamento di Sardegna.

Note

[1] Cfr. A. Marongiu, *Prefazione* a *I Parlamenti sardi. Studio storico istituzionale e comparativo* (Milano, 1979), pp. III-IV. Una bibliografia pressoché completa delle opere di Antonio Marongiu si trova in *Archivio Storico di Sassari,* Moderna, Sassari, 1987. Inoltre, la Deputazione di Storia per la Sardegna ha pubblicato nel 1975 (a cura di A. Boscolo) i saggi di Antonio Marongiu sulla Storia giuridica e politica della Sardegna.

[2] A. Marongiu, *Prefazione* a *I Parlamenti di Sardegna nella storia e nel diritto pubblico comparato* (Roma, 1931), p. IX.

[3] Ibidem.

[4] Cfr. Ibidem, p. 233.

[5] Eravamo nel 1931!

[6] Cfr. Ibidem, pp. 35 ss.

[7] Cfr. Ibidem, p. 42.

[8] Solo Cagliari, la città più importante dell'isola, che aveva pertanto un peso politico maggiore nelle delibere parlamentari, a volte limitava la pienezza dei poteri dei suoi rappresentanti allorché si trattava di decidere questioni politiche di grande rilevanza: si trattava, comunque, di un mandato non pieno, ma che non si poteva definire imperativo.

[9] Cfr. F. Sulis, *Degli Stamenti sardi* (Sassari, 1854); cfr. inoltre, A. Mattone, 'Gli studi sulle istituzioni rappresentative in Italia fra erudizione e miti storiografici', in L. Casella (a cura di), *Rappresentanza e territori. Strumenti di storia del Friuli* (Udine, 2003), pp. 47-74.

[10] Marongiu, *I Parlamenti di Sardegna*, p. 234.

[11] Ancora più rilevante fu poi l'ingresso, nel 1624, di Giovanni Vico, storico e giurista sassarese, nel Supremo Consiglio d'Aragona.

[12] Per una sintesi degli studi di Marongiu sulla metodologia parlamentare, cfr. gli Atti del Convegno a lui dedicato: M. S. Corciulo (a cura di), *Contributi alla storia parlamentare europea (secoli XII-XX), Atti del 43° Congresso ICHRPI* (Camerino,1996).

[13] Cfr. Marongiu, *I Parlamenti sardi*, p. 191.

[14] Marongiu, *I Parlamenti di Sardegna*, pp. 233 ss.

[15] Marongiu, *I Parlamenti sardi*, pp. 305-306.

[16] Marongiu fu Presidente della International Commission for the History of Representative and Parliamentary Institutions dal 1970 al 1980. Sul contributo di Marongiu alla nascita e all'evoluzione scientifica della ICHRPI, cfr. M. S. Corciulo, 'Alle origini del dibattito metodologico sulla Storia delle istituzioni parlamentari. Il contributo della International Commission for the History of Representative and Parliamentary Institutions (ICHRPI)', *Giornale di Storia Costituzionale*, n. 4, (2002).

[17] Cfr. Marongiu, *Prefazione* a *I Parlamenti di Sardegna*, p. IV.

1.
Fonti e metodologie per lo studio della storia dei Parlamenti

Sources and Methodology for the Study of Parliamentary History

Mariarosa Cardia

Acta Curiarum Regni Sardiniae. Il progetto di edizione critica degli Atti dei Parlamenti sardi

Antonio Marongiu, illustre studioso degli antichi parlamenti, che ci ha accompagnato nella fase iniziale di questa impresa, in uno scritto del 1953, perorando l'importanza di inserire in Italia l'insegnamento universitario della storia delle istituzioni politiche per colmare una lacuna nei nostri studi storici e contribuire alla cultura politica dei giovani, ricordava che questo insegnamento, 'caldeggiato in tempi di recente libertà', 'non poteva trovare libero sviluppo in tempo d'oppressione. Sotto Carlo Alberto, nel 1836, si vietò persino in modo assoluto la pubblicazione degli atti delle nostre antiche assemblee rappresentative per timore che in Italia e fuori aprissero il campo a discussioni e controversie meno coerenti ai principii della monarchia'.[1]

In realtà la ricorrente ricerca, da parte degli storici e dei giuristi, delle 'leggi degli antenati', delle istituzioni del passato come modello ed esempio per il presente, nasceva non solo dalla necessità di porre un freno all'assolutismo regio, ma anche dall'opposta esigenza di motivare la piena sovranità del Principe, come nel caso del Piemonte sabaudo, privo di una 'Costituzione degli antenati'. La ricerca delle 'leggi degli antenati' nell'Ottocento iniziò proprio con la proposta avanzata l'8 giugno 1836 dalla Deputazione di Storia Patria di pubblicare gli atti delle antiche assemblee rappresentative degli Stati generali della monarchia di Savoia, allo scopo di dimostrare la piena sovranità regia.[2] Ma, come ricordava Antonio Marongiu, nonostante tali dichiarati intenti, il governo ostacolò il piano di pubblicazione, nel timore di rinnovare la memoria di limitazioni alle prerogative del Sovrano.

Nel caso del Regno di Sardegna la 'Costituzione degli antenati' risaliva alle Corti generali celebrate a Cagliari nel 1355 da re Pietro IV d'Aragona, la prima, vera riunione delle Curiae generales del Regnum Sardiniae, quando gran parte dell'isola era sotto il controllo del Giudicato di Arborea o sotto l'influenza delle repubbliche di Pisa e di Genova. I nuovi documenti pubblicati nel volume curato da Giuseppe Meloni hanno rivelato il ruolo, svolto in funzione paritaria con gli altri tre bracci, da un quarto braccio composto esclusivamente da nativi sardi, che espose al sovrano le proprie condizioni, formulò proposte, ottenne risposte. E hanno evidenziato come delle Corti del 1355 fosse rimasta testimonianza nella legislazione catalana degli anni succes-

sivi, a dimostrazione di un indiscutibile riconoscimento giuridico. Proprio quell'assemblea rappresentativa, esportata dai catalano-aragonesi a trent'anni dalla conquista dell'isola, divenne nel corso di circa quattro secoli lo strumento dei Sardi per partecipare al governo del loro paese, il centro della vita pubblica isolana, espressione della concezione contrattualistica del rapporto tra Corona e Stamenti, dell'individualità storica e dell'autonomia giuridica del Regno di Sardegna.

Alla fine del XVI secolo, insieme al processo di centralizzazione della monarchia di Filippo II, il Parlamento sardo si rafforzò, cominciando ad assumere una propria e originale fisionomia politica e legislativa. Nasceva contemporaneamente anche l'elaborazione e la trattatistica parlamentare: il giurista cagliaritano Francesco Bellit raccolse nel 1572 tutti i capitoli di Corte emanati nel 1421 e i capitoli approvati dal 1421-1565 per iniziativa dello Stamento militare,[3] lavoro ripreso e ampliato nel 1591 dal funzionario Pietro Giovanni Arquer.[4] Fu la raccolta dei *Capitula sive acta Curiarum Regni Sardiniae* del magistrato cagliaritano Giovanni Dexart, pubblicata nel 1645 su deliberazione del parlamento sardo, a dare organicità e sistemazione teorica al diritto parlamentare sardo.[5] I giuristi sardi del Seicento difesero le libertà e i privilegi del regno dall'opprimente fiscalismo e dal centralismo della Corona di Spagna proprio in nome dell'antica Costituzione, della natura contrattualistica dei capitoli di Corte, che contrastavano la piena affermazione dell'assolutismo regio. Ne sono la prova le tensioni e le lotte nelle travagliate sessioni parlamentari seicentesche, fino alla crisi istituzionale del 1668.

Il declino delle istituzioni parlamentari si accentuò nel 1720 con la cessione del Regno di Sardegna ai Savoia: le Corti generali non vennero più riconvocate, nonostante il Trattato di Londra disponesse il rispetto degli ordinamenti preesistenti. Si affermò la prassi di convocare le prime voci dei tre Stamenti per ratificare la concessione del donativo. Svuotato della sua funzione pattista e di rappresentanza degli ordini del Regno, il Parlamento sopravvisse soltanto formalmente e a fini fiscali.

Ma il profondo radicamento delle vecchie istituzioni parlamentari nella società sarda fu evidente durante la 'sarda rivoluzione' del 1793-96, quando gli Stamenti si autoconvocarono, scontrandosi duramente con la monarchia sabauda. La difesa degli antichi privilegi e libertà diede vita a un nuovo costituzionalismo, eversivo rispetto all'Antico Regime. I patrioti sardi, attraverso una rilettura moderna della tradizione parlamentare alla luce delle dottrine giuspubblicistiche settecentesche, innovarono la natura giuridica dell'antico istituto parlamentare, attribuendo agli Stamenti la 'rappresentanza della Nazione', nel tentativo di ottenere all'interno della monarchia sabauda un'autonomia paritaria.

Non è quindi casuale che proprio in questa fase di aspro risentimento antipiemontese riemergesse l'esigenza di una raccolta delle fonti 'costituzionali' e degli antichi privilegi del Regno, che rafforzasse le trattative con il governo sabaudo condotte dalla deputazione dei tre Stamenti sulla piattaforma delle 'cinque domande', le prime due delle quali – la richiesta della 'celebrazione delle Corti generali' con periodicità decennale e '[dell'] osservanza e confermazione de' privilegi e Leggi fondamentali del Regno' – configuravano, come ha scritto Italo Birocchi, una vera e propria 'carta autonomistica della Sardegna'.[6] Né è casuale che nel 1802 un eminente esponente del movimento patriottico sardo, Giovanni Maria Angioy, ex magistrato della Reale Udienza, esule a Parigi, elaborasse il progetto di una storia della 'legislazione antica della Sardegna', per rintracciare l'origine delle leggi fondamentali che avevano reso costituzionale la monarchia sarda e per dimostrare che gli Stamenti avevano garantito nel corso dei secoli la 'rappresentanza nazionale' della Sardegna.[7]

Dopo la 'normalizzazione' attuata dalla Restaurazione, che confinò le Corti sarde in una funzione subalterna al sovrano, fu la contrastata esperienza della 'perfetta fusione' del 1847 – che portò alla soppressione delle antiche istituzioni del Regno e all'estensione all'isola delle leggi e degli ordinamenti amministrativi degli Stati di Terraferma – e fu poi la promulgazione dello Statuto Albertino nel 1848 a dare un nuovo impulso alla riflessione storiografica sui Parlamenti sardi. Nello schieramento liberale pochi erano stati i difensori degli antichi ordinamenti che garantivano l'autonomia del Regno, come il canonico Salvator Angelo De Castro. I più li avevano considerati un anacronistico e dannoso retaggio medievale e feudale.

È nella seconda metà dell'Ottocento, con la frustrazione per la perdita del Regno, che la storiografia sarda delinea la specifica fisionomia politico-istituzionale e l'autonomia del Regnum Sardiniae basata sulla 'Costituzione degli antenati'. L'affermazione del 'mito' politico e culturale del Parlamento sardo – sviluppatasi proprio quando l'istituto parlamentare aveva di fatto cessato di esistere – darà nuovo impulso all'esigenza di pubblicare gli atti delle Corti, che, in polemica con l'assolutismo sabaudo, verranno letti in un'ottica nuova: quella della 'rappresentanza nazionale della Sardegna'. Lo storico cagliaritano Vittorio Angius nel 1856 pubblicò nel *Dizionario geografico-storico-statistico-commerciale degli Stati di Sua Maestà il re di Sardegna*, curato da Goffredo Casalis, *le Memorie de' Parlamenti generali o Corti del Regno di Sardegna*, che contenevano, sintetizzati in lingua italiana, gli atti stamentari e i capitoli di Corte dal 1355 al 1668, e poi, in un'appendice, gli atti fino al 1796.

Ma furono soprattutto l'unificazione nazionale e la conseguente ricerca delle fonti del diritto pubblico italiano a rilanciare il progetto di

edizione degli atti dei Parlamenti sardi. L'Italia unita, infatti, non aveva una 'Costituzione degli antenati'. In mancanza di una monarchia costituzionale in grado di svolgere, come in Spagna e in Francia, una forte funzione unificatrice, la storia istituzionale italiana era caratterizzata dalla frammentazione particolaristica e la tradizione parlamentare era connessa alla storia politica e istituzionale degli antichi Stati.

Da quel momento prese avvio un tormentato itinerario, che non si è ancora concluso. Il 22 febbraio 1865 la Regia Deputazione di Storia Patria per le antiche province, presieduta da Federico Scoplis, inserì nel progetto di pubblicazione degli atti degli Stati Generali – 'Historia Patriae Monumenta' – anche gli atti del Parlamento sardo, affidandone l'incarico a due studiosi piemontesi, il conte Carlo Baudi di Vesme e Carlo Felice Comino, sostituto procuratore generale presso la Corte di Cassazione di Torino, e poi, dopo la morte del Baudi nel 1877, allo storico cagliaritano Filippo Vivanet, direttore del Museo archeologico. Nel 1868 lo storico e magistrato Pasquale Tola aveva regestato nel *Codex diplomaticus Sardiniae* i capitoli di Corte degli ultimi tre Parlamenti della dominazione spagnola (1678, 1688, 1699).

I curatori dell'Ottocento non riuscirono a portare a termine un lavoro tanto complesso e difficile, stretti da difficoltà finanziarie insormontabili, e ci lasciarono solo un primo tentativo di inventario delle fonti sarde conservate negli archivi spagnoli. D'altronde, neanche il catalano Eduard Toda y Güell, nonostante la notevole disponibilità finanziaria concessa dal governo spagnolo per raccogliere gli atti delle Cortes degli antichi regni di Spagna,[8] inclusi quelli del Regnum Sardiniae, riuscì a completare la raccolta delle fonti parlamentari, sicché la Real Academia de Historia di Madrid non pubblicò gli atti delle Cortes di Sardegna e, anzi, molte fonti manoscritte presenti negli archivi sardi furono acquistate e portate in Spagna.[9] Tuttavia alla fine del secolo cominciò a definirsi l'analisi storico-giuridica sulla natura dei parlamenti sardi attraverso gli studi di Giovanni Zirolia.[10]

Nei primi decenni del Novecento, in occasione delle celebrazioni del cinquantenario dell'Unità d'Italia, l'attenzione storiografica sugli Stamenti sardi si riaccese, come confermano il saggio del 1910 di Arrigo Solmi sulle Corti del 1355,[11] il lavoro di Raffaele Di Tucci[12] – che collega l'istituzione parlamentare sarda alla legislazione aragonese di diritto pubblico della prima metà del '400 – e sopratutto la monografia del 1932 di Antonio Marongiu su *I Parlamenti in Sardegna nella storia e nel diritto pubblico comparato*, innovativa per il metodo comparatista nell'analisi della parabola istituzionale. L'Accademia dei Lincei aveva rielaborato l'antica ipotesi della collana di fonti parlamentari, predisponendo nel 1913, su proposta di Luigi Luzzati, un ambizioso piano di pubblicazione degli atti delle assemblee costituzionali italia-

ne dal Medioevo al 1831. Ma anche quella volta la serie dedicata al Parlamento sardo affidata, dopo la morte del Vivanet nel 1905, al direttore dell'Archivio di Stato di Cagliari Silvio Lippi, non andò a buon fine. Negli anni Trenta, in un clima di rinnovato interesse, era apparsa in Italia e all'estero una nutrita serie di studi sull'argomento e, presso l'Università di Lovanio, era stata creata nel 1936, in seno al Comitato Internazionale di Scienze Storiche, la Commissione Internazionale per la Storia delle Assemblee di Stati, che avrebbe dato un notevole impulso agli studi storico-istituzionali e comparativi, e della quale furono membri Antonio Marongiu e Antonio Era.

Nel dopoguerra, la ripresa della vita democratica favorì nella storiografia italiana un confronto con gli studiosi europei e un nuovo approccio allo studio delle istituzioni rappresentative. Il testimone ideale dell'impresa passò alla Deputazione di Storia Patria per la Sardegna, creata nel 1935, succedendo alla Società Storica Sarda. Nel 1951 la Deputazione, col patrocinio della Regione autonoma della Sardegna, varò un progetto di pubblicazione degli atti parlamentari con la collana intitolata, su proposta di Antonio Era, *Acta Curiarum Regni Sardiniae.*[13] Grazie ad alcune missioni scientifiche svolte tra il 1951 e il 1954 negli archivi spagnoli e all'impegno di studiosi di grande prestigio – quali Antonio Era, Antonio Marongiu, Alberto Boscolo, Bacchisio Raimondo Motzo, Francesco Loddo Canepa – venne compilato un inventario delle fonti.[14] Il primo volume della raccolta, su *I Parlamenti di Alfonso il Magnanimo* (1421-1452), fu pubblicato nel 1953 a cura di Alberto Boscolo; il secondo volume su *Il Parlamento sardo del 1481-1485*, curato da Antonio Era, uscì nel 1955; il terzo volume su *Il Parlamento del viceré Fernandez de Heredia (1553-1554)*, curato da Giancarlo Sorgia, fu pubblicato nel 1963.[15]

I problemi relativi allo studio delle istituzioni parlamentari sarde suscitarono particolare interesse al Convegno della Commissione Internazionale per la Storia delle Assemblee di Stato, svoltosi a Cagliari e a Oristano dal 18 al 22 dicembre 1961.[16] In quell'occasione il prof. Francesco Loddo Canepa, presidente della Deputazione di Storia Patria per la Sardegna, fece il punto sulle ricerche condotte in Spagna dal gruppo di studiosi sardi per la ricostruzione delle vicende parlamentari dell'isola. Ma, alla metà degli anni Sessanta la crisi culturale e organizzativa della Deputazione di Storia Patria comportò l'interruzione del progetto. Anche l'interesse dell'analisi storiografica verso nuovi campi contribuì a porre in ombra l'impresa editoriale degli antichi Parlamenti.

Oltre vent'anni dopo, il 10 maggio 1983, l'Ufficio di Presidenza del Consiglio regionale della Sardegna – presieduto dall'on. Alessandro Ghinami – accolse la mia proposta di riprendere l'iniziativa di progettare e finanziare una così impegnativa collezione di fonti. La deci-

sione del Consiglio regionale, 'erede' delle antiche Corti del Regno, si collocava in una temperie politica e culturale che aveva visto crescere negli anni Settanta nell'isola la ricerca sui temi dell'identità regionale e la riflessione critica sui contenuti e sui metodi della storiografia locale. Questo progetto, collocato nell'ambito della costituzione di una sezione storica dell'Archivio del Consiglio regionale, rappresentava indubbiamente l'impegno più rilevante tra le iniziative culturali avviate e anticipava le iniziative promosse in Spagna per la pubblicazione degli atti delle Cortes.[17] L'edizione di questa raccolta documentaria della nostra storia medioevale e moderna può consentire, infatti, una più compiuta e diffusa conoscenza delle tradizioni storico-giuridiche della Sardegna nell'ambito dell'evoluzione della società e delle istituzioni rappresentative europee e offre un fondamentale strumento di ricerca alla storia dell'isola, innovandone temi e contenuti.

Con questa consapevolezza il Consiglio di Presidenza decise di accertare, con la collaborazione di esperti, le modalità e i tempi necessari per la realizzazione del lavoro, nonché il relativo onere finanziario. A tal fine si svolsero in giugno e in luglio 1983 due riunioni con gli studiosi degli Atenei sardi interessati alla materia e con i rappresentanti della Deputazione di Storia Patria, della Soprintendenza Archivistica regionale, degli Archivi provinciali. Scaturirono da quegli incontri numerosi e preziosi suggerimenti. Nel febbraio 1984 si decise di istituire un Comitato scientifico composto da alcuni membri del Consiglio di Presidenza e da rappresentanti degli Atenei sardi, della Deputazione di Storia Patria, degli Archivi, della International Commission for the History of the Representative and Parliamentary Institutions, del Consiglio Nazionale delle Ricerche e dell'UNESCO.[18]

Il Comitato predispose un piano di pubblicazione con nuovi criteri editoriali, discussi i1 28-29 novembre 1984 in un seminario di studi sul tema 'Istituzioni rappresentative nella Sardegna medioevale e moderna',[19] che vide la partecipazione dei più qualificati studiosi italiani e stranieri. Il progetto comporta la pubblicazione di ventidue Parlamenti dal 1355 al 1699 e degli atti stamentari del 1793-1799.[20] Si basa sul superamento dello studio dell'istituto parlamentare da un punto di vista esclusivamente formale, per porre invece le istituzioni in rapporto con la società che le esprime e che esse rappresentano e rispecchiano, secondo la visione innovatrice espressa dal dibattito storiografico internazionale.[21] Inoltre, rispetto ai volumi pubblicati nel 1953-63, prevede la fruibilità dei testi anche per un lettore non specialista, criteri uniformi, l'articolazione di ogni volume in quattro parti: un saggio introduttivo, che inquadra le vicende parlamentari nel contesto storico complessivo; l'analisi archivistica e diplomatistica dei documenti editi; la trascrizione e la regestazione degli atti parlamentari; gli indici onomastico e toponomastico.[22]

Oltre agli atti del seminario del 1984, raccolti nel 1° vol., sono stati sinora pubblicati undici Parlamenti: il 2° vol., Il Parlamento del re Pietro IV d'Aragona (1355), curato da Giuseppe Meloni; il 3° vol., il Parlamento del re Alfonso V (1421-1452), lasciato incompiuto da Alberto Boscolo e completato da Olivetta Schena; il 5° vol., il Parlamento Giovanni Dusay e Ferdinando Giron de Rebolledo (1495-1511), curato da Anna Maria Oliva e Olivetta Schena; il 10°, il Parlamento Giovanni Coloma (1572-1574), curato da Leopoldo Ortu; il 12° vol., il Parlamento D'Aytona (1592-1598), curato da Diego Quaglioni; il 14° vol., il Parlamento Gandia (1614), curato da Gian Giacomo Ortu; il 16° vol., il Parlamento straordinario Bayona (1626), a cura di Gianfranco Tore; il 17°, il Parlamento Bayona (1631-1632), a cura di Gianfranco Tore; il 18° vol., il Parlamento Avellano (1641-1643), curato da Giovanni Murgia; il 23°, il Parlamento Montellano (1698-1699), curato da Giuseppina Cattani e Carla Ferrante; il 24°, l'attività degli Stamenti nella 'sarda rivoluzione' (1793-1799), a cura di Luciano Carta. Altri due Parlamenti sono in fase di stampa: gli atti del Parlamento Antonio Coloma (1602-1603), a cura di Giuseppe Doneddu, e del Parlamento Santo Stefano (1677-1678), curato da Guido D'Agostino.

Molte sono state le difficoltà da superare, sia di ordine culturale sia di ordine politico e tecnico. Alcuni illustri studiosi, come Giovanni Todde, Alberto Boscolo, Giancarlo Sorgia, Girolamo Sotgiu e Marco Tangheroni, che hanno dato una preziosa collaborazione a questa impresa e che ricordiamo con riconoscenza e affettuoso rimpianto, sono scomparsi. Questo progetto ha affiancato lo sforzo, troppo spesso isolato e solitario, del mondo accademico, e ha cominciato a tessere una grande tela per dare spessore alla nostra memoria di popolo. Una grande tela sul cui ordito sono impegnate le nostre energie intellettuali e che ha richiesto un confronto assai ampio.

Il dialogo e la collaborazione soprattutto con istituzioni culturali e studiosi della Spagna si sono intensificati negli anni. Il 27-29 ottobre 1994 si è tenuto ad Alghero un convegno di studi su 'Corts valencianes e Parlamenti sardi nel Medioevo e nell'Età moderna', promosso dal Consiglio regionale della Sardegna e dalle Università di Sassari (Dipartimento di Storia) e di Valencia (Facoltà di Geografia e Storia), in cui si è realizzato un confronto scientifico sui rispettivi modelli editoriali degli atti delle Corti medievali e moderne.[23] Il 25-26 novembre 1998 la collana 'Acta Curiarum Regni Sardiniae' è stata presentata a Barcellona e discussa con i rappresentanti del mondo politico e culturale.

L'auspicio è che entro un triennio questo impegno di lunga lena e di grande respiro possa essere completato, portando alla luce un notevole corpus documentario sulla storia del Mediterraneo dal XIV al XVIII secolo, una raccolta di fonti indispensabile per cogliere l'intersezione

tra storia locale e storia generale e chiarire alcuni complessi nodi storiografici. Troverebbe così, finalmente risposta l'augurio espresso da A. Marongiu nel 1931, in calce alla bibliografia iniziale del suo volume sui Parlamenti di Sardegna, che fosse 'prossimo il giorno in cui gli studiosi e gli amanti della storia patria' potessero 'vedere stampati questi atti parlamentari'. Tanto più che la diffusione dei risultati di questa rilevante, corale impresa sarà assicurata dall'inserimento della collana editoriale nella Digital Library della Regione e nel sito Internet del Consiglio regionale.

Dall'esame del peculiare ruolo che i Parlamenti andarono assumendo in rapporto alla società isolana in quel corso storico plurisecolare si potrà non soltanto valutare meglio quanto questo istituto trapiantato da una classe dominante esterna seppe divenire strumento di unità amministrativa e territoriale della Sardegna e organo giuridicamente e politicamente rappresentativo, ma si potrà, più in generale, recuperare dall'oblio una fonte straordinaria per la conoscenza della storia sarda nel più ampio contesto europeo, dei processi di unificazione nazionale, di fusione etnica, di evoluzione del mondo feudale isolano. È questo il senso del rilievo dato all'utilizzazione anche della documentazione indiretta, al fine di consentire uno studio dell'istituzione nell'ambito sociale in cui opera.

Come affermava Marongiu, la storia degli antichi Parlamenti sardi interessa 'non solo lo studioso di problemi giuridici e politici, ma anche chi voglia rendersi conto della storia e dello stato dell'evoluzione civile del popolo sardo'[24] durante le due epoche spagnola e sabauda. Non si può scrivere la storia di un paese ignorandone le istituzioni rappresentative, che esprimono l'essenza e la misura della partecipazione delle popolazioni al governo e del rapporto tra governanti e governati. Negli ultimi decenni è in atto una ripresa e un affinamento degli studi sulle istituzioni parlamentari, che estende il proprio campo di ricerca dall'analisi giuridico-formale dell'istituzione all'analisi dell'evoluzione dei nessi molteplici tra l'istituzione e la società. Di questa maturazione il Consiglio regionale si è fatto interprete.

Lavorare all'interno di questo Comitato ha, dunque, comportato per i suoi membri percorrere un viaggio a ritroso nel tempo, riprendendo la trama di un'affascinante iniziativa sulla quale sin dalla seconda metà dell'Ottocento si cimentarono storici, paleografi, archivisti. Le difficoltà che quegli studiosi incontrarono nel passato permangono ancor oggi: ampiezza e dispersione delle fonti, loro stato di conservazione, costi economici e intellettuali. Ma oggi esiste certo un apporto di energie intellettuali e finanziarie più consistente rispetto al passato e che fa ben sperare che 'la fatica di radunare le fronde sparse' compiuta dal prof. Francesco Loddo Canepa e dagli altri studiosi non sia stata vana.

D'altronde, già Loddo Canepa sottolineava come la storia parlamentare sia 'la parte più viva, più palpitante, più aderente alla realtà della storia della Sardegna, il documento più eloquente delle sue travagliate vicende, dei suoi bisogni, delle sue speranze', e che avrebbe fornito 'un poderoso e decisivo contributo alla comparazione con le assemblee di altre regioni italiane e di altri popoli'.[25]

A conclusione di questo complesso e imponente progetto editoriale ci troveremo forse in condizione di riscrivere la storia della Sardegna aragonese e spagnola e del primo secolo di dominazione sabauda, e di correggere molti pregiudizi e luoghi comuni. La collana 'Acta Curiarum Regni Sardiniae', attraverso il recupero e la valorizzazione della memoria storica, apporterà certamente un prezioso contributo a dare senso all'identità, a capire le ragioni della speciale autonomia sarda, a fornire nuovi strumenti all'impegno democratico e autonomistico delle popolazioni e delle istituzioni della Sardegna.

Note

[1] A. Marongiu, 'Valore della storia delle istituzioni politiche', *Il Politico*, n. 3, (1953), e in *Scritti di sociologia e politica in onore di Luigi Sturzo* (Bologna, 1953), vol. II, ora in A. Marongiu, *Dottrine e istituzioni politiche medievali e moderne. Raccolta* (Milano, 1979), p. 26.

[2] Cfr. A. Manno, *L'opera cinquantenaria della Regia Deputazione di Storia Patria di Torino* (Torino, 1884), pp. 23-4.

[3] F. Bellit, *Capítols de Cort del Stament Militar de Sardenya* (Caller, 1572).

[4] P. G. Arquer, *Capítols de Cort del Stament Militar de Sardenya* (Caller, 1591).

[5] J. Dexart, *Capitula sive acta curiarum regni Sardiniae* (Calari,1641).

[6] I. Birocchi, *La carta autonomistica della Sardegna tra antico e moderno. Le 'leggi fondamentali' nel triennio rivoluzionario. 1793-96* (Torino, 1992).

[7] Cfr. A. Mattone, P. Sanna, 'Giovanni Maria Angioy e un progetto sulla storia del "Diritto Patrio" del Regno di Sardegna (1802)', in *Studi e ricerche in onore di Girolamo Sotgiu* (Cagliari, 1994), II, pp. 231-308.

[8] Dal 1896 al 1917 la Real Academia de la Historia di Madrid pubblicò ventitrè volumi della 'Colleción de Cortes de los antiquos Reinos de Aragón y de Valencia y Principado de Cataluña', a cura di F. Fita e B. Oliver.

[9] E. Toda y Güell, *Bibliografia española de Cerdeña* (Madrid, 1890).

[10] G. Zirolia, 'Sugli Stamenti di Sardegna', *Il Filangeri*, XII (1892).

[11] A. Solmi, 'Le costituzioni del primo parlamento sardo del 1335', *Archivio Storico Sardo*, VI (1910), pp. 193-272, poi ripreso in *Studi storici sulle istituzioni della Sardegna nel Medioevo* (Cagliari, 1917), pp. 332-391.

[12] R. Di Tucci, *Istituzioni pubbliche di Sardegna nel periodo aragonese. I. Le fonti* (Cagliari, 1920).

[13] Cfr. A. Era, 'L'autonomia del "Regnum Sardiniae" nell'epoca aragonese-spagnola', *Archivio Storico Sardo*, XXV (1957), nn. 1-2, pp. 211 ss. Il piano editoriale è riportato in F. Loddo Canepa, 'La Deputazione di Storia Patria e la Raccolta degli Atti Parlamentari Sardi', in *Liber Memorialis Antonio Era* (Bruxelles, 1963), p. 198.

[14] Cfr. B. R. Motzo, 'Ricerche compiute dalla missione sarda negli archivi spagnoli',

Archivio Storico Sardo, XXIV (1954), nn. 1-2, pp. 469 ss; Loddo Canepa, 'La Deputazione di Storia Patria', pp. 197-8.

[15] Per i criteri editoriali adottati si veda F. Loddo Canepa, 'Relazione sommaria sull'attività della Deputazione Sarda di storia patria per la pubblicazione degli atti dei Parlamenti del Regno di Sardegna', *Archivio Storico Sardo*, XXIV (1954), nn. 1-2, p. 484.

[16] L'VIII Congresso Internazionale di Studi Sardi si svolse come sessione dell'ICHRPI. La cerimonia inaugurale, presso l'aula magna dell'Ateneo, presenti le principali autorità civili e militari, fu aperta dagli interventi del prof. Giuseppe Peretti, rettore dell'Università di Cagliari, della prof. Helen M. Cam, dell'Università di Cambridge, presidente onorario dell'ICHRPI, del prof. Emilio Lousse, dell'Università di Lovanio, presidente effettivo dell'ICHRPI, del prof. Antonio Marongiu, dell'Università di Pisa, vicepresidente dell'ICHRPI. Si veda G. Sorgia, 'Il contributo sardo al Convegno della Commissione Internazionale per la Storia delle Assemblee di Stato', *Archivio Storico Sardo*, XXVIII (1962), pp. 279-282.

[17] Analoghe iniziative sulla raccolta degli atti delle Corti dei regni iberici sono state promosse a Valencia e in Navarra. Nella collana *Textos jurídics catalans. Lleis i costums*, serie *Processos de Cort*, promossa dalla Generalitat de Catalunya, Department de Justícia, nel 1992 è uscito il primo volume *Cort General de Montsó 1382-1384*, a cura di Ignasi J. Baiges i Jardí, Anna Rubió i Rodon, Elisa Varela i Rodríguez, coordinato da Josep Maria Sans i Travé; e nel 1997 il volume *Corts, Parlaments i Fiscalitat a Catalunya: Els Capítols del donatiu (1288-1384)*, a cura di Manuel Sanchez Martínez e Pere Orti Gost.

[18] Era composto da Bruno Anatra, Alberto Boscolo, Mariarosa Cardia, Guido D'Agostino, Antonello Mattone, Gabriella Olla Repetto, Giancarlo Sorgia, Girolamo Sotgiu, Giovanni Todde. Successivamente entrò a farne parte Marco Tangheroni. Attualmente è composto dal presidente del Consiglio regionale, Giacomo Spissu, e da Bruno Anatra, Italo Birocchi, Mariarosa Cardia, Guido D'Agostino, Antonello Mattone, Gabriella Olla Repetto.

[19] *Acta Curiarum Regni Sardiniae. Istituzioni rappresentative nella Sardegna medioevale e moderna* (Sassari, 1986).

[20] Sono i seguenti: il Parlamento del re Pietro IV d'Aragona (1355), curatore Giuseppe Meloni; i Parlamenti del re Alfonso V il Magnanimo (1421-1452), curatore Alberto Boscolo, aggiornamenti, apparati e note di Olivetta Schena; il Parlamento del viceré Eximenen Perez Scrivà de' Romani (1481-1485), curatore Gabriella Olla Repetto; i Parlamenti dei viceré Giovanni Dusay e Ferdinando Giròn de Rebolledo (1495, 1497, 1500, 1504-1511), curatori Anna Maria Oliva e Olivetta Schena; i Parlamenti del viceré Angelo de Vilanova (1518-1523, 1528), curatore Laura Galoppini; il Parlamento del viceré Antonio Folch de Cardona (1543), curatore Luisa D'Arienzo; il Parlamento del viceré Lorenzo Fernàndez de Heredia (1553-1554), curatore Annamari Nieddu; il Parlamento del viceré Alvaro de Madrigal (1558-1560), curatore Maria Luisa Plaisant; il Parlamento del viceré Giovanni Coloma (1572-1574), curatore Leopoldo Ortu; il Parlamento del viceré Michele de Moncada (1583), curatore Giuseppe Pala; il Parlamento del viceré Gastone de Moncada marchese d'Aytona (1592-1598), curatore Diego Quaglioni; il Parlamento del viceré Antonio Coloma conte di Elda (1602-1603), curatore Giuseppe Doneddu; il Parlamento del viceré Carlo de Borja duca di Gandìa (1614), curatore Gian Giacomo Ortu; il Parlamento del viceré Giovanni Vivas (1624), curatori Antonello Mattone e Alessandra Argiolas; il Parlamento straordinario del viceré Gerolamo Pimentel marchese di Bayona (1626), curatore Gianfranco Tore; il Parlamento ordinario del viceré Bayona (1631-1632), curatore Gianfranco Tore; il Parlamento del viceré Fabrizio Doria duca d'Avellano (1641-1643), curatore Giovanni Murgia; il Parlamento del viceré Francesco Fernandez de Castro conte di Lemos (1653-1656), curatori Piero Sanna e Paolo Cau; il Parlamento del viceré Emanuele de los Cobos marchese di Camarassa (1666-1668), curatore Bruno Anatra; il Parlamento del viceré Francesco de Benavides conte di Santo Stefano (1677-1678), curatore Guido D'Agostino; il Parlamento del viceré Nicola Pignatelli duca di Monteleone (1688-1689), curatore Federico Francioni; il

Parlamento del viceré Giuseppe de Solìs Valderràbano conte di Montellano (1698-1699), curatori Giuseppina Catani e Carla Ferrante; l'attività degli Stamenti nella "sarda rivoluzione" (1793-1799), curatore Luciano Carta. Per il piano editoriale originario, che nel corso degli anni ha subito alcune variazioni relative ai curatori, si veda: *Acta Curiarum Regni Sardiniae. Piano editoriale* (Cagliari, s.d. ma 1994).

[21] Sull'ampio dibattito storiografico e metodologico relativo alle istituzioni parlamentari si veda l'antologia curata da Guido D'Agostino, *Le istituzioni parlamentari nell'Ancien Régime* (Napoli, 1980), e G. D'Agostino (a cura di), *Per una storia delle istituzioni parlamentari* (Napoli, 1994). Cfr. inoltre i numerosi contributi pubblicati nella rivista dell'ICHRPI *Parliaments, Estates and Representation / Parlements, États et Représentation*, e, in particolare: V. A. Georgescu, 'Le problème des origines des Assemblées d'États: Réflexions méthodologiques à la lumière de l'histoire sud-est européenne de l'institution', n. 2 (1982), pp. 73-80; A. Marongiu, 'Progrès et problèmes de l'histoire des Assemblées d'Ètats et Parlements', n. 2 (1982), pp. 173-188; K. Orzechowski, 'Les systèmes des assemblées d'états: origines, évolution, typologie', n. 6 (1986), pp. 105-111; V. A. Georgescu, 'L'histoire parlementaire dans l'historiographie roumaine moderne et contemporaine', n. 7 (1987), pp. 15-22; J. Rogister, 'Some New Directions in the Historiography of State Assemblies and Parliaments in Early and Late Modern Europe', n. 16 (1996), pp. 1-16; T. N. Bisson, 'The problem of medieval parliamentarism: a review of work published by the International Commission for the History of Representative and Parliamentary Institutions. 1936-2000', n. 21 (2001), pp. 1-14; I. Sharifzhanov, 'Modern parliamentary history: in search of methodological consensus', n. 21 (2001), pp. 15-22; L. M. de Puig, 'International Parliamentarism: An Introduction to its History', n. 24 (2004), pp. 13-62.

[22] Si vedano i 'Criteri proposti per l'edizione critica degli atti dei Parlamenti sardi', a cura di Gabriella Olla Repetto, in *Acta Curiarum Regni Sardiniae. Istituzioni rappresentative nella Sardegna medioevale e moderna* [ristampa 1989], Appendice II e III, pp. 415-441.

[23] Nel convegno, introdotto da Girolamo Sotgiu, sono intervenuti: P. Sanna, *I Parlamenti del Regnum Sardiniae: problemi storico-istituzionali*; L. G. Marín, *Poder polític i representació. Les Corts valencianes a l'epoca foral*; G. Olla Repetto, *La collana "Acta Curiarum Regni Sardiniae"*; M. J. Carbonell Boria, *Los procesos de Cortes valencianos: un proyecto de edición*; E. Varela, *Las ediciones documentales en Catalunya: las ediciones de Actas de cortes del Principado de Catalunya*; V. Sciuti Russi, *Le edizioni dei Parlamenti del Regno di Sicilia*; B. Anatra, *Contrappunti sui Parlamenti sardi*; P. Corrao, *Equilibri sociali e strutture istituzionali nel Regno di Sicilia. Premesse tardomedievali del sistema parlamentare*; G. D'Agostino, *A proposito dei Parlamenti del Regno di Napoli*; P. Fernández Albaladejo, *La evolución del Parlamento en Castilla durante la Edad Moderna*; R. García Cárcel, *Pactismo y Cortes en Cataluña en la Edad Moderna*; R. Muñoz Pomer, *Problemas de historia del parlamentarismo: las cortes valencianas*; J. J. Visal, *Mallorca: un reino sin Cortes*; L. Carta, *Le sedute stamentarie del triennio rivoluzionario sardo (1793-1796): problemi di ricognizione documentaria e di edizione*. Gli atti sono pubblicati in *Archivio sardo del movimento operaio contadino e autonomistico*, n. 47/49 (1996).

[24] A. Marongiu, *I Parlamenti sardi. Studio storico istituzionale e comparativo* (Milano, 1979), p. 306.

[25] Loddo Canepa, 'La Deputazione di Storia Patria', p. 199.

Guido D'Agostino

Le fonti nella storiografia su Parlamenti ed istituzioni rappresentative

1. *La questione delle fonti (nella prospettiva di E. Lousse)*

Come è ben noto a studiosi e cultori di storia delle istituzioni parlamentari, si deve al grande studioso belga, Emile Lousse, una prima, efficace e duratura sistemazione concettuale del campo in cui si esplica tale impegno scientifico e di ricerca. Nella sua sistematica, peraltro, il Lousse non ha soltanto fissato il proprio impianto teorico – la concezione 'costituzionale' degli studiosi di matrice 'corporativista' – utilizzandolo invero per definire distanza e differenze rispetto alla 'scuola' istituzionale dei parlamentaristi,[1] ma ha bensì dedotto da quell'impianto rilevantissime implicazioni di metodo, di carattere storiografico, nonché stimoli e indicazioni sul terreno concreto di modi, forme e strumenti con cui e in cui procedere nel fare storia delle istituzioni di tipo parlamentare o rappresentativo (a suo avviso, comunque, e in ogni caso, da ascriversi alla 'famiglia' delle 'assemblee di stati', come proprie all'organizzazione cetuale della società d'Antico Regime). Più precisamente, il discorso dello studioso belga è centrato sull'individuazione della forma corporativa della società, sostanzialmente post-medioevale, con la sua triplice e caratteristica gerarchia, organizzata e perciò pure rappresentata, per funzioni, privilegi, gradi, comune a tutti i Paesi dell'Europa cristiana, con i tratti distintivi fondamentali identici, in pratica dal declino della feudalità e sino alle soglie dell'età liberale.

Parimenti noto è altresì il suo impegno, incondizionato e intransigente, nell'ambito dell'organizzazione sul campo della ricerca storica e pluridisciplinare nel settore: al riguardo, si possono ricordare i molteplici congressi internazionali e appuntamenti specifici per gli specialisti, e non soltanto europei; la sollecitazione perché si creassero gruppi nazionali, di storici e giuristi; il privilegiamento del tema delle "origini" delle assemblee in questione. E ancora, la spinta alla redazione di monografie e collane tematiche (fissandone criteri e requisiti cui uniformarsi); di repertori bibliografici, raccolte di fonti e documenti, riviste e periodici dedicati agli argomenti e ai problemi di cui si va dicendo, ecc.

Alla fine, risulta davvero di grossissimo spessore, per quantità e qualità, la mole di lavoro da lui promosso, diffuso, fatto crescere tra generazioni di intellettuali e ricercatori; basti pensare al successo della

stessa Commissione Internazionale, promotrice della presente riunione in terra sarda; alla strada percorsa dalla 'raccomandazione' a favore dell'approccio comparativo o del già menzionato *grand thème* delle 'origini', fino alla preziosa delineazione delle più adeguate tipologie di fonti e dunque alla promozione di ricche, corrispondenti raccolte.

Per Lousse, in effetti, non è raccomandabile utilizzare, ammesso che di questo possa trattarsi, un unico fondo documentario relativo alla vita e attività dell'istituzione di cui si imprenda lo studio, costituitosi a cura e per iniziativa dell'assemblea stessa in parola. Occorre piuttosto rivolgersi a una documentazione varia e multiforme, generata e formatasi in diverse direzioni, e 'pieghe', del contesto sociale, corporativo, dentro cui l'istituzione rappresentativa è sorta ed opera, e rispetto al quale contesto essa si colloca e agisce come 'una micro-lente riflettente'.

Di qui, dunque, la puntigliosa elencazione, ragionata, dei 'patti di richiesta', 'carte di concessione', 'processi verbali', 'atti di consenso', 'istruzioni per le contribuzioni finali', 'conti e rendiconti', oltre che, naturalmente, 'lettere di convocazione', relazioni, memoriali, cronache, memorie e narrazioni.

Al riguardo, ed avendo intanto ribadito il particolare rilievo di 'ordinanze', 'atti di consenso' e, soprattutto, dei *cahiers de doleances*, il Lousse spiega minuziosamente di cosa si tratti. Così, precisa: i 'patti di richiesta' sono gli accordi interni al gruppo che avanza una determinata richiesta all'autorità competente, con lo scopo di difendere i propri interessi, di non compromettere i diritti anteriormente acquisiti e di acquistarne di nuovi attraverso sforzi concertati. Tali patti sono alla base di alleanze, leghe, unioni che spesso si sciolgono dopo che lo scopo sia stato raggiunto, ma che, altre volte, producono unioni permanenti; i contenuti ed il loro disposto sono ripresi dal principe nelle 'carte di concessione'. Queste ultime possono essere individuali, di corpi, di *ordini*, paesi e unioni di paesi, a seconda della natura e qualità del beneficiario; in ogni caso, sono atti di carattere contrattualistico, che intercorrono tra il principe ed i sudditi e che estendono la stipulazione del contratto feudale a dei vassalli collettivi. Le carte ad un livello gerarchico superiore, o posteriori cronologicamente, tengono conto delle concessioni anteriormente fatte ad entità inferiori o uguali.

Sul piano della rappresentanza, una corrispondenza analoga a quella esistente tra 'patti di richiesta' e 'carte di concessione', si ritrova tra i 'cahiers de doleances', i processi verbali delle deliberazioni e gli 'atti di consenso' alle sovvenzioni da una parte, ed istruzioni ufficiali per la riscossione delle stesse, dall'altra.

I deputati degli *Ordini* recano con sé in assemblea i 'cahiers' redatti dai loro committenti, per alimentate ed orientare le discussioni. Ascoltate le proposte del principe, essi fanno stendere dei processi verbali

dello svolgimento della riunione ed in particolare della parte che vi hanno avuto; nel caso in cui sia stato pure votato un sussidio finanziario, il verbale si intitola 'atto di consenso' e contiene tutte le notizie e le particolarità ad esso relative, quali importo, durata, condizioni, ecc.. Sulla base dell' 'atto di consenso' viene poi redatto per incarico del principe l' 'ordinanza' o istruzione, che riprende le clausole dell' 'atto', ma in forma tale da annullare qualsiasi traccia dell'attiva partecipazione degli ordini e da apparire una decisione unilaterale dell'autorità. Nella realtà, per il principe si è trattato di una conferma di privilegi a titolo oneroso, mentre per gli *Ordini* di una concessione di fondi che frutta un accrescimento di libertà.

Anche le 'lettres de convocation' (lettere di convocazione) ed i 'comptes' (conti) delle città contengono, secondo il Lousse, interessanti elementi sul modo in cui la rappresentanza opera e si realizza: le due fonti si integrano a vicenda e consentono di ricostruire un quadro preciso della fisionomia d'una sessione, mentre i conti degli addetti alla riscossione effettiva del sussidio permettono di misurare il divario tra teoria e pratica, tra previsione e realtà in merito a tutto quanto attiene all'esazione del contributo. Infine vi sono le relazioni, i rapporti, i memoriali a vario titolo stilati dai partecipanti ai lavori, dall'una e dall'altra parte, che vanno però usati con cautela. In ogni caso, – ammonisce – occorre maneggiare i diversi tipi di fonti prestando la massima attenzione alle difficoltà terminologiche che possono insorgere, data la grande varietà ed approssimazione delle denominazioni con cui le istituzioni si ritrovano indicate nelle fonti.[2]

Nel prosieguo di tempo, oltrepassata ormai la metà degli anni Cinquanta del Novecento, e pur evolvendosi gli studi del settore (come, del resto, l'insieme della conoscenza e delle scienze storiche), non si può dire che ci sia stato, almeno in ordine a fonti e documenti, analogo intento e sforzo classificatorio, con tutti i limiti e i difetti che possano essergli stati addebitati; di sicuro, non vi è stato di pari intensità, e potrebbe dirsi, tendenziale 'universalità'.

Va peraltro osservato che nel più generale avvicinamento delle due 'correnti di pensiero', o posizioni concettuali 'chiave' – a cui si è accennato in principio – , prima soltanto giustapposte e poi sempre meglio raccordate e quasi 'fuse', non sono mancati comunque significativi e interessanti riflessi appunto sul terreno dell'individuazione, utilizzazione e valorizzazione delle fonti. Valga l'esempio dell'impegnativa impresa legata alla 'Société Jean Bodin' nel corso degli anni Sessanta (al cui interno si ritrova, accanto al coordinatore Gilissen, ancora E. Lousse).

In tale ambito sono fioriti studi e si sono distinti studiosi di varia appartenenza e provenienza, apportatori di novità per aspetti, taglio, approcci specifici, applicati a fonti per qualche verso peculiari in sé, o su-

scettibili di essere trattati con particolari tecniche e/o procedure (magari, grazie al sussidio recato dall'informatica). In tale direzione, le specificità territoriali, contributi prosopografici, configurazioni seriali (nel campo, ad esempio, dell'attività legislativa, o assimilata); e, ancora, aspetti linguistici, culturali, di pensiero, teorie o dottrine.[3]

2. *Il caso del Parlamento Generale del Regno di Napoli*

Nel caso del Parlamento Generale del Regno di Napoli – evoluzione basso-medioevale e moderna (secoli XV-XVII) di più antiche assemblee, vigenti, sia pure in maniera intermittente sin dagli albori del Regno (sec. XII) – la situazione, per quel che concerne le fonti, si presenta in termini diversi, più semplici, o semplificati, da una parte, e più complessi, dall'altra. Intanto, la documentazione-base, esistente in loco e comunque indispensabile allo studioso, è raccolta in una compilazione, tardiva, in 9 grossi tomi (legati in sei corposi volumi), individuata nella Sezione Manoscritti della Biblioteca Nazionale di Napoli da Giuseppe Galasso già diversi decenni fa ed oggi ancora, almeno in larga parte, rimasta inedita.[4] La doppia intitolazione di tale raccolta, 'Parlamenti, Precedenze e Rappresentanze della Città di Napoli', e 'Parlamenti e Gratie della Città di Napoli. Fatti storici nella stessa avvenuti. 1554-1642' segnala, di per sé, il carattere multiplo della stessa, con evidenti risvolti sul piano della storia interna alla sua formazione nel tempo, ma anche l'indubbio rilievo e protagonismo della Città-capitale rispetto alla storia politica e istituzionale dell'intero Regno. In ogni caso, è indiscutibile la derivazione della raccolta in questione dai cosiddetti 'Libri Praecedentiarum', già esistenti nell'Archivio Municipale di Napoli e segnalati da Bartolommeo Capasso nel suo prezioso Catalogo-inventario (1876), ma in seguito andati dispersi e/o distrutti, più o meno completamente. Al tempo, ne ha parlato e scritto il De Blasiis (1877), così precisando: 'Tra le molte ed importanti scritture dell'Archivio municipale di Napoli, si conservano dieci volumi segnati col titolo *Pracedentiarum*, i quali contengono carte di vario soggetto relative al governo del comune, e principalmente le consulte e le risoluzioni dei Parlamenti del Regno dal 1554 al 1642. Di queste risoluzioni alcune poche si trovano ricordate dagli storici, e i brani di alcune altre furono inseriti tra i *privilegi* e i *capitoli* concessi alla città…'.[5] In più, l'attento studioso, nel fornire nella stessa sede e occasione un estratto di notizie ricavate dal primo dei dieci volumi ricordati, segnala come esso costituisca 'una parte speciale della raccolta' dedicata a 'ricordi delle feste e delle solenni cerimonie celebrate in Napoli dal 1488 al 1566, compilati officialmente dai segretari del comune per documentare la precedenza degli eletti de' seggi e del sindaco nelle pubbliche funzioni', per poi specificare ulteriormente che 'il titolo: *de praecedentia nobilium sedilium in onoribus et dignitatibus occurrentibus Universitati Neapolis*, messo in-

nanzi a questa cronaca, e che fu dato poi a tutti i dieci volumi, mostra a qual uso quei ricordi dovevano servire'.[6]

Il tutto, insomma, sembra confermare quanto si è detto sulla molteplicità, se non eterogeneità della fonte, ed anche della sua 'povertà' relativa (ovviamente, non manca altro materiale, ma disperso in vari e diversi contesti, mentre qui fa riferimento ad una unica fonte, basica, organica disponibile).[7] Ma non solo, in quanto risulta di tutta evidenza il dato, più sopra richiamato, della preminenza di Napoli e del suo Sindaco (espressione, peraltro, dei 'Seggi' nobili cittadini) nelle pubbliche cerimonie, atti, eventi politici e religiosi in cui sia presente e rappresentata la Città, e dunque negli stessi Parlamenti, nel corso del loro svolgimento e all'interno dei vari momenti e fasi dei lavori, sia in sede plenaria sia nei più ristretti organismi di gestione, o di controllo, dell'assemblea.

C'è ancora da rimarcare l'altro dato, o elemento, costituito dall'intreccio con le 'grazie' e i 'privilegi', a loro volta considerati, nell'insieme e nella successione cronologica (fino, almeno, dall'età angioina), un *corpus* di concessioni e/o acquisizioni, in cui risiede la 'tavola' dei diritti, prerogative, competenze, consuetudini ecc., quasi la capacità e personalità giuridica dei governati a fronte dei governanti.[8]

In termini propriamente storici e istituzionali, occorre richiamarsi, peraltro, a un processo graduale – su cui chi scrive si è soffermato altrove abbondantemente – di inserimento della Città-capitale nell'insieme del sistema politico-rappresentativo interno del Regno di Napoli, particolarmente nell'età spagnola. Se la rappresentanza cittadina costituisce in principio uno dei due 'poli' del sistema appena citato, via via si concretizza la sua 'marcia' dentro il secondo 'polo', quello parlamentare, appunto, fino allo svuotamento di quest'ultimo e la sua surrogazione nel polo cittadino (alla metà del secolo XVII), che diviene così titolare dell'istanza rappresentativa globale del Regno.[9]

3. *Il caso degli Antichi Parlamenti Sardi*

Si tratta probabilmente del caso più interessante per l'istituzionalità forte e protratta nel tempo dispiegata sul tema delle fonti, nel quadro di un'assunzione altrettanto intensa e decisa di impegno e progettualità, insieme di orientamento storiografico e di spirito civile ed etico-politico pubblico. In prima linea, la Regione autonoma Sardegna, promotrice e sostenitrice dell'impresa, comunque lunga e non facile, di un'edizione critica degli Atti degli antichi parlamenti isolani, dal medioevo alle soglie dell'età contemporanea, mettendo in campo apposito Comitato scientifico e una schiera assai folta di studiosi, archivisti e ricercatori. Nel caso in questione, la fase di preparazione si è rivelata assolutamente decisiva, per l'intervento di studiosi locali, italiani e stranieri, chiamati a discutere ed orientare in ordine sia ai problemi rico-

gnitivi-quantitativi inerenti appunto la documentazione, sia a quelli qualitativi, di metodo e di efficacia dei risultati finali.[10]

In un certo senso, anche per l'essersi trovati di fronte a un *corpus* documentario alquanto cospicuo, ma omogeneo e continuo, l'impostazione prevalente emersa è risultata il frutto di un contemperamento delle due opzioni fondamentali provenienti dalle scuole di pensiero, o 'modelli', definite dalla concezione 'costituzionale' (ancora Lousse, evidentemente) e da quella 'istituzionale' (degli studiosi parlamentaristi e neo-parlamentaristi, tra cui il Marongiu).

Al tempo stesso, si è adottata una modalità di lavoro 'corale', coordinato tra gran numero di specialisti, ed intrecciando la cura e il rigore della filologia e della paleografia, alla varietà e ricchezza dell'approccio scientifico storiografico.

Quanto alle fonti disponibili, soprattutto ma non soltanto, ovviamente, presso l'Archivio di Stato di Cagliari, si può distinguere tra gli *Atti* in senso stretto (processi verbali e pronunce regie), quelli in senso più lato (oltre ai precedenti, le riunioni de Bracci e la ripartizione dei donativi) ed infine, su scala più ampia e comprensiva, nonché aggiuntiva, l'insieme della documentazione complementare e di quella proveniente dagli ambiti locali.

In particolare, nei criteri fissati nella fase propedeutica più sopra richiamata, si è convenuto – e di fatto così è stato adempiuto – che alla trascrizione e regestazione dei documenti corrispondenti, fosse anteposto un ampio saggio introduttivo in grado pure di valorizzare la documentazione 'indiretta' (a parte, ovviamente, il corredo tradizionale, ma indispensabile, di indici, note, bibliografia).[11]

In chiusura, pochi cenni sul caso dei parlamenti siciliani di 'antico regime', e non certo per minore importanza degli stessi (chi scrive vi si è in effetti dedicato, al pari di quelli sardi e del Mezzogiorno continentale) quanto sia per la minore efficacia realizzativa rispetto ad omologhi progetti recenti in materia, pur messi in campo, peraltro; sia per la peculiare, già positiva, situazione della storiografia e della pubblicistica isolana sette-ottocentesca al riguardo.[12] In ogni caso, è d'obbligo ricordare almeno quanto segnalato già da V. Sciuti Russi e da A. Coco nel momento stesso in cui si è messo in moto l'impegnativo programma di edizione degli Atti degli antichi parlamenti sardi, più volte richiamato. Nella valutazione dei due studiosi, entrambi direttamente coinvolti nello studio e cura editoriale di alcuni parlamenti siciliani, il 'modello' più adeguato da adottare è sicuramente quello 'a spettro largo', che tenga insieme, cioè, forme e forze, aspetti strutturali e procedurali di un'assemblea con analisi di contesto e tessuto politico-sociale corrispondente. Nonostante la documentazione riferita ai 146 parlamenti celebrati nell'isola dal 1446 al 1815 sia ineguale, come altalenante è il

rapporto di forze e l'incidenza delle assemblee rispetto ai poteri pubblici 'forti', l'opinione di Sciuti e Coco è che comunque valga la pena intraprendere studio e pubblicazione sistematica dei vari episodi di vita parlamentare isolana, con metodo comparativo e sulle orme di esempi più e meno recenti, della tradizione locale di studi nonché avvalendosi di modelli stranieri. Al riguardo, sono state fornite pure notizie dettagliate e annunzi riferiti ad almeno due ambiziosi programmi messi in campo dalle Università di Catania e di Messina, facenti capo a prestigiosi studiosi e storici, quali G. Giarrizzo, E. Sciacca e A. Romano.[13]

Risultano, a chi scrive, avere visto la luce opere di notevole interesse e di indubbio spessore, di cui però un eventuale elenco peccherebbe sicuramente per difetto, dovuto a carenze del tutto soggettive. D'altronde, costituisce un dato indiscutibile, nella peculiarità della storia siciliana nel corso del lungo 'Antico Regime', la singolare valenza della vitalità e perduranza dell'istituto parlamentare isolano, la cui storia si snoda per più secoli e si proietta in quella dell'età dei lumi e del costituzionalismo ottocentesco, circostanza che non si riscontra nei casi di Napoli e della Sardegna, e che è stata assunta, e largamente percepita, come espressione distintiva dell'autonomia e delle 'libertà', alimento non secondario del mito 'sicilianista'.[14]

Anche per questa via, in ogni caso, la storia delle istituzioni parlamentari e rappresentative, e delle fonti che la sostanziano, rivela il suo potenziale civile e culturale, e si segnala all'attenzione del mondo degli studi, storici e giuridici, e della comunità, nazionale e internazionale, degli studiosi che vi si dedicano e la professano.

Note

[1] Ho trattato il tema in varie sedi e occasioni; si può tra l'altro vedere 'La storia delle istituzioni parlamentari. Problemi e prospettive', in *Les Corts a Catalunya* (Barcellona, 1991), pp. 353 ss. (si tratta della raccolta di studi e interventi di un convegno internazionale, promosso e curato dalla *Generalitat* catalana), nonché 'Gli studi di Emile Lousse: la concezione costituzionale dei corporativismi e la concezione istituzionale dei parlamentaristi' in G. D'Agostino (a cura di), *Per una storia delle istituzioni parlamentari* (Napoli, 1994), pp. 13 ss.; ancora, di recente, nella rivista spagnola *Aragón en la edad media*, 2010.

[2] E. Lousse, *La société d'Ancien Régime* (Louvain, 1952), pp. 44 ss. (il volume è anche nella collezione delle *Etudes présentées à la Commission Internationale pour l'Histoire des Assemblées d'Etats*, VI).

[3] G. D'Agostino, 'Una particolarità concettuale e storiografica. Comparazioni e tipologie', in *Per una storia delle istituzioni parlamentari*, pp. 47 ss.

[4] G. Galasso, 'Momenti e problemi di storia napoletana nell'età di Carlo V', riproposto nella raccolta di saggi dell'A., *Mezzogiorno medioevale e moderno* (Torino, 1965), pp. 137-97. Cfr. ancora G. D'Agostino, *Parlamento e Società nel Regno di Napoli. Secoli XV-XVII* (Napoli, 1979), pp. 11-17; nonché, *Il Parlamento Generale del regno di Napoli, 1556-1598* (Napoli, 1984) (si tratta dell'edizione dei documenti riguardanti l'istituto

rappresentativo napoletano, cui è preposta un'introduzione storico-critica).

[5] G. De Blasiis, 'De praecedentia nobilium sedilium in honoribus et dignitatibus occorrentibus Universitari Neapolis', *Archivio Storico per le Provincie Napoletane*, 2, 1877, fasc. III, p. 535; l'accenno a B. Capasso riguarda il suo prezioso *Catalogo ragionato dei libri, registri e scritture esistenti nella Sezione antica, o Prima Serie dell'Archivio Municipale di Napoli. 1387-1806* (Napoli, 1876), Parte prima, pp. 29-34.

[6] Ibidem.

[7] Secondo quanto riportato dal Capasso nel *Catalogo*, esisteva documentazione riguardante sia i voti delle 'Piazze' cittadine in relazione ai Parlamenti celebrati e ai donativi che vi si stabilivano, sia vari fasci di 'procure'. Di tale documentazione poco o nulla resta nell'Archivio Municipale (a seguito delle vicissitudini da esso attraversate ed alle distruzioni in tempo di guerra, così come del resto poco s'è salvato degli antichi Atti, dei quali peraltro sporadiche e/o parziali copie si ritrovano nelle biblioteche napoletane e negli archivi spagnoli). Cfr. comunque le mie opere sul tema, citate alle note precedenti.

[8] Cfr. le interessanti osservazioni al riguardo svolte da M. Berengo, *L'Europa delle città. Il volto della società urbana europea tra Medio Evo ed Età Moderna* (Torino, 1999), pp. 33 e 41-44, nonché 317 ss.

[9] G. D'Agostino, 'Il sistema politico-rappresentativo interno del Regno di Napoli tra monarchia aragonese e viceregno spagnolo', in *Parlamento e Società*, pp. 163-200.

[10] *Acta curiarum Regni Sardiniae* I. *Istituzioni rappresentative nella Sardegna medioevale e moderna* (Cagliari, 1986) (vi sono raccolti saggi, studi e interventi degli studiosi convenuti nel capoluogo dell'Isola, nel 1984, a cura del Consiglio Regionale della Sardegna il quale in tal modo ha dato il via all'impresa straordinaria di edizione critica della documentazione, corredata dal lavoro storiografico dispiegato dagli specialisti del settore, per ogni singolo Parlamento).

[11] Sono stati pubblicati già numerosi volumi, tra i quali quelli dedicati ai Parlamenti di Pietro IV d'Aragona (1355), a cura di G. Meloni (vol. 2 della Collana); di Alfonso il Magnanimo (1421-52), a cura di A. Boscolo (vol. 3); dei vicerè Dusay e Rebolledo (1495-1511), a cura di A. M. Oliva e O. Schena (vol. 5); del vicerè Aytona (1592-94), a cura di D. Quaglioni (vol. 12); del vicerè Gandia (1614), a cura di G. G. Ortu (vol. 14); del vicerè Bayona (1626), a cura di G. Tore (vol. 16); del vicerè Montellano (1698-99), a cura di G. Catani e C. Ferrante (vol. 23 in quattro tomi); nel vol. 24 sono stati raccolti quattro tomi, a cura di L. Carta, contenenti 'L'attività degli Stamenti nella *sarda rivoluzione*'.

[12] A. Coco, 'Problemi e metodi di storia parlamentare: il caso siciliano nel Settecento', in *Acta Curiarum Regni Sardiniae*, I, pp. 307 ss.

[13] Ci si riferisce al progetto messo in campo dall'Università di Catania sotto la direzione di Giuseppe Giarrizzo, che prevede la ristampa del classico studio del Mongitore e che ha prodotto già alcuni risultati in termini di studi e/o edizioni di fonti. Tra gli altri, si segnalano i lavori di A. Baviera Albanese (parlamenti 1518 e 1522), S. Catalano (1815), lo stesso Sciuti (1612) e Spoto (1790). Nell'ambito dell'Università di Messina, da segnalare l'intensissima applicazione di A. Romano (Dipartimento di Storia e comparazione degli ordinamenti giuridici e politici), infaticabile sostenitore di tali studi e promotore di numerose iniziative scientifiche. In particolare, cfr. nei 'Monumenta Iuridica Siciliana', varie ristampe e riproposizioni, tra cui i *Regalium Constitutionum Pragmaticarum et Capitulorum huius Regni liber trinus et unus* (Messina, 1497 [Soveria Mannelli, 2000]) e *Parlamenti Generali ordinarij e straordinarij celebrali nel Regno di Sicilia dal 1494 fino al 1658* (Palermo, 1717 [Soveria Mannelli, 2001]).

[14] V. Sciuti Russi, 'Notizie sullo stato degli studi sugli Atti dei Parlamenti siciliani', in *Acta Curiarum Regni Sardiniae*, I pp. 376 ss., nonché, ibidem, pp. 377-79. Dal canto mio, occupandomi del caso siciliano, rimando a 'Un caso di antico regime: le istituzioni parlamentari di Sicilia, Sardegna e Napoli', in *Per una storia delle istituzioni parlamentari*, pp. 65 ss, nonché i saggi contenuti in *Poteri, Istituzioni e Società nel Mezzogiorno medievale e moderno* (Napoli, 1996), pp. 93-122 e pp. 123-142, dedicati egualmente al tema.

Antonio Ruiu

Tuscan Civic Nobility and Research Perspectives. Family Historiography and Archive Sources: Methodology and Resources for the Comparative History of Political and Parliamentary Institutions

1. *Introduction*

In Tuscany, the most important legacy of the Medieval Age was the creation of an urban aristocracy that legitimized its hierarchical superiority by the exclusive exercise of its power in the major public offices. The families that held the monopoly of the municipal magistratures, or at least the most important ones, were part of this nobility. This was due to a hereditary privilege or to an act of aggregation to the historically constituted *regimen*.

The unusual nature of the Tuscan nobility allowed it to enjoy a rather high level of social mobility, facilitated by the absence of traditional and inflexible blood rights, birth rights and weapon monopoly. This nobility was instead based on other elements that made the parameters of the *status* of the nobility somewhat vague. This phenomenon, moreover, may have been based on the theory of social stratification developed by Roland Mousnier.[1] Clearly, the case in point was an example of a society stratified on the basis of orders, where social mobility was in an intermediate position relative to the two extremes represented by the distribution into castes (where social mobility was nothing) and by distribution into classes (the context of the greatest potential mobility). Indeed, the possibility of social mobility was limited and subjected to the control of the public authority and was also related to the evaluation of social qualities, which were essential in order to acquire the *status* of nobility.

The concept of *nobiltà civica*, which was grounded on the jurisprudential constructions established between the sixteenth and the eighteenth century, was later accepted in the *Law for Regulation of the nobility and citizenship*, enacted in Vienna by the Grand Duke and Emperor Francis Stephen of Lorraine (31st July 1750) and published in Florence (1st October 1750).[2] The *Law* regulated, for the first time, the titles and the procedures for the access to the ruling class, by the recognition of the noble qualities, and replaced the rules of common law (*diritto comune*), which had been enforced for many centuries, but

with innumerable controversies.[3] Therefore, until the eighteenth century, Tuscany was left without a state law on nobility and used the rules of the *ordo decurionum* that disciplined the *municipia* in the Lower Roman Empire and the Statutes of the noble Order of St. Stephen (editions: 1562, 1590 and 1746).[4] Without a doubt, the *Law* was a compromise between the tradition of the Tuscan Communes and the Statutes of the Order of St. Stephen.[5]

The 17th Century legislative measures,[6] in the first title (*Della nobiltà e sua distinzione*), recognised four sources of nobility: the holding of 'Feudi nobili' (i.e. the feudal investiture, which consisted in the attribution of a noble title and, above all, of feudal jurisdictions),[7] admission to the 'Ordini nobili' (undoubtedly of Malta and St. Stephen); obtaining 'Nobiltà per Diplomi' from the prince; enjoying the 'primo, e più distinto Onore, delle Città Nobili'.[8] What was innovative here was represented, first of all, by the distinction between the two classes of nobles (simples) and the patricians[9] and, secondly, by their being members of specific registers, the *Libri d'Oro*,[10] on the basis of the approval of the necessary certificates for the 'nuova descrizione'[11] by the *Deputazione sopra la nobiltà e cittadinanza*, created for this purpose .[12]

The proof of the 'continovazione della propria nobiltà per lo spazio almeno di anni dugento compiti'[13] was necessary for the admission as patricians into the seven ancient noble cities,[14] where 'tal descrizione di nobili si faccia distinta in due Classi, alla prima delle quali diamo il nome di *Nobili Patrizj*, all'altra quello solo di *Nobili*'.[15] What appears to be very clear is that the norms in question referred to the families of the *nobiltà civica*.[16] They drew the foundations of their *status* from the enjoyment of the supreme municipal magistratures, in accordance with the hereditary right of passive electorate for the 'maggiori dignità, e gradi che solo i più nobili Gentiluomini sogliono havere, e godere',[17] in the field of urban political and parliamentary institutions.

In particular, amongst the two legal categories of the nobility, the patriciate had a clear relative numerical predominance, and as such acquired the characteristic features of a real 'tecnocrazia'.[18] And we can find complete confirmation of this in the files presented by the most ancient families (*magnatizie*) in order to have their names entered among the names of the superior class of the Tuscan nobility.[19] Through these documents it is possible to reconstruct, through hindsight, events for at least the two previous centuries (and, very often, also until the Medieval Age). These files also make it possible to highlight certain constants that characterised this class regardless of the contingent historical period:

> Studiare il patriziato, così come venne definendosi con le riforme settecentesche, dopo essere stato decimato e trasformato dal calo demografico,

> significa leggere la storia di quel gruppo dirigente che aveva saputo mantenere il monopolio dell'esercizio politico nonostante l'affermazione del potere mediceo.[20]

The *Legge*, in the 5th article, directly admitted the knights of St. Stephen *per giustizia* to the patrician class, taking for granted that the demonstration of the four quarters of nobility according to the rules of the *Statuti* could easily substitute, in terms of time, the foreseen requirements to be enrolled in the catalogue of patricians.[21] The knightly orders of Malta and St. Stephen, with their respective statutes, provided the legislator with continual cues for the drawing up of the law: if on the one hand the term bicentenary was taken from the Order of Jerusalem, on the other hand, all the families who had undertaken the *provanze per giustizia* in the Tuscan Order were exempt from the rule of the 200 years. It was undoubtedly a question of a formal recognition regarding the fundamental role that the norms and the praxis of the Order founded by Cosimo I had consolidated regarding the reconnaissance of the *status* of nobility, even if the lineage of the ancient aristocracy had never attributed any determined significance regarding their prestige to the St. Stephen cross, but rather a confirmative function.

The Order, however, didn't oppose – and neither did it had the fancy to surrogate itself – to the traditional mechanisms of social advancement, but progressed in parallel, providing a valid and concrete alternative solution, above all, for the simple nobility, which used the knightly designation for social emersion. On the other hand, the lineages of the titled aristocracy transmitted the St. Stephen dignity from father to son on the level with a hereditary legacy.

2. *Methodology and resources for the comparative history of political and parliamentary institutions*

In general, therefore, Medieval Tuscany was characterised by a complex group of Communes in which the primeval political and parliamentary institutions were consolidated. These urban institutions maintained their autonomy until the end of the XVIII century. In particular, it is important to underline that the peculiar *status* of nobility of the *genus* of their members is precisely derived from this membership and it was recognised, once and for all, by the state legislature in the mid 1700s. Undoubtedly, the families of the Tuscan ruling class maintained their effective political prominence until the unification of Italy and they joined with the nobilities of other Italian and European States, above all in the period of the transition from the *monarchia assoluta postmedievale* to the *monarchia assoluta prerivoluzionaria*.[22] It is precisely through the study of the past of the aris-

tocratic and oligarchic lineages which had the common essential characteristics of the *nobiltà civica* that it is possible to go through the evolutionary events of the institutional history of Tuscany, Italy and Europe.

In fact, over the past decades, the studies of family history have awakened the interest of scholars in an ever-increasing way.[23] But it is not the purely statistical data which has been the focus of this interest,[24] since at the origin of this swirling increase of such studies there is certainly – apart from the overcoming of the merely encomiastic and laudatory intent – the reaching of full scientific awareness regarding the value of enquiries of this type, in order to scrutinize the 'universe' of socio-political dynamics over the long period, to be developed within a certain and specific explorative field , through the irreplaceable observatory represented by the family entities.

> A ben vedere, infatti, il circuito degli interessi, degli affetti, delle attività economiche e delle relazioni sociali intraprese all'interno di una struttura parentale come la famiglia monogamica occidentale, individua un sistema di osservazione omogeneo nello spazio e sufficientemente dilatato nel tempo, le cui vicende riassumono in un ambito compatto e privo di discontinuità diacronica sia la funzione culturale dell'elaborazione e della trasmissione dei valori dominanti in seno ad una società data, sia anche i modi di legittimazione che ne fondano ed impongono poi la validità e l'efficacia. In campo teoretico, l'intuizione è peraltro antica, se fin da Jean Bodin non se'è mancato di ribadire la convinzione che esista una continuità organica tra la cellula familiare (che è 'vraye image de la République') e la struttura statale: che, insomma, l'ottica ricostruttiva dell'esperienza familiare ripercorra necessariamente anche situazioni strutturali, quadri di valore, modi di elaborazione culturale, i quali, a loro volta, consentono di cogliere – nell'àmbito in apparenza soltanto angusto del microcosmo domestico – anche il pulsare di tensioni provenienti dal profondo del tessuto sociale e politico. Coltivando analoga via di riflessione, l'avrebbe poi detto anche Giambattista Vico che le famiglie sono 'il seminario' delle repubbliche, e che nella loro analisi si colgono 'l'origini degl'imperi privati paterni-sovrani nello stato delle famiglie'. E sarebbe stata simile anche la via battuta da Montesquieu, quand'egli poi, di lì a poco, avrebbe indicato, prima nelle *Lettres persanes*, poi nell'*Esprit des lois*, che il bene privato delle singole unità domestiche diviene, entro il sistema delle leggi, il bene pubblico delle nazioni. Sicché si sarebbe ben presto ricostruita, nella convinzione dei *Savants*, l'opinione consolidata che un'intima solidarietà lega costantemente la vicenda familiare al quadro complessivo delle relazioni sociali ed istituzionali.[25]

Still today, the suggestions of Bodin,[26] Vico[27] and Montesquieu[28] are completely valid, although the parables that come down towards the adequacy of a teaching which is so dated and yet so current in its vitality are much more elementary and easily tangible to write the history of the *nobiltà civica* and its homologues non-Tuscans. As a mat-

ter of fact, the institutional and state evolution in modern Tuscany seems undoubtedly restrained if considered in relationship to the national and continental political systems, and if one considers that the impact of the absolutist attempt of the Medici and the reforming attempt of the Lorraine 'fu tanto più forte e dirompente, quanto più quegli interventi si trovarono ad incidere su una realtà cittadina, ove gli intrecci gentilizi, corporativi e familiari avevano sovente fornito un sostegno ed una *supplenza consortile* al rallentato decollo nel Granducato di un processo di modernizzazione statale'.[29]

On the other hand, at the moment in which one wishes to study the European ruling classes, it is obviously not possible to leave out of consideration the Order of the St. Stephen's Knights. This is because the Order undoubtedly found the reasons for its birth and survival in that which, more generally, distinguished the military and Knightly Orders during the Modern Age. That is to say, the use of the knightly dignity by the sovereigns to unite itself with the aristocracy in order to escape from the threats weighing upon the consolidation of the monarch's power, as well as, on the other hand, the utilization of the noble Orders by the aristocratic groups in order to defend the traditional social prerogatives and perpetuate the political predominance both respect to other social groups, and, above all, in front of the growing authority of the monarchy.

But, once the most common reasons for the taking of the equestrian cloth have been verified, it is necessary to remember that, in fact, between the XVI century and the middle of the XIX century, the cross of the St. Stephen knights had become the most longed for sign to demonstrate the noble *status* which had an essentially political derivation. The knights coming from the families *di reggimento* and *parlamentarie*, who controlled, as such, the political and parliamentary institutions where the lineages came from and where they were resident (but also elsewhere), were spread over a period of almost three centuries. Without a doubt, the guiding theme was the dynastic perpetuation – both aristocratic and oligarchic – according to inexhaustible peculiarities both in the social architecture as well as in the institutional engineering.

This phenomenon can certainly not be overlooked, if one considers that the extent and the nature of the sources produced by the Order of St. Stephen have an inestimable value for the study of the ruling classes – and, as a consequence, of the political and parliamentary institutions – which intends to make use of the family as the fundamental research pillar.

> La mentalità, l'ideologia, la cultura medesima dei protagonisti della vicenda plurisecolare degli Ordini, sono tutte permeate, trasudano di elementi che hanno nella famiglia – inteso come insieme ininterrotto di ascen-

> denti e di discendenti – il loro punto di riferimento unico e centrale. Tra Cinque e Settecento, quando si chiedevano abiti di cavaliere o si fondavano commende, si ragionava non come individui, ma come elementi, frammenti quasi, di quel *continuum* che era la famiglia, con il suo patrimonio di beni materiali, ma anche immateriali, quali la fama, il prestigio, l'onore, la tradizione, la memoria. […] Del resto […] tanta della documentazione accumulata negli archivi degli Ordini, non per caso attiene alle famiglie e a individui che vengono colti come elementi di esse, come punti di quella lunga serie che è la 'casata'. E di fatto gli archivi degli Ordini militar-cavallereschi finirono molto in fretta per diventare anche importanti e vasti depositi documentari, talora ufficialmente riconosciuti come tali da autorità statali e consulte araldiche, dei ricordi e delle testimonianze, specie quelle genealogiche, delle famiglie che in essi avevano inviato i loro membri.[30]

At this point, therefore, both the instrumental functionality of the *nobiltà civica* and its homologues non-Tuscans, and the methodological adequacy of family historiography for the comparative study of the ruling classes have been demonstrated. These were the *orders* which, for at least five centuries, spanning the period between the Medieval Age and the Modern Age, conditioned the political destiny of the small and large States.

As a consequence the steps in order to analyse the comparative historical evolution of the Italian and European political and parliamentary institutions can follow the footsteps of the knights of St. Stephen until the final suppression of the Order in 1859 (1561-1859). In particular, it is crucial to analyse the socio-political processes that were decisive for the transition towards the Modern and Contemporary Age. This so as to extend the observational field from the multi-form institutional context of Tuscany to the wider Italian and European States, between the end of the XII and the middle of the XIX century. In such a way, the effect of a stone – *nobiltà civica toscana* – being thrown onto a surface of water would be achieved, in order to extend the speculative horizon from the ruling classes of the Grand Dukedom to those of the rest of the nation and the continent, over an evolutionary time span (considered with reference to the Italian historical-institutional evolution) including from the epoch of the Communal Republics to the formation of the national State. The importance and the specificity of the *nobiltà civica* would be so amplified by the links to the most widespread and complex socio-economic and political-institutional models (above all if studied in relationship to its peculiar persistence). However, the nobility with political origin is the focus point of the comparative study of the ruling classes and the political and parliamentary institutions, since it contained under the same roof the members of the aristocracy with Italian and European origins in the moment in which they were confirming that they had the req-

uisites for admission into the Order of St. Stephen and for inclusion in the categories of the *nobiltà semplice* and the *patriziato* of Tuscany on the basis of the same substantial requisite: the monopoly of the political and parliamentary institutions.

Indeed, in the European context, the history of the consolidation of the ruling classes

> coincide, per almeno quattro secoli (dal XIV secolo alla seconda metà del Settecento), con quella della nobiltà. Tutti coloro che aspiravano alla gestione del potere, pur provenendo da classi immediatamente inferiori, non misero mai in discussione i principi distintivi della nobiltà o le loro pretese di esclusività e superiorità, ma piuttosto li fecero propri secondo quella che Huppert, riferendosi alla situazione francese, ha definito una vera 'abdicazione di classe'.[31]

From the point of view of the resources for empirical research, without a doubt, the dossiers of the *Deputazione sulla nobiltà e cittadinanza*, kept in the State Archive of Florence, provide a solid basis in terms of documentation in order to examine the admissions to the Tuscan patriciate. From the information presented to the *ad hoc* committee it is possible to find out how it was easy for the Republican aristocracy to adapt itself to the regime of the Principality, establishing a peculiar form of compromise which allowed them to confirm their leadership role in the new institutional apparatus of the Grand Dukedom also between 1751 and 1860.[32]

But the Archive of the Sacred Military Order of St. Stephen Pope and Martyr, kept at the State Archive of Pisa, is the indispensable source to track down all the papers regarding the families that wanted a formal recognition of the socio-political prominence in their homeland. At the same time they wanted to be honoured with a title which would make them equal to the most prestigious legacies of the Tuscan dominant class, assuming the uniform and the symbols of the order of the cavalry analogous to the Order of Malta. As a consequence, the original and unedited documents provide, 'in a game of mirrors', numerous cues and excellent information in order to draw up a profile of the most important Tuscan, Italian and European powerful group of families (*consorterie*), who had a fundamental role in the management of the public apparatuses.[33] They also offer new enquiry opportunities, which are really particular and innovative, concerning the historical evolution of the political and parliamentary institutions between the end of the XII and the middle of the XIX century.

A very relevant example, regarding the St. Stephen sources, is represented by the series of the *Provanze* of nobility, in which are kept,

amongst the other documents, the so-called 'capitoli delle provanze', usually made up of about a dozen articles enumerating the usual questions about noble qualities of the aspirant. Through these questions they interrogate witnesses about the nobility of the families of the four quarters (but, as far as possible, also to those linked to them by ties of affinity). The applicant had to present the proofs in the form of documentation and the notary acts regarding the nobility of all the ancestors, for at least four generations. In fact, the descendants of the oldest aristocratic families perpetuated in every way possible the splendour of its forebears, with glorious actions or with blood spilt in battle, but also, and above all, through their noticeable presence in ecclesiastical positions, in the legal professions, in political and military affairs. Numerous renowned individuals maintained the value and the honour of their forefathers in diplomatic missions, in the top military ranks and in the cavalry orders. It is certainly a question of a common characteristic among the ancient lineages, the most relevant of which, both in the period in which the *legislazioni antimagnatizie* were in force (XIII-XIV century), as well as subsequently until the national unification. This was about the prerogatives which had rendered them irreplaceable at the top of the public apparatuses, since the beginning of the *Comune cittadino* as public entity. The facts, indeed, highlight the eminent role in the government that the *magnati* acquired in the Medieval Age and kept over the centuries, which was not merely due 'alle particolari condizioni di privilegio della loro classe, ma alle loro qualità personali, alle loro possibilità economiche, all'importanza delle tradizioni sociali e politiche della famiglia' from which they drew their own origins and of which they represented the solidity in the exercising of charismatic authority in all senses. Precisely due to this essential series of real motivations, since the Medieval Age, in the 'complesso dell'atteggiamento del popolo verso i magnati si può osservare un misto di odio e di ammirazione, atteggiamento assai spesso proprio di chi riconosce malvolentieri altri superiore a sé'.[34]

However, the antiquity of the insertion of families into the ruling class of their place of origin was the main characteristic both of the *nobiltà civica*, as well as of the cavalry nobility. But a specific proof was not requested by the statutes of the Order of St. Stephen, which limited themselves to establishing that

> Chiunque desidera d'esser ricevuto in Cavaliere […] bisogna prima, che [...] provi, e verifichi ciascuna dell'infrascritte cose, cioè. Ch'egli stesso, Padre, Madre, Avi, ed Avole dal lato Paterno e Materno, sieno discesi da casate nobili, che habbiano avuto, o veramente sieno stati atti a potere avere, e godere nella Patria loro quelle maggiori dignità, e gradi che solo i più nobili Gentiluomini sogliono avere, e godere; dichiarando nominatamente quali gradi e dignità.[35]

The '*nazionale*' character of the Order of St. Stephen was, therefore, overtaken in reason by the admission of non-Tuscan pretenders, as is effectively evident from the solid mass of information collected, even if schematically, by Bruno Casini.[36] Through this it is possible to find both a preliminary census of the lineages who could adorn themselves and their noble arms with the red cross on the white background, and, above all, the indications of the documentary coordinates from which to draw the first series of clues and knowledge regarding the origins, nature and evolution of the ruling classes who could be homologated to the Tuscan *nobiltà civica*, through the indispensable aid of a source of solid historical matrix, and not only heraldic and genealogical.

The efficiency and efficacy of the family historiographic methodology, for the thorough investigation in the field of historical-institutional research, are guaranteed by the indisputable nature of the proofs gathered from archive sources (concerning documentation, for the most part, unedited), and have been empirically confirmed by a series of studies which have reinforced the thesis upheld in this essay. And, regarding this, it is important to underline that these researches began from the model that is mainly representative and congenial – particularly dear to the writer – among the Tuscan oligarchies, that is to say

> quella senese [che] – sia per essere propria di una città capitale [dello Stato 'nuovo'] sia per essere politicamente più consistente e giuridicamente più autonoma rispetto a quella dell'altra 'metropoli' – assumeva una posizione di primissimo rilievo ed un valore paradigmatico, anche fuori dei confini del Granducato: era, in una parola, quella che maggiormente si avvicinava al modello delle più antiche e prestigiose nobiltà cittadine italiane.[37]

As a matter of fact, the history of the *Stato Nuovo* of Siena is exemplary, especially in a sector poorly illuminated by modern research contributions, in terms of planning and dating, like that of the *famiglie di reggimento*. After having assumed the responsibility to govern at the time of the Republic, they had continued to be part of the ruling class also in the Grand Duke period. The reports and the researches relative to the aristocratic lineages are destined, in their complexity, to make up a *corpus* of studies able to throw new light on a peculiar side of the socio-economic and political-institutional structures and to provide a contribution which is certainly useful in order to deepen the understanding of at least five centuries of history on the management apparatuses of the institutional powers and of the ruling classes which held the monopoly until the threshold of Unification.

3. *Conclusions*

The considerations on the Sienese political-institutional structure have already been transformed into definite results that may objectively be weighed up.[38] Consequently, the contents of our research proposal still to be carried out also in a wider sense, using the methodology of the family historiography. From a comparative point of view, congress activity has provided opportunities to deepen both substantial aspects regarding urban systems of *reggimento cittadino*,[39] as well as more specifically conceptual topics,[40] and, finally, the ties between Tuscany and the ruling classes of National and European origins, with special reference to the *parlamentarie* families.[41] In particular, consider the events of the two lineages of the Sproni and the Colloredo, the members of which were knights of St. Stephen, the forefathers members of the most relevant institutional structures of places of provenance (Holland and Friuli) and the descendents of the more dynamic branches were protagonists in landing places (Tuscany and Marche). The points of reference to grasp, in a comparative way, the peculiarities and similarities of the typologies of political and parliamentary institutions directed by the ruling classes homologous to the *nobiltà civica toscana* (which, at the same time, flourished, lived and survived in other Italian and European places) are amply documented.

The future perspective is to progressively extend the enquiry spectrum, in order to consolidate a new research line on the political and parliamentary institutions that came into existence in the Medieval Age and on the ruling classes that were born together with them. They clashed in the Modern Age with the affirmation of the monarchy, but they survived the unstoppable evolutionary vortex of the national and continental institutions, which brought about the affirmation of enlightened absolutism, in the complex transition to the Contemporary Age.[42]

Still to be explored are the research horizons offered by the collection of documentation of the Archive of the Order of St. Stephen and, presumably, of other noble and cavalry institutions, for which we await valiant and willing champions who have an uncontainable passion for an irresistibly fascinating lady: historical research.

Notes

[1] R. Mousnier, *Les hiérarchies sociales de 1450 à nos jours* (Paris, 1969).

[2] The text may be found in: L. Cantini, *Legislazione Toscana* (Florence, 1800-1808), vol. XXVI, pp. 231-41. The relative *Istruzione alli deputati sopra la descrizione della nobiltà del Granducato di Toscana* (that contained the accomplished norms of the new

normative body) was issued together with the *Legge per regolamento della nobiltà e cittadinanza*. From here on: *Legge* and *Istruzione*.

[3] Regarding Tuscan noble law and its shaping, see: D. Marrara, *Riseduti e nobiltà. Profilo storico-istituzionale di un'oligarchia toscana nei secoli XVI-XVIII* (Pisa, 1976), pp. 5-60; F. Diaz, *I Lorena in Toscana. La Reggenza* (Turin, 1987), pp. 156-70; F. Diaz - L. Mascilli Migliorini - C. Mangio, 'Il Granducato di Toscana. I Lorena dalla Reggenza agli anni rivoluzionari', in G. Galasso (ed.), *Storia d'Italia* (Turin, 1997), vol. XIII-2, pp. 158-72; C. Donati, *L'idea di nobiltà in Italia. Secoli XIV-XVIII* (Bari, 1988), pp. 315-38; M. Verga, *Da 'cittadini' a 'nobili'. Lotta politica e riforma delle istituzioni nella Toscana di Francesco Stefano* (Milan, 1990), pp. 241-72; C. Pazzagli, *Nobiltà civile e sangue blu. Il patriziato volterrano alla fine dell'età moderna* (Florence, 1996), pp. 1-10 and 58-71; M. Aglietti, *Le tre nobiltà. La legislazione nobiliare del Granducato di Toscana (1750) tra Magistrature Civiche, Ordine di Santo Stefano e Diplomi del Principe* (Pisa, 2000); D. Marrara, 'I ceti municipali nella Toscana del settecento', in *Ceti dirigenti municipali in Italia e in Europa in età moderna e contemporanea* (Pisa, 2003), pp. 9-17; C. Mangio, 'Fra Giulio Rucellai e la Granduchessa Elisa: sconfitta e persistenza delle nobiltà cittadine', in ibidem, pp. 177-86; C. Rossi, 'Il Discorso di Lorenzo Cantini sulla legge toscana del 31 luglio 1750 per regolamento della nobiltà e cittadinanza', in *Atti del Convegno 'Volterra e l'Ordine di Santo Stefano'* (Pisa, 2006), pp. 201-26.

[4] *Statuti dell'Ordine de' Cavalieri di Santo Stefano ristampati con l'addizioni in tempo de' Serenissimi Cosimo II e Ferdinando II e della Sacra Cesarea Maestà dell'Imperatore Francesco I Granduchi di Toscana e Gran Maestri* (Pisa, 1746). From here on: *Statuti*.

[5] Regarding the comparison between the legislation of 1750 and the statutes of the Order of St. Stephen, see: D. Marrara, 'La nobiltà e l'Ordine di Santo Stefano nella Toscana del settecento', *Rivista di Storia del Diritto Italiano* LXIII, (1990), pp. 119-42; idem, 'Nobiltà civica, patriziato e Ordine di Santo Stefano nella Toscana settecentesca', *Quaderni Stefaniani* XXII, (2003), pp. 47-56.

[6] Judged as 'una sorta di riuscito compromesso tra la visione gerarchico-feudale del Richecourt e le aspirazioni oligarchiche delle famiglie senatorie fiorentine': C. Donati, *L'idea di nobiltà in Italia*, p. 326.

[7] Regarding the conservation and the persistence of the feudal system in the age of the Medici, see: E. Fasano Guarini, *Lo stato mediceo di Cosimo I* (Florence, 1973), pp. 63-72; G. Pansini, 'Per una storia del feudalesimo nel Granducato di Toscana durante il periodo mediceo', *Quaderni Storici* 19, (January-April 1972), pp. 131-86.

[8] *Legge*, art. I, clause 1st.

[9] For the conceptual distinction between simple nobility and patriciate, see: D. Marrara, 'Nobiltà civica e patriziato. Una distinzione terminologica nel pensiero di alcuni autori italiani dell'età moderna', *Annali della Scuola Normale Superiore di Pisa. Classe di Lettere e Filosofia* III-X, (1980), pp. 219-32; idem, *Nobiltà civica e patriziato nella Toscana Lorenese del Settecento*, in *I Lorena in Toscana. Convegno internazionale di studi* (Florence, 1989), pp. 45-54.

[10] *Legge*, art. XI; *Istruzione*, art. XVII. The compilation of two series of registers was foreseen: the originals, to be kept in Florence, in the 'Archivio di Palazzo', and the copies, compiled and signed by the State Secretary, provided with the imperial seal, to be kept in the public archives of the noble cities.

[11] *Legge*, title II (*Del modo di far la nuova Descrizione*).

[12] Ibidem, art. IX.

[13] Ibidem, art. V.

[14] Ibidem, artt. I, II, III and VI, clause 2nd. On the 'perfetta segregazione delle borse' made possible by the abundance of the population, necessary in order to maintain the social stratification, see: P. Neri, 'Discorso sopra lo stato antico e moderno della nobiltà di Toscana scritto l'anno 1748', in Verga, *Da 'cittadini' a 'nobili'*, pp. 403-567: 547; Marrara, *Riseduti e nobiltà*, pp. 43-5; idem, 'Livorno città "nobile"', in *Atti del Convegno 'Livorno e il Mediterraneo in età medicea'* (Leghorn, 1978), pp. 77-81; idem, 'La cit-

tà di Colle Val d'Elsa nel quadro delle "patrie nobili" toscane', *Miscellanea storica della Valdelsa* LXXXVIII, (1982), pp. 165-75; F. Angiolini, 'L'Ordine di S. Stefano negli anni della Reggenza (1737-1765): urti e contrasti per l'affermazione del potere lorenese in Toscana', in *Atti del Convegno 'L'Ordine di S. Stefano nella Toscana dei Lorena'* (Rome, 1992), pp. 1-47: 22-25; idem, *I Cavalieri e il Principe. L'Ordine di S. Stefano e la società toscana in età moderna* (Florence, 1996), pp. 178-81; S. Simonini, 'Pescia città nobile. Il motuproprio del 25 luglio 1732 e i suoi riflessi sull'Ordine di Santo Stefano', *Quaderni Stefaniani* XVII, (1998), pp. 89-103; Aglietti, *Le tre nobiltà*, pp. 157-77; A. Zappelli, 'L'Ordine di Santo Stefano e le città nobili della Toscana', *Quaderni Stefaniani* XX, (2001), pp. 85-101; eadem, 'Le città nobili della Toscana', in *Ceti dirigenti municipali*, pp. 225-35.

[15] *Legge*, art. II.

[16] For the concept of civic nobility, see: D. Marrara, 'Le giustificazioni della nobiltà civica in alcuni autori italiani dei secoli XIV-XVIII', *Rivista di Storia del Diritto Italiano* LXII, (1989), pp. 15-38.

[17] *Statuti*, title II (*Del modo di ricevere i Cavalieri*), chap. III (*Delle probazioni, che si debbano fare innanzi, che alcuno si accetti*), p. 95. The linking interconnection between these norms and the *Legge per regolamento della nobiltà e cittadinanza* is clear.

[18] Aglietti, *Le tre nobiltà*, p. 73.

[19] State Archive of Florence (ASFi), *Deputazione sopra la nobiltà e cittadinanza*, Giustificazioni (1751-1860).

[20] Aglietti, *Le tre nobiltà*, p. 15.

[21] *Legge*, art. V: 'ordiniamo, che nella classe de' Patrizj si descrivano tutte le Famiglie Nobili, di cui sono state ricevute le provanze per giustizia al Nostro Ordine di S. Stefano'.

[22] We adopt the terminology granted by A. Marongiu, *Storia del diritto italiano. Ordinamenti e istituti di governo* (Milan, 1985); in particular, pp. 225-365: 282-8 and 356-8.

[23] See, for example: M. A. Visceglia (ed.), *Signori, patrizi, cavalieri nell'età moderna* (Bari, 1992); (in particular: *Introduzione* and chap. 3, *Famiglie e identità aristocratiche*).

[24] See the entry *famiglia, storia della*, edited by N. Gallerano, in *Dizionario di storiografia* (Milan, 1996), pp. 372-4.

[25] M. Montorzi, *Crepuscoli granducali. Incontri di esperienza e di cultura giuridica in Toscana sulle soglie dell'età contemporanea* (Pisa, 2006), pp. 41-2.

[26] J. Bodin, *Les six livres de la République* (Paris, 1583), I, chap. II, p. 11.

[27] G. B. Vico, *Principj di scienza nuova d'intorno alla comune natura delle nazioni, in questa terza impressione dal medesimo autore in un gran numero di luoghi corretta, schiarita, e notabilmente accresciuta* (1725-1744), in F. Nicolini (ed.), *Opere* (Milan - Naples, 1953), pp. 365-905: p. 374, par. 11 and p. 383, par. 25.

[28] C. L. de Secondat de Montesquieu, *Lettres persanes* (1721), 12 (*Usbek au même* [*Mirza*] *à Ispahan* [alors capitale de la Perse]. *D'Erzeron, le 6 de la lune de Gemmadi 2* [Août]*, 1711*), in D. Oster (ed.), *Œuvres complètes* (Paris, 1964), p. 69. See also, for completeness: *Esprit des lois* (1748), ibidem, pp. 585 and ff.

[29] Montorzi, *Crepuscoli granducali*, p. 43.

[30] Angiolini, *I Cavalieri e il Principe*, pp. 145-6; (in particular, see chap. VII, *Strategie familiari e Ordine di S. Stefano*, together with the thematic bibliography reported in the footnotes).

[31] Aglietti, *Le tre nobiltà*, p. 15; G. Huppert, *Il borghese gentiluomo. Saggio sulla definizione di élite nella Francia del Rinascimento* (Bologna, 1978); in particular: pp. 23-31 and 69-86.

[32] ASFi, *Deputazione sopra la nobiltà e cittadinanza*, Giustificazioni (1751-1860).

[33] State Archive of Pisa (ASPi), *Ordine dei Cavalieri di Santo Stefano*, Provanze; Apprensioni d'abito; Suppliche e informazioni; Libri di esequie; Strumenti di fondazione di commende di padronato; Strumenti della Religione. In one strike, a diversified series of news can be traced, from archive sources (e.g.: births, baptisms, weddings, deaths, family origins, noble titles, public roles, estates, incomes and taxes).

[34] G. Fasoli, 'Ricerche sulla legislazione antimagnatizia nei comuni dell'alta e media Italia', *Rivista di Storia del Diritto italiano* XVII, (1939), pp. 86-133 and 240-309: 246-7.

[35] *Statuti*, title II (*Del modo di ricevere i Cavalieri*), chap. III (*Delle probazioni, che si debbano fare innanzi, che alcuno si accetti*), pp. 94-5.

[36] B. Casini, *I cavalieri degli Stati italiani membri del Sacro Militare Ordine di S. Stefano Papa e Martire. Volume I* (Pisa, 1998); idem, *I cavalieri degli Stati italiani membri del Sacro Militare Ordine di S. Stefano Papa e Martire. Volume II* (Pisa, 2001).

[37] Marrara, *Riseduti e nobiltà*, p. 60.

[38] For the *Stato di Siena*, see: A. Ruiu, *Il Monte senese dei Gentiluomini nel Principato mediceo. Inquadramento storico-storiografico e profilo comparato degli assetti politico-istituzionali e socio-economici interni, per la fondazione del Granducato* (Pisa, 2008).

[39] A. Ruiu, 'La famiglia Ugurgieri nel patriziato senese e nell'Ordine di S. Stefano', *Quaderni Stefaniani* XXVI, (2007), pp. 117-208; idem, 'La famiglia Giusti nell'Ordine di S. Stefano', in *Atti del Convegno: Colle Val d'Elsa e l'Ordine di Santo Stefano. Istituzioni, economia, società* (Pisa, 2008), pp. 131-64.

[40] A. Ruiu, 'Ceti dirigenti e archivio stefaniano', in D. Barsanti (ed.), *Omaggio a Rodolfo Bernardini* (Pisa, 2009), pp. 305-28.

[41] A. Ruiu, 'I Colloredo nelle carte dell'Ordine di Santo Stefano', in D. Barsanti (ed.), *I Colloredo e l'Ordine di Santo Stefano* (Pisa, 2009), pp. 17-36; idem, 'La famiglia Sproni fra Comunità di Livorno, Ordine di S. Stefano e nobiltà toscana: l'ascesa di una nuova aristocrazia', *Nuovi Studi Livornesi* XVI, (2009), pp. 97-119.

[42] See the acts of three congresses closely connected, which fit into the research track and historiographic reflections which have developed over the past ten years: *Ceti dirigenti municipali in Italia e in Europa in età moderna e contemporanea* (Pisa, 2003); *Ceti dirigenti e poteri locali nell'Italia meridionale. Secoli XVI-XX* (Pisa, 2003); *Èlites municipales et sentiment national dans l'aire de la Méditeranée nord-occidentale* (Pisa, 2003).

José Manuel de Bernardo Ares

*Fuentes y metodologies para el estudio de las Cortes de la Corona de Castilla durante los siglos XVI - XVII**

1. *Significación del 'reino' en la organización política de la sociedad*

El objetivo de este trabajo es el estudio de las comunidades territoriales y locales desde la perspectiva del poder de sus asambleas representativas.[1] En la Corona de Castilla estas asambleas se denominaron Cortes de Castilla, Juntas del Reino (Galicia, Asturias, Navarra y País Vasco) y Cabildos de las ciudades (de las 21 ciudades con procuradores en Cortes). La composición social de todas ellas en los siglos XVI-XVII fue de carácter oligárquico, en donde estaban representados la nobleza, pero también algunos poderosos del tercer estado, muy relacionados con el comercio y los gremios. La naturaleza jurídica e institucional de estas asambleas representativas se expresaba a través de un concepto/realidad denominado 'reino'. El reino, al decir de Alfonso García Gallo, representaba a la comunidad política, que compartía a nivel central o supranacional, territorial y local, el poder soberano del 'rey' y ostentaba el poder económico y administrativo en los ámbitos de los 'estados señoriales' (2/3 del territorio) y del micro-estado local de los cabildos urbanos de las 21 ciudades (1/3 del territorio).[2]

La organización política de una sociedad se estructura en distintos niveles institucionales, que ostentan un poder específico y se relacionan con las necesidades o intereses de la sociedad de forma diversa.[3] Para los siglos XVI y XVII y tratándose concretamente de la monarquía hispánica paccionada de los Austrias esos dos niveles institucionales son los del 'rey' en cuanto institución, que conlleva, no sólo un poder palatino (el propio de la Casa Real), sino también un poder político (el de los Consejos Supremos, que articulaban el sistema polisinodial), sin olvidarse del omnipresente poder burocrático de los secretarios, preferentemente de los secretarios del Despacho Universal.[4] El otro nivel era el del 'reino', que se manifestaba

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orgánicamente reunido en Cortes o separado en los Cabildos de las ciudades.[5]

Aunque estos dos niveles (rey-reino), de naturaleza jurídico-institucional distinta, se entremezclan verticalmente, desarrollan una actividad política propia dictada, en el caso del reino, por los dos polos de un único binomio institucional (Cortes, Juntas y Cabildos): de una parte el polo sociológico de los miembros de aquellas asambleas representativas; y de otra el polo de la praxis política, que resuelve necesidades sociales o satisface intereses individuales. Sin prescindir – sería imposible – del papel condicionante del 'rey', nos centraremos en el funcionamiento del 'reino'.[6] Y para ello haremos crítica histórica de las fuentes, insistiremos en una metodología de trabajo histórico y apuntaremos los grandes temas, que se deben de elucidar en el estudio de aquellas asambleas representativas. Y, aunque nos movemos en el obligado contexto de la historia comparada, inexcusable en toda comunidad científica internacional, nos basaremos espacialmente en la Corona de Castilla, como una parte, entre otras, de la monarquía hispánica en los siglos XVI y XVII.[7]

2. *Las Actas: fuentes de gran riqueza informativa*

Para estudiar estas instituciones del 'reino' se cuenta con muchas fuentes (ordenanzas, protocolos, etc.),[8] pero nos vamos a centrar en una de ellas: las *actas* de Cortes,[9] de las Juntas del Reino[10] y de los cabildos de las ciudades.[11] Las razones de esta selección son varias. En primer lugar son fuentes manuscritas en su origen, pero la mayoría de ellas están editadas con mayor o menor rigor crítico.[12] En segundo lugar se trata de fuentes primarias, coetáneas a los hechos históricos narrados y escritas por fedatarios públicos (los escribanos o notarios)[13]. En tercer lugar tienen la misma estructura formal, lo que significa que su gran riqueza informativa de datos es susceptible de organizarse en unas cuantas variables, que posibilitan ulteriormente su interpretación.[14] En cuarto lugar son fuentes permanentes en el tiempo, que no sólo abarcan la Modernidad, sino que se iniciaron antes y se prolongan hasta nuestros días. Esto no sólo permite tener muy en cuenta el tiempo largo, lo que es fundamental, sino también constatar las recurrencias históricas o, como dirían los epistemólogos, leyes en la historia. Y, finalmente, porque su riqueza informativa abarca seis campos concretos: el quién es quién en la toma de decisiones (sociología del Estado); el patrimonio y las haciendas tanto de las Cortes como de los Cabildos; la estructura orgánica de esas Cortes o Cabildos; los problemas que se deben de resolver políticamente de la comunidad de los gobernados; las relaciones interinstitucionales, tanto las horizontales a nivel local (cabildos civil y eclesiástico) como las verticales con los organismos periféricos (chancillerías de Vallado-

lid y Granada, audiencias, etc.) y con las otras instituciones de la monarquía, especialmente con los Consejos supremos; y la lucha contra el poder o el desencadenamiento de los conflictos (algaradas, motines, revueltas o revoluciones).

3. *Metodología de la investigación*

Pero si es importante disponer de una fuente manuscrita, primaria, con una misma estructura formal, permanente en el tiempo y riquísima en contenido informativo, para el historiador, que es un científico social, lo más significativo es el tratamiento de esta fuente.[15] Es decir, ¿cómo se estudia? Porque de la metodología utilizada depende totalmente el rigor de los resultados, que se pretenden conseguir en el proceso de investigación.[16] Un buen método para el tratamiento adecuado de estas *actas* de las asambleas representativas es el que nos brinda el instrumentalismo cognitivo, que reconoce en el sujeto o historiador una capacidad interpretativa y en el objeto o realidad histórica la posibilidad de ir desvelándose poco a poco a través de un meticuloso análisis o individualización de todos y cada uno de los hechos históricos.[17] De esta manera, la contingencia de estos hechos se transforma, previo el análisis y la síntesis, en una explicación o teoría universal, omnicomprensiva, rigurosa y contrastada.[18]

Por consiguiente, para estudiar la sociedad (los gobernados) desde la óptica del poder de las asambleas representativas (gobernantes) se propone el despliegue investigador de un 'triángulo historiográfico', cuyos vértices importantísimos son las fuentes (las *actas* en nuestro caso), la bibliografía (todo lo aportado por la comunidad científica al respecto) y los resultados. Pero la parte central de este triángulo historiográfico, sin la cual no habría triángulo, es la metodología.[19] La propia consulta de las fuentes, a la que se le debe de aplicar una implacable crítica histórica siguiendo los modelos, todavía no agotados a pesar de su hontanar decimonónico, de la escuela de Chartes,[20] la utilización selectiva de la bibliografía[21] y, por supuesto, los resultados adquiridos, no significan nada si no estuvieran bien articulados por una metodología bien experimentada por las ciencias sociales en general [22] y las ciencias históricas en particular .[23]

4. *Resultados contrastados y verificados*

Los resultados de esta investigación sobre las asambleas representativas, partiendo de las *actas* como fuente primordial, pero no exclusiva, y utilizando la ya contrastada metodología científica del instrumentalismo cognitivo, son de seis tipos o, mejor dicho, abarcan seis campos complementarios.

a.- En primer lugar se explicita la propia estructura orgánica de la institución (las Cortes, las Juntas y los Cabildos). En este campo pre-

domina el derecho o, mejor, las disposiciones normativas que regulan el funcionamiento administrativo de estas importantes instituciones, en cuanto representaron jurídicamente al 'reino', ya reunido en Cortes o Juntas o separado en los correspondientes cabildos de las ciudades.[24]

b.- En segundo lugar aparecen todos los problemas relacionados con el patrimonio y la hacienda.[25] En el Antiguo Régimen los municipios disponían de un patrimonio propio – los 'bienes de propios' – y administraban los importantísimos bienes comunales.[26] Y tanto las Cortes como las Juntas tenían sus propias haciendas – las 'haciendas del Reino' – con sus figuras impositivas propias, como las alcabalas, recaudadas por encabezamiento, y los servicios ordinario y extraordinario[27]. En este campo concreto de la propiedad, de la financiación y de la fiscalidad es donde mejor se comprueba que los varios niveles del poder, del poder soberano escalonado, se entremezclan de abajo arriba y de arriba abajo, tal y como lo pone de manifiesto Julio Muñoz para el caso concreto de la ciudad de Murcia.[28]

c.- En tercer lugar estos órganos institucionales tienen una composición social, cuyos perfiles personales y, sobre todo, su entroncamiento parentelar y clientelar (redes sociales) permite al estudioso conocer a fondo quién toma realmente las decisiones en cada momento de la actuación de estas asambleas representativas. La importancia de estos datos sociológicos estriba en que, no sólo se pueda individualizar el quién es quién en la toma de decisiones, sino que también ofrecen una amplia base informativa sobre las necesarias biografías colectivas de procuradores, regidores, corregidores, escribanos, mayordomos, contadores, alcaldes mayores, corregidores, etc. etc.[29]

d.- En la inexcusable relación entre estas entidades representativas y la sociedad afloran los problemas sentidos como tales por la comunidad, de la que los representantes o procuradores son los portavoces, aunque en la mayoría de los casos sus intereses personales o de grupo se coloquen por encima de las necesidades de la propia comunidad. Se trata, en definitiva, de la política local; de cómo se atienden a aquellos intereses o de cómo se resuelven estas necesidades.[30] Los campos de esta política, ya sea territorial o municipal, son múltiples y complejos, pero los podemos concretar en los siguientes: economía, educación, guerra, justicia, metrología, policía, religión, salud pública, servicios y urbanismo.[31]

e.- Aparece también un quinto bloque de datos sobre las relaciones interinstitucionales de estas asambleas representativas con otras entidades, tanto particulares como públicas, a nivel vertical u horizontal.[32] Es precisamente en estas múltiples y heterogéneas relaciones interinstitucionales en donde se descubre la complejidad del poder po-

lítico, entendido al modo de Michael Man,[33] porque es aquí en donde se pone de manifiesto la fuerza económico-administrativa del 'reino' (las asambleas representativas) en relación con la fuerza jurídico-legal del 'rey' (los consejos y secretarías).[34] En este ámbito, tanto en las relaciones verticales como en las horizontales de estas asambleas, se descubre una auténtica lucha por el poder entre los mismos gobernantes. Y es precisamente en este campo de lucha permanente, de donde se extrae la información pertinente para determinar el alcance teórico y práctico del pactismo (siglos XVI y XVII) y del absolutismo (siglo XVIII).[35]

f.- Las anteriores relaciones interinstitucionales se articulan siempre en torno a una lucha por el poder, pero también – subrepticiamente siempre y públicamente de vez en cuando – se da una lucha contra el poder, manifestándose de esta manera el permanente conflicto, que conlleva siempre la dinámica social.[36] Cuando aquella relación entre gobernantes y gobernados se rompe por una excesiva presión fiscal o por una prolongada crisis de subsistencias o por los azotes inmisericordes de las pestes o por la fuerte represión policial o por la falta de organización de los movimientos sociales, entonces se desencadenan algaradas, motines, revueltas e incluso revoluciones.[37]

5. *La participación versus representación*

Últimamente Antonio Manuel Hespanha se preguntaba si era mejor denominar a la *representación* política de estas 'asambleas representativas' del Antiguo Régimen *participación* política.[38] Sin entrar en este interesante debate intelectual, lo cierto es que en nuestros días estos mismos conceptos y realidades políticas están en el candelero de lo opinable, pero en un sentido contrario. Ahora lo que se pretende es sustituir la *representación* de los 'parlamentos o cortes' por la *participación* directa de los ciudadanos – 'democracia deliberativa' le llaman algunos – para poder hablar legítimamente de democracia.[39]

En definitiva, lo que se discute aquí, tanto en el pasado como en el presente, es la legitimidad del poder político (el del rey o el del reino, o el de ambos a la vez).[40] Como nos recuerdan autorizadamente Jürgen Habermas, Hannah Arendt y Raimon Panikkar lo que realmente importa es si antes, ahora y mañana el poder establecido resuelve políticamente las necesidades de los más o, por el contrario, atiende exclusivamente a los intereses de los menos.[41]

Sea lo que fuere, la investigación rigurosa, metodológicamente bien elaborada, supone una aportación científicamente relevante sobre la función esencial de las 'asambleas representativas' de antaño como poderosa herramienta institucional, que actuó dialécticamente entre las necesidades de un tercer estado y los intereses de los privilegiados del primer y segundo estados en el contexto de una sociedad siempre dinámica.[42]

Notes

[1] J. M. de Bernardo Ares, 'Parliament or city Councils: The representation of the kingdom in the Crown of Castile (1665-1700)', *Parliaments, States and Representation*, 25 (2005), pp. 33-54.

[2] A. Garcia Gallo, *Manual de Historia del Derecho Español. I: El origen y la evolución del Derecho* (Madrid, 1975), pp. 682-685 y 781-786; A. Carrasco Martínez, 'Poder señorial y poder municipal en la Corona de Castilla durante los siglos XVII y XVIII', in L. A. Ribot García. y L. de Rosa (edits.), *Ciudad y mundo urbano en la Época Moderna (*Madrid, 1997), pp. 117-133.

[3] J. M. Carretero Zamora, *Cortes, Monarquía, Ciudades. Las Cortes de Castilla a comienzos de la Época Moderna. 1476-1515* (Madrid, 1988) ; J. J. Ruiz Ibáñez, *Las dos caras de Jano. Monarquía, ciudad e individuo. Murcia, 1588-1648* (Murcia, 1995).

[4] J. Martínez Millán, 'La corte de la monarquía hispánica', *Studia Historica. Historia Moderna*, 28, (2006), pp. 17-61 ; F. Barrios, *Los Reales Consejos. El gobierno central de la Monarquía en los escritores sobre Madrid del siglo XVII* (Madrid, 1988) ; J. A. Escudero, *Los Secretarios de Estado y del Despacho. 1474-1724* (Madrid, 1976).

[5] J. M de Bernardo Ares, 'Rey-Reino: El binomio estatal de la Corona de Castilla en el siglo XVII', in J. L. Castellano, J-P. Dedieu y M. V. López-Cordón, (Edits.)*, La pluma, la mitra y la espada. Estudios de historia institucional en la Edad Moderna* (Madrid-Barcelona, 2000), pp. 339-354 ; J. E. Gelabert, *La bolsa del rey. Rey, reino y fisco en Castilla. 1598-1648* (Barcelona, 1997).

[6] J. M de Bernardo Ares, 'Poder del "reino" (ciudades) y poder del "rey" (consejos, secretarías y audiencias) entre los siglos XVII y XVIII: elites, derecho, guerra, finanzas y hacienda', in O. Rey Castelao y R. J. López (Eds.), *El mundo urbano en el siglo de la Ilustración* (Santiago de Compostela, 2009), II, pp. 445-473 ; Id., 'Las ciudades andaluzas: articulación del espacio político y relaciones con la Corona', in B. Yun Casalilla (Coord.), *Historia de Andalucía. VI: Entre el Nuevo y el Viejo Mundo. 1492-1652* (Sevilla, 2006), VI, pp. 106-127.

[7] J. D. Muñoz Rodríguez, 'Tantas cortes como ciudades: negociación, beneficio, lealtad en la Corona de Castilla (1667-1714)', in F. J. Guillamón Álvarez, J. D. Muñoz Rodríguez, y D. Centenero de Arce, *Entre Clío y Casandra. Poder y sociedad en la monarquía hispánica durante la Edad Moderna* (Murcia, 2005), pp. 275-301.

[8] M. García Ruipérez, M.d. C. Fernández Hidalgo, *Los archivos municipales en España durante el Antiguo Régimen. Regulación, conservación, organización y difusión* (Cuenca, 1999); P. A. Porras Arboledas, *Ordenanzas de la muy noble, famosa y muy leal ciudad de Jaén, guarda y defendimiento de los reinos de Castilla* (Granada, 1993); Á. Hijano Pérez, *Las ordenanzas municipales como norma del gobierno local* (Granada, 2001).

[9] Sobre la importancia de las actas de Cortes *vid*. el capítulo 'La construcción del Estado en el Antiguo Régimen desde la óptica de las Cortes de Castilla', in J. M. de Bernardo Ares, *El poder municipal y la organización política de la sociedad. Algunas lecciones del pasado* (Córdoba, 1998), pp. 507-524 ; C. López Alonso, 'Conflictividad social y pobreza en la Edad Media según las Actas de las Cortes castellano-leonesas', *Hispania*, 140, (1978), pp. 475-567.

[10] J. Sobrón Ortiz, 'Creación de una base de datos de las Actas del período histórico de las Juntas Generales de Alava (1502-1876)', in J. Agirreazkuenaga (ed.), *Contribution to European Parliamentary History. Minutes of the 47th Conference of the International Commission for the History of Representative and Parliamentary Institutions (Bilbao-Gernika, 2-6 Septembre 1997* (Bilbao, 1999), LXXIX, pp. 709-725.

[11] M. d. C. Belmonte López-Huici, M. Cuesta Martínez y M. I. García Cano, et al., 'Las actas capitulares como fuente para la historia urbana', *Axerquía. Revista de Estudios cordobeses*, 10, (1987), pp.155-181; M. Carrera Stampa, 'Las actas municipales fuente de la historia de Mexico', in *Contribuciones a la historia municipal de América* (México, 1951), pp. 109-135.

[12] A. Eiras Roel, 'Las Juntas del Reino de Galicia: orígenes y proceso de institucionalización', *Obradoiro de Historia Moderna*, 4, (1995), pp. 115-182. La edición crítica de estas Actas de las Juntas del Reino de Galicia, coordinada por el referido profesor Eiras constituyen un modelo historiográfico a seguir. Igual juicio merece la edición de las Actas de las Juntas Generales del Principado de Asturias, dirigida por Josefina Velasco Rozado.

[13] E. M. Mendoza García, *Los escribanos de Málaga en el reinado de Felipe IV. 1621-1665* (Málaga, 2007) ; P. Ortego Gil, '¿Fiel y legal escribano?: visitas de escribanos', *Initium. Revista catalana d'Història del Dret*, 13, (2008), pp. 371-549 ; J.P. Poisson, *Notaires et Societé. Travaux d'Histoire et de Sociologie Notariales* (París, 1990).

[14] Es esta organización de los datos en unas cuantas variables la que permite, como veremos luego, el desarrollo de la fundamental operación lógica de la sistematización.

[15] L. Castro Nogueira, M. Á. Castro Nogueira, y J. Morales Navarro, *Metodología de las ciencias sociales: una introducción crítica* (Madrid, 2008); M. Herrera Gómez, *Metateoría de las ciencias sociales. El puzzle epistemológico* (Madrid, 2005).

[16] J. M. Amado Mendes, *A História como ciência. Fontes, metodologia e teorizaçâo* (Coimbra, 1989), pp.122-139; J. Aróstegui, *La investigación histórica: teoría y método* (Barcelona, 2001), pp. 360-397.

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Maria Helena da Cruz Coelho

L'histoire des parlements dans le Portugal du Moyen Âge: un parcours des sources et des études[1].

L'histoire se construit à partir des sources les plus diverses, bien que ce soient, en définitive, les sources écrites qui l'emportent sur les autres. Mais dans le cas de l'histoire parlementaire, l'écriture et les écrits renferment l'essence même de la mémoire historique d'une institution, dans laquelle la rhétorique, le discours, arts de la communication, ont théâtralisé la sollicitation et la protestation. Sur la scène des Cortès, où l'on cherche à persuader, c'est la voix qui se fait d'abord entendre, et l'oralité prend les devants, pour bientôt en appeler à l'écriture qui fixera durablement sur la page ce qui n'avait d'abord été que paroles.

L'édition des documents produits dans les Cortès est donc devenue absolument indispensable pour la connaissance de ces assemblées.

Si nous nous reportons au Portugal médiéval, il faut bien admettre que nous sommes loin de pouvoir comter sur des matériaux entièrement édités même si l'on prend en considération les progrès, très significatifs, réalisés depuis les années 1980.

Avant cette date nous ne disposions, comme outil fondamental, que d'un répertoire indiquant le lieu et la cote de divers originaux et contenant les copies de documents produits dans les Cortès, éparpillés dans les diverses archives et bibliothèques du pays. C'est le cas du catalogue de Joaquim Leitão, *Cortes do Reino de Portugal*,[2] qui tout en ayant besoin d'être actualisé, peut encore nous fournir des références utiles, surtout pour les archives de moindre importance. Par ailleurs, au XIXe siècle, grâce au labeur du Vicomte de Santarém, divers actes ou procès-verbaux de Cortès des XIV et XVe siècles ou résumés d'articles ou 'chapitres' généraux (nous utiliserons ici dorénavant, par commodité, cette désignation de 'chapitres' qui reprend le mot portugais 'capítulos', comprenant les demandes et les réponses obtenues du roi) avaient été publiés.[3] Sans oublier qu'un nombre considérable d'ouvrages et d'éditions documentaires, de nature très diverse, comprenaient la transcription ou le résumé de la documentation issue des Cortès.[4]

A partir des années '80, le Centre d'Etudes Historiques de l'Université de Lisbonne entreprit, en même temps que la publication

des *Chancelarias Régias*, l'édition des *Cortes Portuguesas*. Ces documents se répartissent sur les règnes successifs et on trouve également compilée toute la documentation issue des Cortès ou produite en vue de leur préparation.

En ce qui concerne la première dynastie, on a édité dans cette collection, en 1982, les *Cortes Portuguesas. Reinado de D. Afonso IV (1325-1357),*[5] en 1986, les *Cortes Portuguesas. Reinado de D. Pedro I (1357-1367),*[6] en 1990, les *Cortes Portuguesas. Reinado de D. Fernando (1367-1383)*, volume I (1367-1380)[7] et, en 1993, le volume II (1383).[8]

Voyons maintenant de manière synthétique les enseignements que ces publications nous permettent de recueillir.

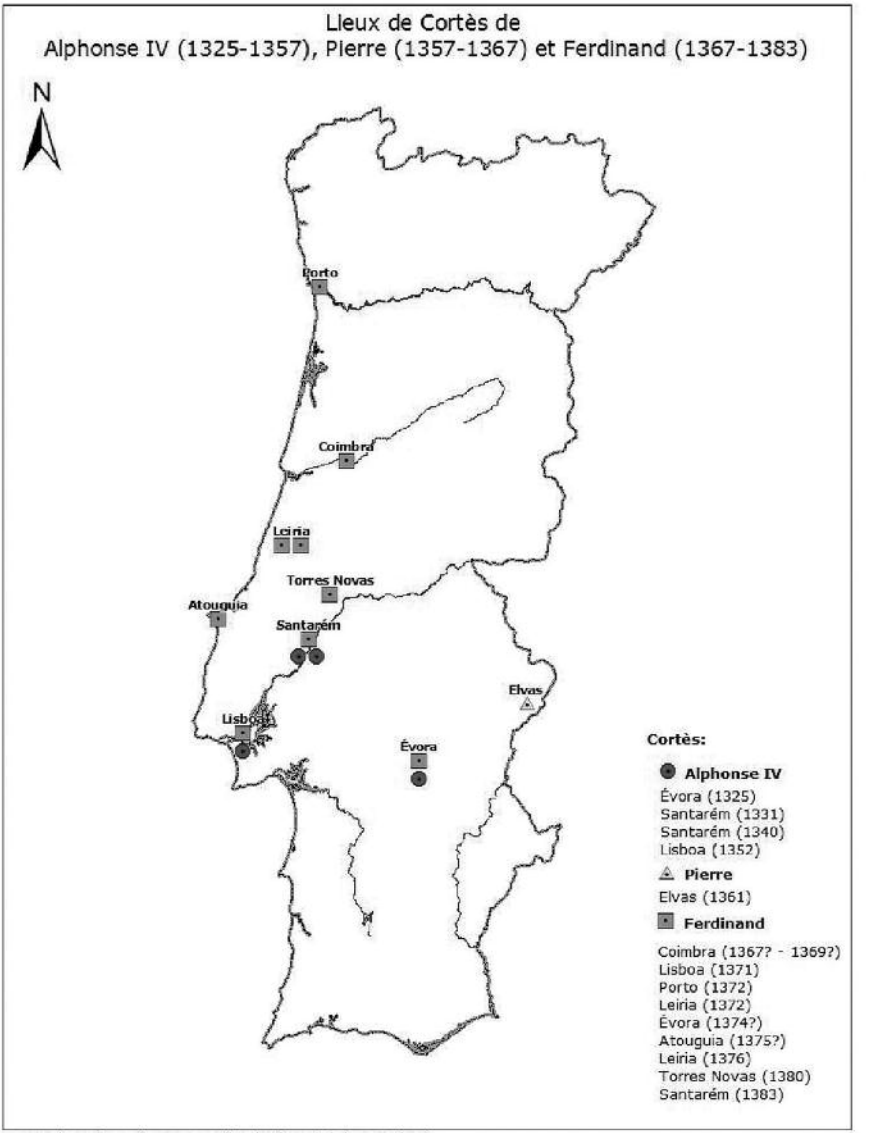
1 – nous connaissons toutes les Cortès réalisées durant les règnes de ces monarques: il y en eut quatre sous Afonso IV, une seule durant les dix années du règne de D. Pedro et neuf durant les 16 années du règne de D. Fernando. Nous observons, et c'est une moyenne tout à fait significative, des intervalles d'un peu plus d'un an et demi entre les réunions de ce dernier règne (quoique la réalisation effective de certaines Cortès puisse être mise en doute);

2 – nous pouvons aussi constater que les principales villes et bourgades qui accueillirent les Cortès se trouvent en Estramadure, dans le triangle Coimbra, Santarém et Lisbonne, territoires où une cour encore itinérante séjourna plus volontiers; une assemblée, à l'époque de D. Fernando, se réunit exceptionnellement à Porto, et on se mit à en convoquer en Alentejo, la ville d'Évora surclassant les autres puisqu'elle sera le futur centre de fixation des monarques dans cette région [Carte1, p.71];

3 – de certaines Cortès nous n'avons d'écho qu'à travers des allusions faites dans des chroniques ou autres documents, aucune production écrite n'en étant sortie, comme c'est le cas, sous Fernando, des Cortès de Coimbra de 1366 ou 1369, des Cortès d'Évora de 1374 et celles d'Atouguia de 1375;

4 – des autres Cortès nous possédons des documents produits au moment de leur réunion, et nous les synthétisons dans le graphique – où il est montré que furent présentés 322 chapitres généraux du peuple et 324 chapitres spéciaux du peuple, 43 chapitres généraux du clergé et 2 chapitres généraux de la noblesse et encore une demi-douzaine d'autres chartes royales. De ces diverses données il ressort que les réunions servaient essentiellement les intérêts du peuple, qui y exposait ses demandes et doléances en comptant sur l'approbation du roi, et très peu répondaient aux intérêts spécifiques de la noblesse et du clergé, dont tout l'intérêt se portait sur le débat du sujet principal, motif de la convocation des Cortès;

Carte 1


Lieux de Cortès de
Alphonse IV (1325-1357), Pierre (1357-1367) et Ferdinand (1367-1383)
N
Porto
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Leiria
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Atouguia
Santarém
Elvas
Lisboa
Évora
Cortès:
Alphonse IV
Évora (1325)
Santarém (1331)
Santarém (1340)
Lisboa (1352)
Pierre
Elvas (1361)
Ferdinand
Coimbra (1367? - 1369?)
Lisboa (1371)
Porto (1372)
Leiria (1372)
Évora (1374?)
Atouguia (1375?)
Leiria (1376)
Torres Novas (1380)
Santarém (1383)
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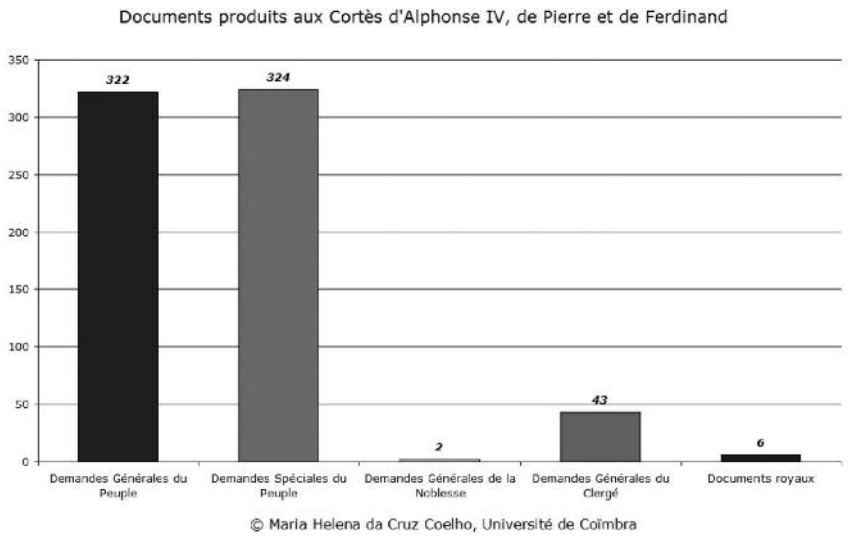
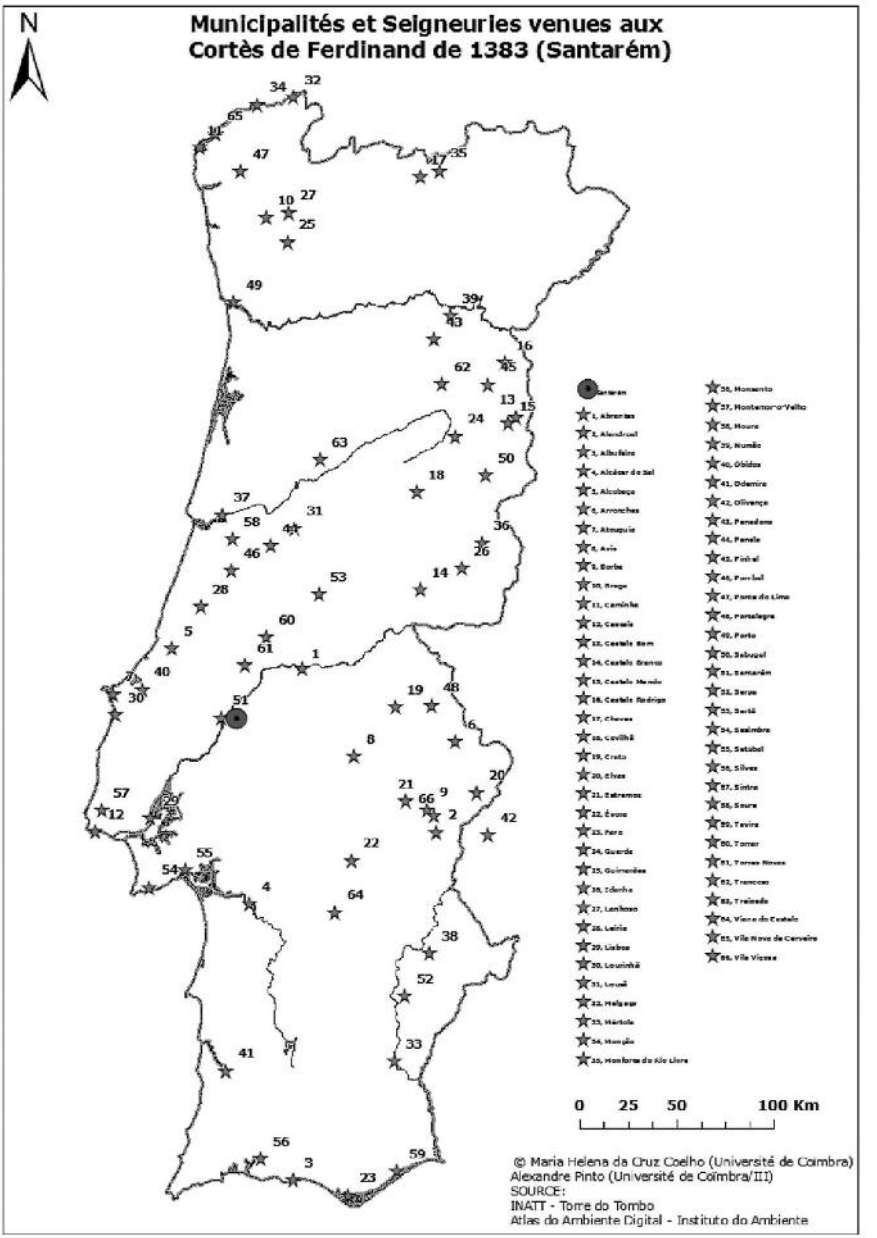


5 – une autre particularité se dégage des Cortès de D. Fernando en 1383, convoquées afin de permettre aux forces sociales du royaume de prêter serment aux héritiers de la couronne portugaise, à l'infante Dona Beatriz, fille de D. Fernando et à son mari, D. Juan I, roi de Castille. Nous ne connaissons pas de procès-verbal de ces Cortès, mais nous sont parvenues, dans des documents conservés aux Archives de Simancas, les procurations de 66 communes et de deux domaines ecclésiastiques. Témoignage qui nous donne à voir, sur la carte, la marche convergente vers la cité de Santarém, où se réunirent ces Cortès, de plus de six dizaines de villes, bourgades et domaines, représentés, en moyenne, par deux procureurs. Nous sommes du coup rendus sensibles d'une part aux distances parcourues par certaines délégations (c'est ainsi par exemple que de Melgaço dans le Minho, de Numão dans la Beira Alta et de Faro en Algarve à Santarém les trajets sont, respectivement, de 400, 330 et 300 kms) et d'autre part au nombre considérable de personnes que la localité où se tenaient les Cortès devait accueillir, avec tous les problèmes de ravitaillement et de logement posés par un tel afflux de population [Carte 2, p.73].

Considérant que les Cortès commencèrent sous le règne de D. Afonso III, et en admettant que les Cortès de Leiria de 1254 furent celles où l'institution se mit en place, nous ne disposons pas de l'édition des Cortès tenues sous ce monarque (1245-1279) et sous son fils D. Dinis (1270-1325). Il est certain que sur ce point les problèmes sont plus complexes, parce que souvent nous n'avons connaissance de la réalisation de Cortès qu'à travers une référence indirecte, sans compter qu'il arrive que nous ignorions, dans certains cas, s'il s'agit de vé-

Carte 2


N
Municipalités et Seigneuries venues aux Cortès de Ferdinand de 1383 (Santarém)
0 25 50 100 Km
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ritables Cortès, comprenant la présence des trois ordres, les communes étant représentées par leurs procureurs, ou s'il ne s'agit que d'une assemblée élargie et extraordinaire de la curie royale. A cette époque, quelques Cortès se réunirent pour débattre de difficultés monétaires, d'autres pour discuter de questions relatives aux rapports du roi avec le clergé et d'autres encore à propos d'enquêtes ordonnées par D. Dinis sur les biens et les droits de la Couronne en vue de faire obstacle aux abus des privilégiés, noblesse et clergé.

Quel est le panorama sous la seconde dynastie?

Le tableau est beaucoup plus pauvre, en matière d'éditions systématiques, que pour la première. Ne sont publiées que les *Cortes Portuguesas. Reinado de D. Duarte (Cortes de 1436-1438)*[9] et quelques-unes du règne de D. Manuel, monarque que certains historiens incluent déjà dans l'époque moderne et non plus dans les temps médiévaux. De ce souverain nous avons *Cortès Portuguesas. Reinado de D. Manuel (Cortes de 1498),*[10] *(Cortes de 1499)*[11] et *(Cortes de 1502).*[12]

Dans cet ensemble de réunions parlementaires les plus nombreuses furent celles de Lisbonne de 1498, où participèrent 54 communes.

C'est également dans ces Cortès que furent rédigés le plus grand nombre de procès-verbaux – 145 chapitres généraux du peuple, augmentés de 320 chapitres spéciaux du peuple, en plus de 5 chapitres généraux du clergé et 1 chapitre général de la noblesse.

Nous n'avons donc pas la publication des réunions parlementaires qui se tinrent sous D. João I, ni des Cortès de Leiria-Santarém de 1433 sous le règne de D. Duarte, ni de toutes celles des règnes de D. Afonso V et de D. João II.

La documentation inédite qui s'y réfère se trouve éparpillée dans certaines archives du pays mais on peut en consulter une part significative aux Archives Nationales de la Tour du Tombo, qui conserve deux noyaux essentiels pour l'étude de ces réunions.[13]

Si le panorama de l'édition systématique de la documentation de Cortès pour la deuxième dynastie est très réduit, nous disposons cependant d'un ouvrage précieux qui nous en laisse apercevoir un peu plus. Il s'agit d'une étude, en deux volumes, d'Armindo de Sousa, *As Cortes Medievais Portuguesas (1385-1490).*[14] Nous ne sommes pas devant un ouvrage dédié à éditer des sources, mais bien devant un travail approfondi sur cette institution et les textes qui y furent produits, ces derniers se rapportant aux chapitres généraux du peuple.

L'ouvrage cependant présente une énumération très développée des Cortès tenues entre 1385 et 1490 – de celles suffisamment attestées à celles qui ne le sont que peu ou qui sont mal datées. Et de celles que l'auteur considère comme des Cortès effectivement réalisées, il analyse au total cinq aspects – la convocation; les objectifs; les date et du-

rée; les désignations; les participants. Il s'agit là d'une systématisation très utile au travail de tout chercheur. Mais il va plus loin.

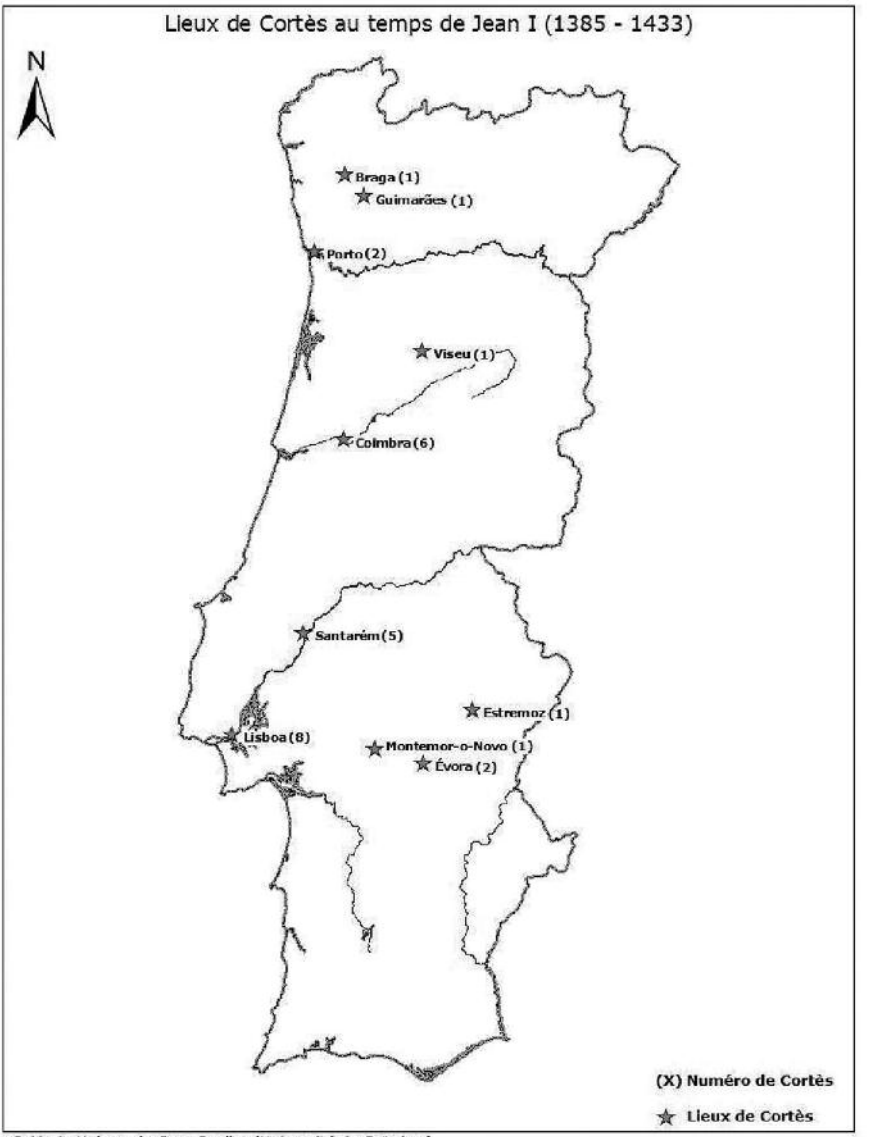
Dans le second volume, il systématise en effet tous les documents qui concernent chacune d'elles en indiquant l'institution où trouver la cote.

Et, dans le cas des chapitres généraux du peuple, qui furent le thème de son étude, dans la partie relative à la production de textes aux Cortès, chaque fois qu'ils sont connus pour n'importe quelle assemblée, il les énumère, résume leur contenu, les classe selon une grille interprétative préalablement fournie au lecteur, et détermine le type de réponse donnée par le roi à chacune des requêtes ou des doléances.

On comprend facilement que ce matériel est très utile pour les diverses études que l'on voudrait entreprendre. De ce travail systématique nous pouvons dès à présent retirer quelques conclusions:

- sous le règne de D. João I, les Cortès se réunirent 28 fois, pour autant que les données peuvent être confirmées; de 1385 à 1418 l'intervalle moyen entre les réunions fut de 1,3 an; ensuite, dans les quatorze dernières années de son règne, les Cortès ne se réunirent que deux fois (en 1427 et en 1430); géographiquement, ces Cortès eurent lieu dans les principales villes et bourgades et couvrirent une vaste portion du royaume du Nord au Sud ; mais la lourde charge de recevoir tous les corps sociaux présents dans ces parlements fut supportée par les trois plus grandes villes du royaume – Lisbonne avec huit réunions; Coimbra avec 6 et Santarém avec 5 [Carte 3, p.76];

Carte 3


Lieux de Cortès au temps de Jean I (1385 - 1433)
N
Braga (1)
Guimarães (1)
Porto (2)
Viseu (1)
Coimbra (6)
Santarém (5)
Estremoz (1)
Lisboa (8)
Montemor-o-Novo (1)
Évora (2)
(X) Numéro de Cortès
Lieux de Cortès
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Alexandre Pinto (Université de Coimbra/III)
SOURCE:
INATT - Torre do Tombo
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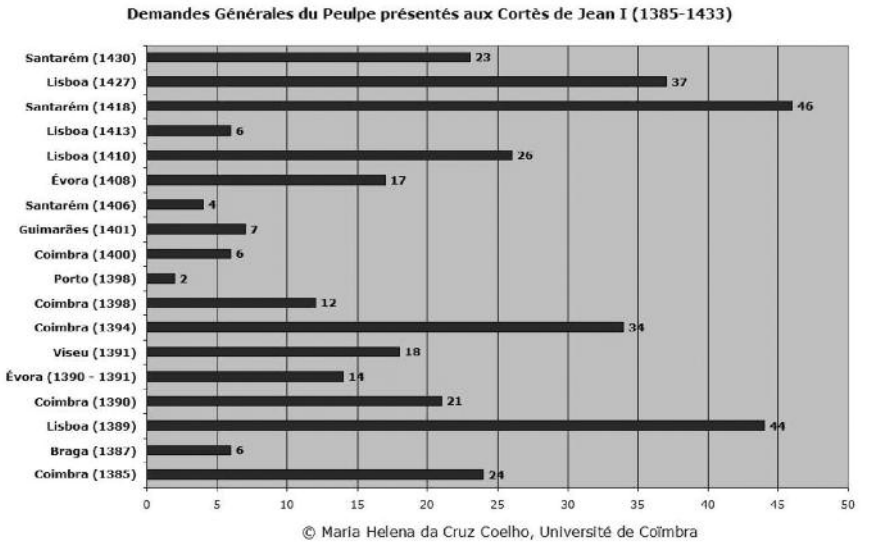
0 25 50 100 Km

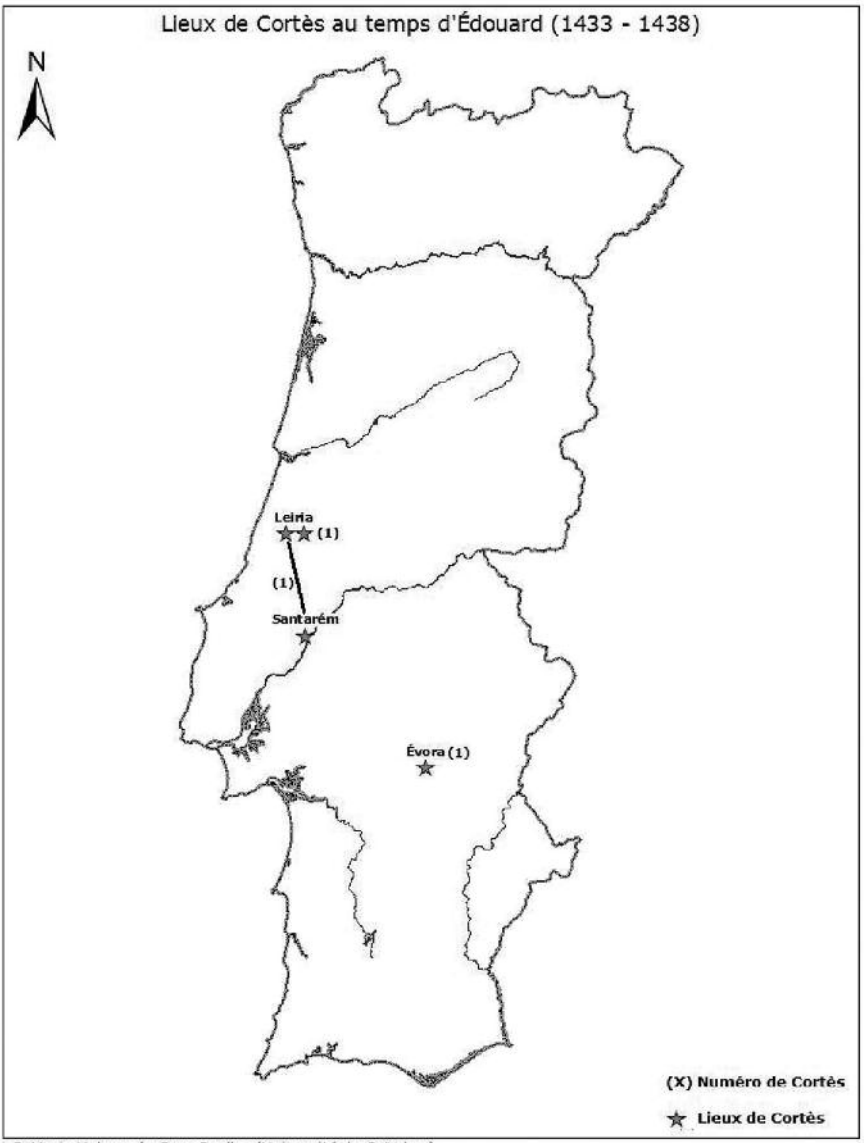


- au niveau de la production de procès-verbaux, et uniquement en ce qui concerne les chapitres généraux du peuple, ceux sur lesquels, comme nous l'avons dit, l'auteur a porté son attention, nous concluons que globalement il en fut présenté 347, même s'il importe d'observer que de certaines Cortès nous ne connaissons pas la production documentaire ou que n'y fut présentée aucune demande générale du peuple; les Cortès qui présentèrent des griefs et des demandes supérieurs à quatre dizaines furent, comme le montre le graphique, celles de Lisbonne de 1389 et celles de Santarém de 1418;

- nous pouvons encore dire, point dont nous avons fait l'objet d'un de nos travaux antérieurs, que la majorité des Cortès du règne de D. João I furent convoquées en vue d'obtenir de l'argent pour le financement de la guerrre, ou de discuter justement le problème de la guerre et de la paix avec lequel se colletait le monarque;

- quant à son fils et successeur, D. Duarte, lors de son court règne de cinq ans, il convoqua les Cortès à trois reprises; celles d'Evora de 1436 et celles de Leiria de 1438, toutes les deux ont été publiées; demeurent inédites celles de Leiria-Santarém de 1433, même si on a dans l'ouvrage d'Armindo de Sousa le résumé de 155 chapitres généraux du peuple y présentés, nombre tout à fait considérable [Carte 4, p. 78].

Carte 4


Lieux de Cortès au temps d'Édouard (1433 - 1438)
N
Leiria
(1)
(1)
Santarém
Évora (1)
(X) Numéro de Cortès
Lieux de Cortès
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SOURCE:
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Atlas do Ambiente Digital - Instituto do Ambiente
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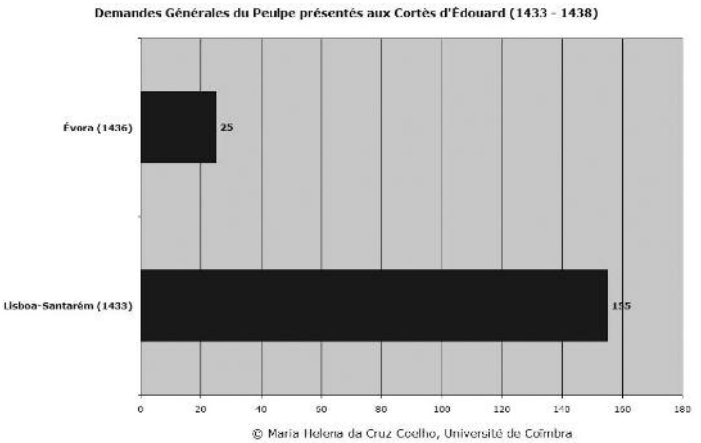
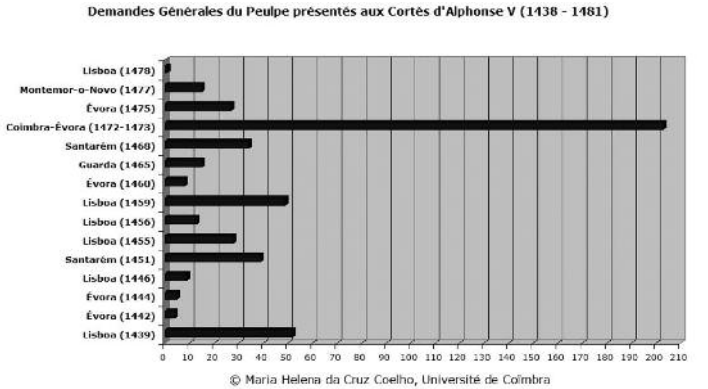
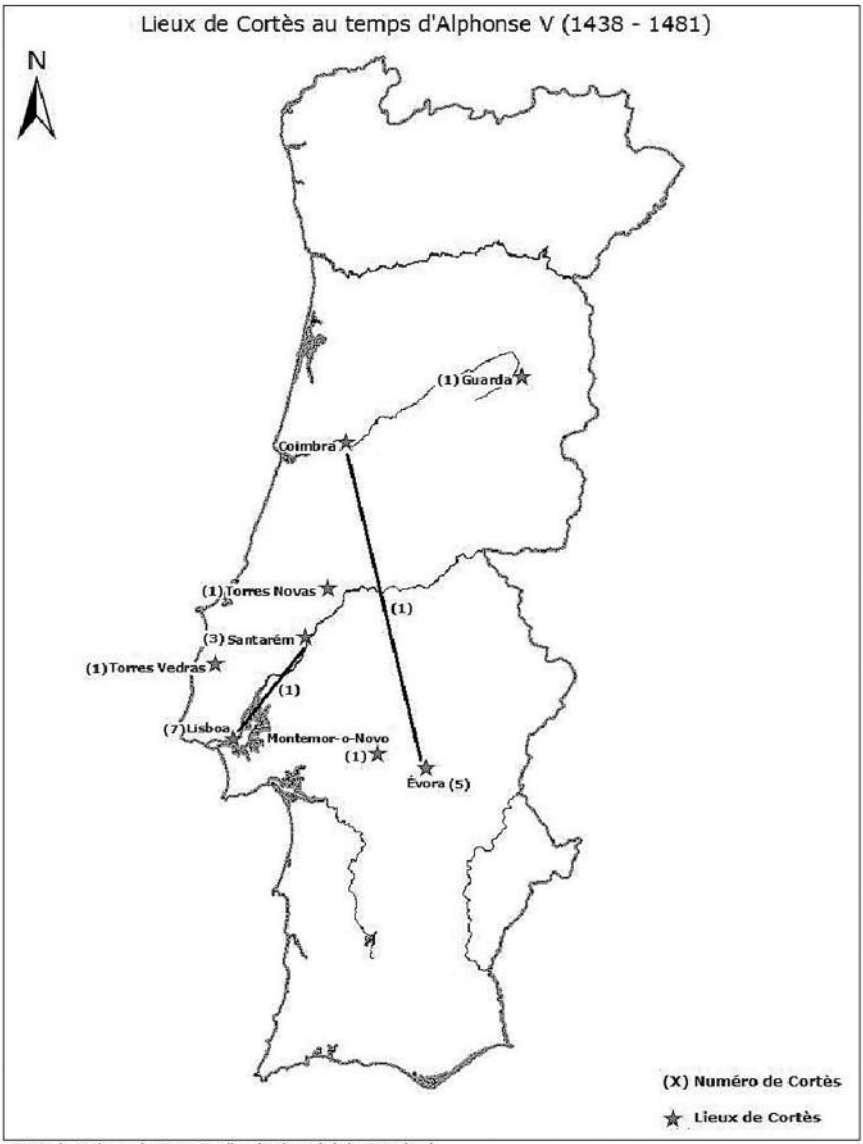


- quant au règne suivant, celui d'Alphone V, qui s'étendit sur 48 ans (en comptant les dix années de régence de sa mère et de son oncle) on y convoqua les Cortès 21 fois, ce qui représente en moyenne près d'une réunion tous les deux ans; quant aux lieux choisis, l'emportent ceux du Centre-Sud et du Sud, à l'exception de Guarda; mais c'est le triangle déjà dessiné par les lieux de séjour de la cour royale les plus importants – Lisbonne, où les Cortès se réunirent 7 fois, Evora qui en accueillit 5 et Santarém qui en compta 3; dans la majorité des cas, le débat se porta sur les réformes financières et générales du royaume et on délibéra sur la perception d'impôts extraordinaires [Carte 5, p. 80];

- nous constatons encore qu'au long de ces Cortès le peuple présenta un nombre très élevé de chapitres généraux, sur un total de 502 ; il y eut une grande oscillation de chapitres au long des diverses réunions parlementaires, mais aux Cortès de Coimbra-Evora de 1472-1473, convoquées exactement pour discuter d'une vaste réforme du royaume, le peuple n'hésita pas à présenter au monarque le nombre très considérable de plus de deux cents demandes;



Carte 5


Lieux de Cortès au temps d'Alphonse V (1438 - 1481)
N
(1) Guarda
Coimbra
(1) Torres Novas
(1)
(3) Santarém
(1) Torres Vedras
(1)
(7) Lisboa
Montemor-o-Novo
(1)
Évora (5)
(X) Numéro de Cortès
Lieux de Cortès
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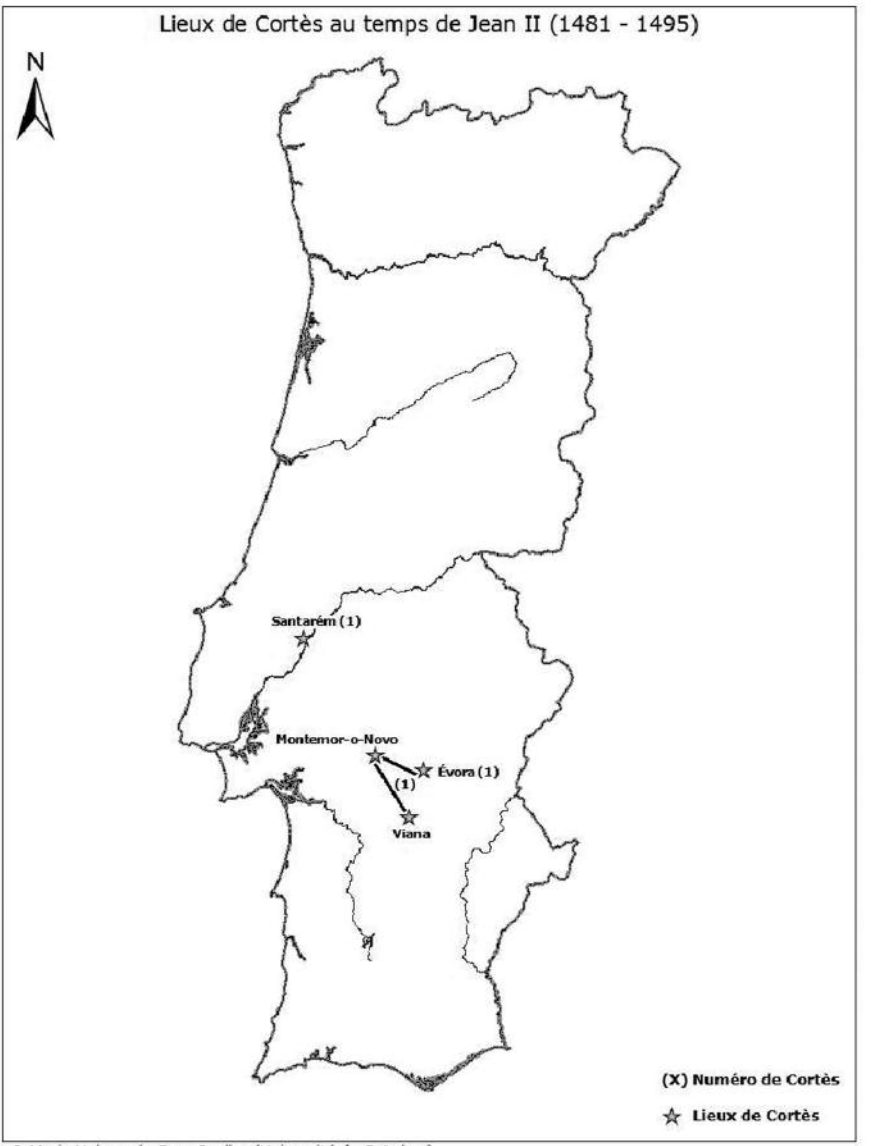
Carte 6


Lieux de Cortès au temps de Jean II (1481 - 1495)
N
Santarém (1)
Montemor-o-Novo
Évora (1)
(1)
Viana
(X) Numéro de Cortès
Lieux de Cortès
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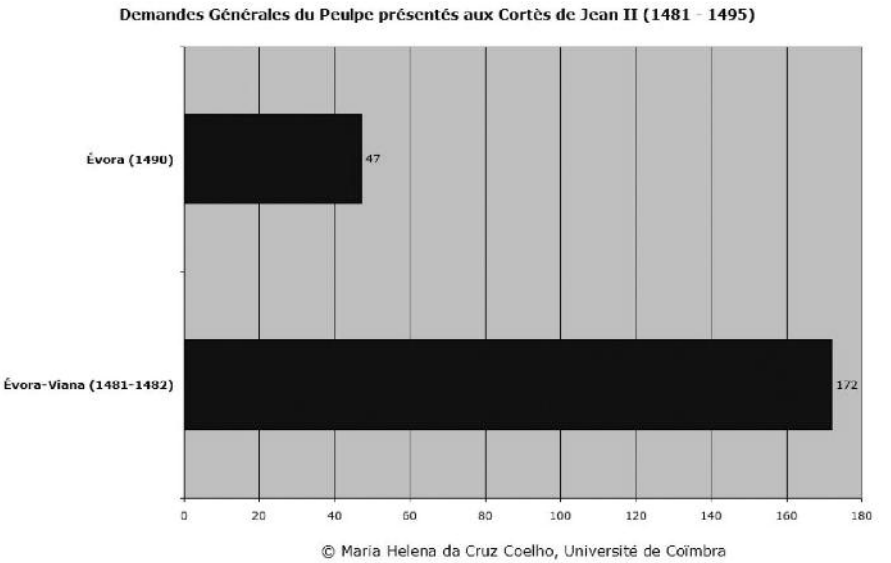
- finalement, sous le règne de quatorze années de D. João II, englobé dans l'ouvrage mentionné, les Cortès se réunirent à trois reprises seulement et toutes dans des villes et bourgades du sud du royaume, et principalement à Évora [Carte 6, p. 81;

- dans deux seulement furent présentés des chapitres généraux du peuple, et il est très intéressant de noter que dans la première, convoquée pour prêter hommage au nouveau roi et proposer des réformes, le peuple, se saisissant de l'occasion, porta ses demandes ou réclamations au chiffre, très élevé, de 172.



Ces éléments recueillis dans l'ouvrage d'Armindo de Sousa, à partir desquels nous avons pu élaborer nos cartes et tableaux, et bien que nous ne disposions ni de la production écrite totale des Cortès,[15] ni même de la transcription des chapitres généraux du peuple, mais seulement de leurs résumés, ces abrégés, et l'énumération détaillés des diverses réunions représentent un matériau très utile pour le chercheur.

Après l'énumération de ces sources écrites il convient de signaler qu'une seule ouvrage, le *Livro de Apontamentos de Álvaro Lopes de Chaves* (Registre de notes d'Alvaro Lopes de Chaves)[16], nous fournit l'iconographie de l'espace de réunion de Cortès, en particulier la disposition respective du roi, des officiers du roi, de la noblesse, du clergé et des communes représentées aux Cortès d'Évora de 1481-82, lors desquelles ont prêta hommage au nouveau monarque, D. Jõao II.

Etablir un bilan – aussi condensé soit-il – de la production historiographique autour des thèmes parlementaires est une tâche complexe quand on songe à tout ce qui a été écrit sur le sujet.

Nous répartirons donc l'historiographie des Cortès sur quatre champs :

1. les travaux qui se sont centrés sur l'institution en elle-même ;
2. les travaux qui ont traité d'une réunion parlementaire en particulier ;
3. les travaux qui ont étudié des chapitres spéciaux du peuple des Cortès ;
4. les travaux portrant sur les autres acteurs présents aux Cortès ainsi que sur les diverses thématiques abordées.

1. Dans le premier cas, les études les plus anciennes et les plus renommées ont cherché à éclairer la problématique de la genèse et de la nature des Cortès comme institution.[17]

Dans cette perspective, l'ouvrage classique est l'oeuvre de Marcello Caetano, *As Cortes de Leiria de 1254*,[18] qui veut montrer qu'il s'agit là des premières Cortès, distinctes des réunions élargies des curies.

Ce travail doit cependant être confronté avec les études de Torquato de Sousa Soares qui, de son côté, prétend que les premières Cortès du royaume de Portugal furent celles de Guimarães en 1250,[19] tandis que d'autres auteurs veulent les reculer jusqu'en 1211,[20] ce qui engage la question des critères de distinction entre les curies et les Cortès, thème qui pourra être davantage élaboré lorsque le nombre des diverses curies, leurs participants et les questions abordées seront mieux connus.

Armindo de Sousa, se limitant essentiellement à la chronologie du Bas Moyen Age, s'est penché sur l'institution à cette époque, sur sa 'nature' et ses désignations, les mécanismes, les procédures et l'atmosphère des Cortès, de même qu'il a porté son attention sur les participants et leurs procurations et, plus généralement, sur les fonctions des Cortès médiévales .[21]

2. Certaines Cortès, revêtues d'une signification spéciale, ont été étudiées 'per se' par les historiens, singulièrement celles de 1372, convoquées sous la première dynastie par D. Fernando.[22]

On a aussi beaucoup réfléchi sur celles de Coimbra de 1385, où fut choisi pour roi le Maître d'Avis, D. João, qui sera le souverain fondateur de la deuxième dynastie, la dynastie dite d'Avis. Marcello Caetano dans son étude intitulée 'As Cortès de 1385' a examiné la composition et le fonctionnement de cette réunion, se fixant ensuite sur deux thèmes majeurs de débat, l'attribution de la couronne et le financement de la guerre, s'intéressant aussi pour analyser les do-

léances générales du peuple. Il publia encore divers documents produits par ces Cortès, de l'acte d'élection de D. João I aux chapitres généraux du peuple. Mais ce travail a été complété par un autre, 'O concelho de Lisboa na crise de 1383-1385', où l'auteur s'est arrêté sur les demandes spéciales et sur les privilèges octroyés par le monarque à la ville, qui l'a toujours servi et soutenu.[23]

L'importance capitale de cette réunion parlementaire a conduit encore Armindo de Sousa a réinterpréter le sens politique du discours des communes dans ces Cortès, soulignant toute leur portée réformatrice, voire 'révolutionnaire'.[24] Du temps de João I datent encore les Cortès de Viseu de 1391, analysées par Humberto Baquero Moreno.[25]

Armindo de Sousa a consacré des études minutieuses aux Cortès de Leiria-Santarém de 1433, les premières à se réunir sous D. Duarte et qui prêtèrent serment à ce dernier, ainsi qu'aux Cortès d'Évora de 1435,[26] mais, dans ce dernier cas, son propos se borne à démontrer qu'une telle réunion n'a pas eu lieu.

De l'époque d'Afonso V ont été abordées, avec un plus grand détail, les Cortès de Torres Novas de 1438,[27] où fut prêté serment à l'héritier du trône, et les Cortès de Lisbonne de 1448[28] et de 1476,[29] de la réunion desquelles certains ont pu douter.

Les premières Cortès de João II, celles d'Évora-Viana, de 1481-1482, où le monarque a reçu l'hommage des corps sociaux du royaume, ont suscité un travail déjà ancien de Manuel Rodrigues Lapa[30] et un plus récent de la part de Rita Costa Gomes et d'Amélia Aguiar Andrade.[31]

Si l'on veut se faire une première idée des motifs et du déroulement d'une réunion parlementaire, il importe de consulter le *Dicionário de História de Portugal*, qui présente une vue synthétique des Cortès : il suffit de se reporter à la ville ou à la bourgade où l'Assemblée s'est tenue et ensuite à l'année concernée.

On pourra encore évaluer le poids respectif des diverses réunions parlementaires convoquées par un gouvernant, inscrites dans le champ de sa politique générale de direction du royaume, dans l'article que nous avons présenté sur les cortès convoquées par le régent D. Pedro.[32]

3. Comme on le sait, et nous l'avons déjà montré, le peuple représenta la catégorie sociale qui a tiré le plus grand profit des Cortès pour demander ou réclamer. Il l'a fait dans des chapitres généraux, résultant d'une concertation entre les diverses villes et bourgades et présentés conjointement, mais aussi dans des chapitre spéciaux, ceux où chaque commune faisait état de ses problèmes propres.

De nombreux travaux ont été consacrés à cette matière, envisagée sous divers angles et il arrive souvent que les études soient accom-

pagnées de la publication des sources.

Certains articles ont analysé les plaintes et les pétitions d'une certaine commune dans une réunion parlementaire déterminée, comme par exemple la commune de Porto aux Cortès de 1387,[33] celle de Ponte de Lima aux Cortès de 1394,[34] celle de Santarém aux Cortès de 1436,[35] celle de Guimarães aux Cortès de Lisbonne de 1446, celle d'Évora aux Cortès de 1448, celle de Beja aux Cortès de 1451,[36] entre autres.

D'autres études se sont concentrées sur tous les chapitres spéciaux des différentes communautés qui élevèrent leur voix pour défendre leurs intérêts propres lors d'une réunion parlementaire. On observe ici la convergence d'intérêts de villes et de lieux à une même époque. Notre travail sur les chapitres spéciaux des municipalités présentes aux Cortès de 1439[37] nous a permis de signaler cette coïncidence de griefs et de pétitions selon la position géographique des communautés, soit intérieures et proches de frontières terrestres, soit plus littorales et tournées vers les activités maritimes. Dans d'autres cas, on observe une différence selon la vocation économique des communautés représentées, soit plus rurales et vouées à l'élevage, soit plus commerciales et vouées au négoce, tandis que davantage sur certaines que sur d'autres s'est fait sentir une forte pression de la part des seigneurs.

Finalement un autre ensemble de travaux a examiné les plaintes et demandes successives d'une commune ou même de plusieurs appartenant à une région déterminée, au long des diverses réunions parlementaires où elles furent présentes. C'est la diachronie qui se trouve ici privilégiée et il est facile de constater que les formulations sont réitérées, même si elles ont reçu antérieurement une réponse favorable du souverain, ce qui soulève la délicate question de la distance entre la législation et sa mise en pratique.

Dans une étude, incluant les documents, nous suivons les expositions de Viseu, commune, puis ville seigneuriale de l'infant D. Henrique, lors de diverses réunions parlementaires, comme nous l'avons fait dans le cas du bourg de Guimarães et de la ville de Guarda.[38]

De leur côté, deux travaux d'Alberto Iria, ayant aussi le grand mérite d'éditer tous les documents, nous font connaître les pétitions des communes de la région d'Algarve.[39]

Nous-même avons, dans un article, examiné l'expression de la volonté des communes de la région-frontière de Riba Côa,[40] et plus récemment nous avons développé l'étude en analysant le discours de toutes les communes de la région de Guarda, publiant, en collaboration, toutes les sources.[41] Les dits études permettent entendre les 'voix' des communes qui, situées à la frontière terrestre de la province de Beira, se faisaient l'écho des difficultés ressenties par des gens qui étaient, d'une part, les riverains d'une frontière politique les séparant

du royaume voisin, mais qui, d'autre part, étaient les voisins d'une frontière naturelle, qui unissait plus qu'elle ne séparait les hommes vivant des deux côtés de la ligne et entretenant des liens de fraternité dans un climat de bonne entente.

De tels travaux, situés au croisement des études qui se penchent sur le municipalisme et l'institution parlementaire, nous donnent une idée très claire de la relation intime entre le pouvoir local, seigneurial, mais surtout municipal, et le pouvoir central et royal.

4. Dans une systématisation brève, et nécessairement très réductrice, nous rappellerons qu'un ensemble de réflexions s'est attaché à d'autres acteurs présents aux Cortès, comme par exemple le clergé,[42] ou aux différentes thématiques qui traversent les discours parlementaires, comme questions sociales,[43] problématique des guerres[44] ou des crises politiques du royaume,[45] entre autres.

Nous dirons pour conclure que l'histoire des parlements au Portugal constitue un thème qui, depuis longtemps et jusqu'à nos jours, a retenu l'attention des historiens. Si on a déjà beaucoup écrit sur cette institution, nous croyons pourtant que reste encore un long chemin à parcourir.

Il serait ainsi essentiel de publier toute la documentation produite aux Cortès, et même celle qui a conduit à jalonner leur préparation. Ce n'est que de cette façon qu'il sera possible d'ouvrir de nouveaux horizons, de frayer de nouvelles voies et de stimuler la réflexion sur le discours parlementaire et la problématique de la représentation.

Il nous semble opportun d'insister sur l'histoire comparée, mettant en parallèle les réunions parlementaires des divers royaumes de la Chrétienté médiévale. Sous cet aspect, des colloques programmés et dirigés par un questionnaire préalablement concerté pourraient être très utiles pour défricher des similarités et des différences entre les parlements dans l'espace de la chrétienté médiévale.

Ce qui a été fait, et plus encore ce qui demeure à faire nous invite à continuer à approfondir, avec des intérêts et des méthodologies renouvelés, les questions liées aux Cortès, dans le royaume de Portugal, à l'époque de sa fondation et de son affirmation.

Il convient d'indiquer qu'en 2004, 750 ans après la réunion des Cortès de Leiria, la municipalité de cette ville a pris l'heureuse initiative d'un grand Colloque international, dont l'organisation scientifique incomba à l'Université de Coimbra, et qui reçut le haut patronage et l'appui du Parlement portugais. A cette occasion, on étudia la thématique des Cortès, selon une approche diachronique, des temps médiévaux jusqu'à nos jours, la commémoration s'étant achevée avec un débat de parlemenaires sur des sujets d'actualité.[46]

L'an prochain, comme tout le monde le sait, c'est encore au Portugal que se tiendra la prochaine Conférence de notre Commission, ce qui nous conduira, une fois de plus à réfléchir sur la longue durée, au rôle de cette grande institution qui, plongeant ses racines dans le Moyen Age, représente une structure fondamentale de l'appareil politique des pays européens et de l'Union Européenne elle-même.

Notes

[1] L'auteur remercie très vivement son collègue Pierre Jourdan de la traduction de ce texte.

[2] J. Leitão, *Cortes do Reino de Portugal* (Lisbonne, 1940).

[3] Nous renvoyons aux compilations suivantes: Visconde de Santarém (ed.), *Alguns Documentos para servirem de Provas à Parte 1ª das Memórias para a Historia, e Theoria das Cortes Geraes que em Portugal se celebrarão pelos Três Estados do Reino Ordenadas no Anno de 1824* (Lisbonne,1828); Visconde de Santarém (ed.), *Alguns Documentos para servirem de Provas à Parte 2ª das memórias para a Historia, e Theoria das Cortes Geraes que em Portugal se celebrarão pelos Três Estados do Reino Ordenadas no Anno de 1824* (Lisbonne, 1828).

[4] Pour une étude plus détaillée de ces sources nous renvoyons à l'ouvrage d'A. de Sousa, *As Cortes Medievais Portuguesas. 1385-1490* (Porto, 1990) , vol. I, pp. 25-31.

[5] A. H. de Oliveira Marques, M. T. Campos Rodrigues, N. J. Pizarro Pinto Dias (eds), *Cortes Portuguesas. Reinado de D. Afonso IV. 1325-1357* (Lisbonne, 1982).

[6] A. H. de Oliveira Marques, N. J. Pizarro Pinto Dias (eds.), *Cortes Portuguesas. Reinado de D. Pedro I. 1357-1367* (Lisbonne, 1986).

[7] A. H. de Oliveira Marques, N. J. Pizarro Pinto Dias (eds.), *Cortes Portuguesas. Reinado de D. Fernando. 1367-1383* (Lisbonne, 1990), I.

[8] A. H. de Oliveira Marques, J. P. Salvado (eds.), *Cortes Portuguesas. Reinado de D. Fernando. 1367-1383* (Lisbonne, 1990), II.

[9] J. J. Alves Dias (ed.), *Cortes Portuguesas. Reinado de D. Duarte. Cortes de 1436-1438* (Lisbonne, 2004).

[10] J. J. Alves Dias (ed.), *Cortes Portuguesas. Reinado de D. Manuel. Cortes de 1498* (Lisbonne, 2002).

[11] J. J. Alves Dias (ed.), *Cortes Portuguesas. Reinado de D. Manuel. Cortes de 1499* (Lisbonne, 2001).

[12] J. J. Alves Dias (ed.), *Cortes Portuguesas. Reinado de D. Manuel. Cortes de 1502* (Lisbonne, 2001).

[13] Respectivement le noyau 'Aclamações de Cortes' et le noyau 'Suplemento de Cortes'.

[14] A. de Sousa, *As Cortes Medievais Portuguesas. 1385-1490* (Porto, 1990), 2 vols.

[15] Quelques-unes en sont sporadiquement publiées dans les catalogues mentionnés plus haut ou dans les études que nous allons aborder plus bas.

[16] Á. Lopes de Chaves, *Livro de Apontamentos (1438-1489). Códice 443 da Colecção Pombalina da BNL*, introduction et transcription de A. Mestrinho et A. J. Salgado (Lisbonne, 1983).

[17] Pour un inventaire complet des études anciennes du Vicomte de Santarém (XIXe siècle), de Paulo Merêa e Henrique da Gama Barros (commencement du XX e siècle) ou récentes (jusqu'en 1990) sur les Cortès au Portugal, voir de Sousa, *As Cortes Medievais Portuguesas*, vol. I, pp. 66-76.

[18] M. Caetano, *As Cortes de Leiria de 1254* (Lisbonne, 2004 [2e édition fac-similé de J. Veríssimo Serrão]).

[19] Entre autres études, voir T. de Sousa Soares, 'Antecedentes das Cortes reunidas em Guimarães em 1250', *Revista Portuguesa de História* 20, (1983), pp. 141-154; 'As primeiras Cortes Gerais da Monarquia Portuguesa, realizadas em Guimarães em 1250', *Revista de Guimarães* 93, (1983), pp. 345-349.

[20] D. Peres, 'As Cortes de 1211', *Revista Portuguesa de História* 4, (1949), pp. 1-8.

[21] A partir de cet ouvrage L. M. Duarte fait le point de la situation dans l'article 'The Portuguese medieval parliament: are we asking the right questions?', *e-Journal of Portuguese History*, vol.1, n. 2 (2003), pp. 1-12.

[22] L. Coelho Cristino, *As Cortes de Leiria de 1372* (Leiria, 1373).

[23] Les deux études ont ensuite été compilées dans l'ouvrage, qui reste aujourd'hui le plus accessible, *A Crise Nacional de 1383-1385. Subsídios para o seu estudo* (Lisbonne-S. Paulo, s.d.).

[24] A. de Sousa, 'O discurso dos concelhos nas Cortes de 1385', *Revista da Faculdade de Letras – História*, 2 (1985), pp.9-44. Il faut ajouter que de nombreux autres travaux font une étude plus détaillée des acteurs ou des thèmes discutés lors de ces Cortès, surtout quand il s'agit de l'élection du roi.

[25] H. Baquero Moreno, 'As Cortes e Viseu de 1391', *Bracara Augusta*, XXXIX, 87/88 (100-101), (1985), pp. 363-375.

[26] A. de Sousa, 'As Cortes e Leiria-Santarém de1433', *Estudos Medievais*, 2, (1982), pp. 71-224; 'As Cortes de Évora de 1435', *Estudos Medievais*, 3/4, (1984), pp.131-150.

[27] A. Moreira de Sá, 'As Actas das Cortes de 1438', *Revista da Faculdade de Letras*, XXII, 2ª série, 2, (1956), pp. 155-176. Il ne s'agit pas là à proprement parler d'une étude mais seulement de la publication des procès-verbaux des Cortès.

[28] H. Baquero Moreno, 'As Cortes de Lisboa de 1448', *Revista Portuguesa de História*, 16, (1978), pp. 185-208. De Sousa, *As Cortes Medievais*, vol. I, pp. 445-451 réfute l'existence de ces Cortès, insuffisamment documentées à son gré.

[29] E. A. Pereira Sales, 'Cortes de Lisboa e juramento do infante D. Afonso a 6 de Março de 1476', *Revista de História*, 11, (1922), pp. 135-145 (cet article renferme moins une étude que la publication dudit jurement à partir d'un codex du XVIIIe siècle). De Sousa, *As Cortes Medievais*, vol. I, pp. 462-463, réfute l'existence de ces Cortès, insuffisamment documentées, à son gré.

[30] M. Rodrigues Lapa, 'Cortes de Évora, terçarias de Moura. A cabeça do duque de Bragança', *Revista de Guimarães* 35, (1925), pp. 94-99, 169-174, 259-266, vol. 37, (1927), pp. 16-23, 105-114, 202-217.

[31] R. Costa Gomes, A. Aguiar Andrade, 'As Cortes de 1481-1482: uma abordagem preliminar', *Estudos Medievais*, 3-4, (1983-1984), pp. 151-212.

[32] M. H. da Cruz Coelho, 'État et Cortès au Portugal sous la dynastie des Avis: le cas du régent Don Pedro', *Parliaments, Estates and Representations,* 16, (1996), pp. 47-58.

[33] A. Cruz, 'O Porto nas Cortes de Braga de 1387', tiré-à-part du *Boletim Cultural da Câmara Municipal do Porto*, 1961.

[34] H. Baquero Moreno, 'Capítulos especiais de Ponte de Lima apresentados nas Cortes de Coimbra de 1394', *Bracara Augusta,* 35, (1981), pp. 389-395.

[35] M. A. Flores Gonçalves, 'Capítulos especiais de Santarém nas Cortes de 1436', *Revista Portuguesa de História,* 8, (1959), pp. 310-326.

[36] H. Baquero Moreno, 'A representação do concelho de Guimarães nas Cortes de Lisboa de 1446', *Revista da Faculdade de Letras. História*, 2ª série, I, (1984), pp. 7-15; 'As Cortes de Lisboa de 1448 (Capítulos especiais de Évora)', *Bracara Augusta*, 36, 81/82 (94-95), (1982), pp. 5-16; 'O concelho de Beja nas Cortes de Santarém de 1451 e após a sua clausura', *Memória*, 1, (1989), pp. 267-278.

[37] M. H. da Cruz Coelho, 'Relações de domínio no Portugal concelhio de meados de Quatrocentos', *Revista Portuguesa de História*, 25, (1990), pp. 235-289.

[38] M. H. da Cruz Coelho, 'O concelho e senhorio de Viseu em Cortes', in *Actas do Congresso "Infante D. Henrique. Viseu e os Descobrimentos". Viseu, 27-29 de Maio de 1993* (Viseu, 1995), pp. 83-112; 'O discurso de Guimarães em Cortes', in *Actas do 2º Congresso Histórico de Guimarães*, 6, *História Local* (Guimarães, 1997), pp. 29-43; 'A Guar-

da em Cortes nos séculos XIV e XV', *Revista Portuguesa de História*, 35, (2001-2002), pp. 123-142.

[39] A. Iria, *O Algarve nas Cortes Medievais Portuguesas do século XIV. Subsídios para a sua História* (Lisbonne, 1982); Idem, *O Algarve nas Cortes Medievais Portuguesas do século XV. Subsídios para a sua História* (Lisbonne, 1990).

[40] M. H. da Cruz Coelho, 'Riba Côa em Cortes (séc. XV)', in *Congresso Histórico Luso-Espanhol "O Tratado de Alcanices e a importância histórica das Terras de Riba Côa"* (Lisbonne, 1988), pp. 233-246.

[41] M. H. da Cruz Coelho, L. M. Repas, *Um cruzamento de fronteiras. O discurso dos concelhos da Guarda em Cortes* (Porto, 2006).

[42] A. de Sousa, *Conflitos entre o bispo e a Câmara do Porto nos meados do século XV* (Porto, 1983) (publie les chapitres du clergé présentés aux Cortès de Lisboa de 1456); S.A. Gomes, 'A voz do clero nas Cortes de Lisboa de 1455', *Revista de História da Sociedade e da Cultura,* 4, (2004), pp. 57-87; M. H. da Cruz Coelho, 'Le parlement et le pouvoir religieux dans le Portugal du Moyen Age', *Parliaments, Estates and Representations,* 27, (2007), pp. 97-109.

[43] M. H. da Cruz Coelho, 'O Social: do vivido ao representado em Cortes', in *Actas dos 2ºs Cursos Internacionais de Verão em Cascais* (Cascais, 1996), vol. 2, pp. 15-44.

[44] M. H. da Cruz Coelho, 'Les Cortès en temps de guerre – une médiation interactive entre le roi et les corps sociaux du royaume de Portugal aux XIVe et XVe siècles', *Parliaments, Estates and Representations,* 21, (2001), pp. 37-56.

[45] M. H. da Cruz Coelho, 'Le Parlement en temps de crises politiques dans le royaume de Portugal (XIVe-XVe siècles)', thème que nous avons présenté à la conférence d'Edimbourg et qui a fait l'objet d'une publication dans *Parliaments, Estates and Representations*, 28, (2008), pp. 57-67.

[46] *Actas do Congresso Internacional 'As Cortes e o Parlamento em Portugal'. 750 anos das Cortes de Leiria de 1254* (Lisbonne, 2006). Pour l'époque médiévale voire les pages 21-37, 41-57, 59-152, 221-259.

Maria Manuela Tavares Ribeiro

Matériels pour l'Histoire Électorale et Parlementaire Portugaise 1820-1926

L'histoire politique du Portugal contemporain présente une longue tradition électorale et parlementaire, largement associée à la période du Libéralisme. De nombreuses et diverses sources nous la font connaître.

Dans les *Matériels pour l'Histoire Électorale et Parlementaire Portugaise, 1820-1926*, résultant essentiellement de l'examen des collections des imprimés existant à la Bibliothèque National de Lisbonne - BNL, l'utilisateur trouvera un minutieux ensemble de sources et une bibliographie, la systématisation d'un ensemble systématisé d'informations de base (chronologie des élections et des législatures parlementaires, législation et statistiques électorales) et la reproduction d'une significative quantité de textes (constitutions, régiments parlementaires, manifestes et annonces électorales).

La reproduction d'une importante quantité de textes (constitutions, régiments parlementaires, manifestes et propagande électorale) et des images (caricatures, photographies), chronologiquement sont organisées en deux périodes: la Monarchie Constitutionnelle (1820-1910) et la Première République (1910-1926).

La production de *Matériels pour l'Histoire Électorale et Parlementaire Portugaise, 1820-1926* est le fruit de la collaboration entre la Bibliothèque Nationale de Lisbonne et l'équipe du projet – 'Le Recrutement Parlementaire au Portugal, 1834-1926' – financé par la Fondation pour la Science et Technologie. Ce projet a la coordination scientifique du Prof. Pedro Tavares de Almeida et coordination de recherche de Fernando Moreira, Marta Carvalho dos Santos, Paulo Jorge Fernandes e Paulo Silveira e Sousa.

Sources et Bibliographie : http://purl.pt/5854/

Ces références se basent sur l'exploration systématique et aussi exhaustive que possible du fonds des imprimés existant à la Bibliothèque Nationale de Lisbonne. S'y ajoutent des sources bibliographiques récentes qui ne sont pas (encore) cataloguées, ainsi que quelques sources qui seulement se trouvent dans d'autres bibliothèques publiques ou appartiennent à des collections particulières.

Dans des œuvres d'intérêt plus général, il est fréquemment fait référence aux aspects les plus importantes pour l'étude des Elections

et/ou du Parlement. Ont été exclues néanmoins les Histoires du Portugal, excepté celles qui consacrent des chapitres spécifiques à un de ces sujets, ainsi que les études et les essais qui font seulement de brèves allusions ou observations dispersées.

La qualité et l'utilité des sources et de la bibliographie sont naturellement variables et revient à l'utilisateur d'en faire l'évaluation critique. Dans de futures mises à jour on cherchera à suppléer à d'éventuelles omissions, corriger des lacunes et ajouter de nouveaux titres.

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CRONOLOGIE

CONSTITUTIONS

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MANIFESTES ET PAMPHLETS ÉLECTORALS

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ICONOGRAPHIE

Les comparaisons mettent en relief la façon dont les divers langages et les rapports avec différents contextes de production déterminent les représentations en les rapprochant d'un modèle critique ou d'une vision 'officialiste'.

Au regard de la postérité le système représentatif libéral de la monarchie constitutionnelle et de la Première République est resté associé à des images d'inefficacité, à des outrances verbales, à la violence des affrontements, à la corruption et à l'incapacité des parlementaires à s'accorder sur les réformes à mettre en œuvre.

Le Parlement n'était pas représentatif de la nation et ses députés apparaissaient dépourvus de formation morale et de préparation technique.

Mais les représentations collectives ne créent-elles pas la réalité ?

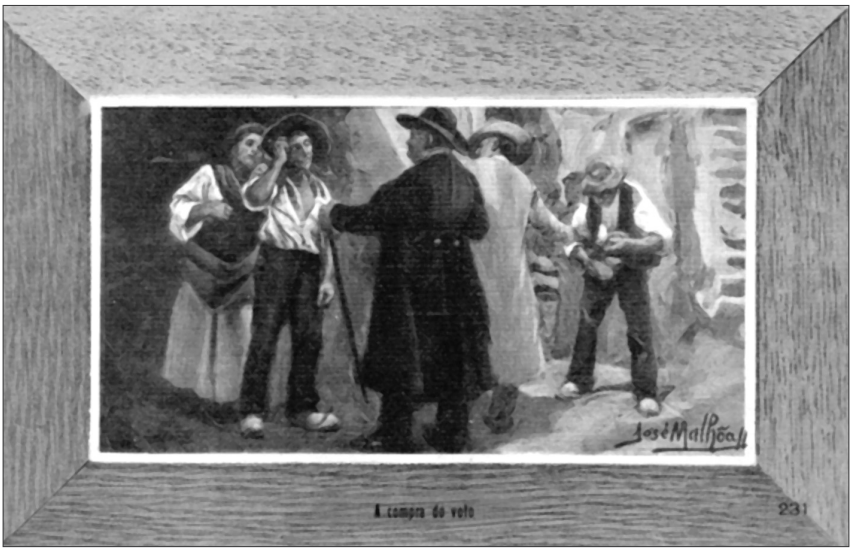
Le régime politico-constitutionnel de la période comprise entre 1926 et 1974 peut se définir comme hostile aux partis, anti-libéral et anti-parlementaire. Les partis et les associations politiques qui s'opposaient au régime furent mis hors-la-loi. Il existait un parti unique – l'Union Nationale. L'Assemblée Nationale reflétait les principes constitutionnels de la Constitution de 1933 qui légitimait le régime de l'Etat-Nouveau.

Avec la révolution démocratique du 25 avril 1974 le Mouvement des Forces Armées convoque l'Assemblée Constituante élue au suffrage universel direct et secret. Les élections pour l'Assemblée Constituante eurent lieu le 25 avril 1975; ce furent les premières élections au suffrage véritablement universel réalisées au Portugal avec un taux historique de participation (91% des citoyens recensés). Dix mois plus tard, le 2 avril 1976, l'Assemblée Constituante allait approuver la Constitution de 1976.

L'Assemblée de la République – Information et Divulgation

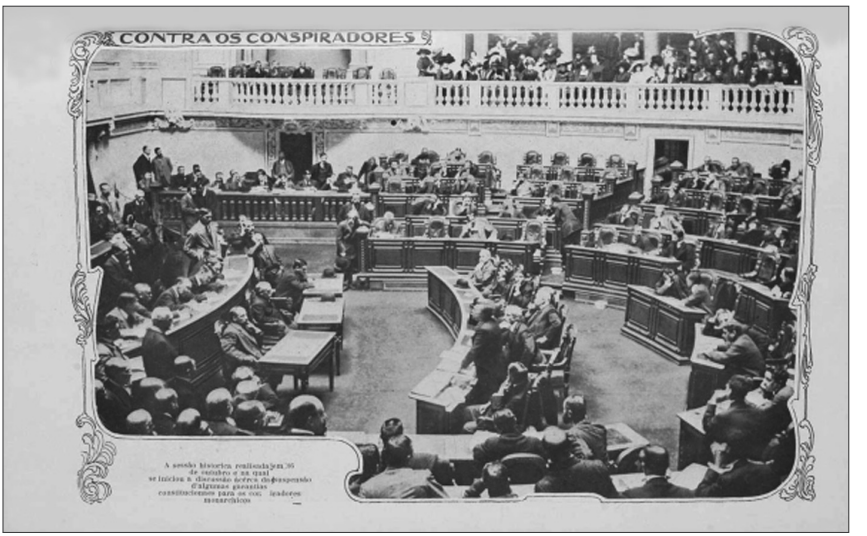
Le site parlementaire www.parlamento.pt, créé en 1996, a permis une ample divulgation de l'activité de l'Assemblée de la République, donnant accès à l'agenda parlementaire, aux débats en séance plénière, aux initiatives présentées, à la législation approuvée. D'autres initiatives promues par l'Assemblée – notamment par les Commissions – sont divulguées sur l'Internet, rendant possible une plus grande interaction avec les citoyens. L'ouverture au public de la Libraire Parlementaire, en septembre 2000, fait connaître les publications de l'Assemblée de la République et constitue un lieu d'information sur l'activité du Parlement.

Caricature - 1879
Le vote ou la vie

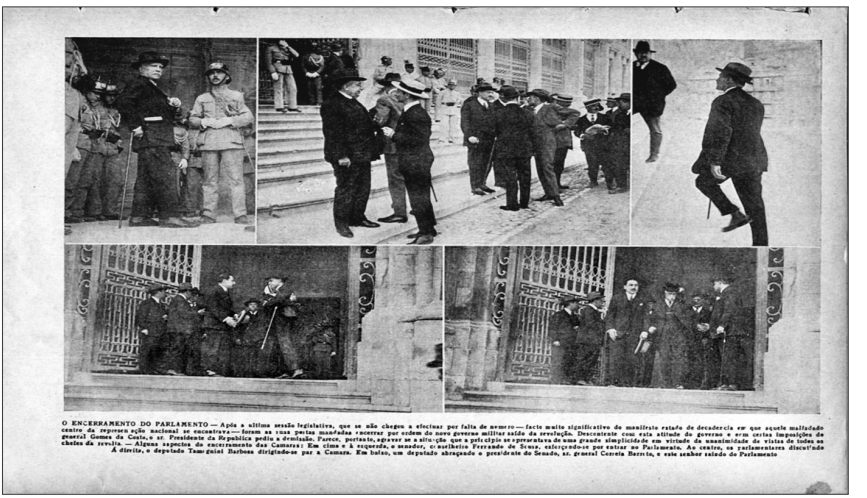


Carte postale - 1904
L'achat du vote

Caricature – 1911
L'ouverture du Parlement



Photographie - 1911
Contre les conspirateurs


O ENCERRAMENTO DO PARLAMENTO — Após a ultima sessão legislativa, que se não chegou a efectuar por falta de numero — facto muito significativo do manifesto estado de decadencia em que aquele malfadado centro da representação nacional se encontrava — foram as suas portas mandadas encerrar por ordem do novo governo militar saído da revolução. Descontente com esta attitude do governo e com certas imposições do general Gomes da Costa, o sr. Presidente da Republica pediu a demissão. Parece, portanto, agravar-se a situação que a principio se apresentava de uma grande simplicidade em virtude da unanimidade de vistas de todos os chefes da revolta. — Alguns aspectos do encerramento das Camaras: Em cima e á esquerda, o senador, conselheiro Fernando de Sousa, esforçando-se por entrar no Parlamento. Ao centro, os parlamentares discutindo. A direita, o deputado Tamagnini Barbosa dirigindo-se para a Camara. Em baixo, um deputado abraçando o presidente do Senado, sr. general Correia Barreto, e este senhor saindo do Parlamento

Photographie - 1926
La clôture du Parlement

Karin van Leeuwen

Paving the Way for New Approaches to Constitutional History: the ING Dutch Constitutional Committees Project, 1883-1983[1]

With the recent interest for 'political culture' among researchers of political history, the study of traditional institutions seems to have lost attention in favour of more cultural topics. Turning away from the traditional focus on 'politics, power, and policy'[2] this cultural approach introduced new questions such as: Who can take part in politics? What does politics deal with? How do political concepts evolve? And what form can, and should, political conflict take? In order to answer these questions, new elements of politics were explored such as songs, pamphlets and ceremonies.[3] More traditional sources like constitutions, which for a long time had been employed for research into the more formal changes in the political system or for the study of the struggle for power among different groups and factions, seemed less relevant for this type of research and lost interest.

The project 'Dutch constitutional committees' which is currently carried out by the Institute of Netherlands History (ING) aims at bringing the Dutch constitution back to the core of the history of politics. In doing so, the project both aims to facilitate the more traditional research as well as to pave the way for a more cultural approach in the study of constitutional history. By focusing on the sources surrounding 'constitutional committees', the advisory bodies that usually prepared changes in the constitution, we think not only questions of procedure and power will find answers, but also light can be shed on questions such as: Who was entitled to participate in the debate on changing the constitution? How did written constitution and actual political behaviour relate? And how were constitutions legitimised?

The second part of this paper will give a taste of the way in which cultural aspects of the constitutional committees can be studied. In this way it will demonstrate how analysis of the rituals and traditions of these committees can lead to new insights about the functioning of politics and representation. The first part of the paper however will, after a short introduction into Dutch constitutional history, be devoted to the sources this project aims to disclose and the way in which these sources will be made accessible to the future researcher.

In 1814, as the first – apart from Louis Napoleon – Dutch King William I was asked to reign under a 'wise constitution', he called some of his best men together. Within a few months they prepared a constitution, which still functions as one of the most important sources of Dutch constitutional law. Since 1814, the constitution has been changed 18 times. For example the introduction of universal suffrage in 1917 and the decolonisation of the Dutch Indies in 1948 urged for such changes. But also minor questions like the enlargement of parliament or changes in the succession to the throne could only take place through constitutional change as the Dutch constitution lacks the possibility of judicial review. For almost every revision, a state committee like the one in 1814 was ordered to prepare the changes. Installed by the government, which took over authority from the King in 1848, these committees prepared a report in which they put forward recommendations for changes in the constitution. Usually, this report served as the starting point for the deliberations in the actual legislative process between parliament and government.

Because of the many safeguards laid down in the constitution, this legislative process for changing the constitution is a complex and exhausting process. A 2/3 parliament majority for these changes must be found in both the Second Chamber – the Lower House – and the First Chamber or Senate. Especially from 1917 onwards, as the Dutch election system was changed to almost perfect proportional representation and at least seven different political parties took seat in parliament, such a majority required for a compromise of a large part of the political parties represented. For normal legislation, these compromises usually are found within the coalition of parties governing at that moment. That is, though officially the system is a dualist one, in reality – for important legislation – governments informally seek the consent of the coalition parties before presenting proposals for legislation in parliament. In the case of legislation for constitutional change however, the normal coalition majority is not enough.

Here, the preparation of constitutional change in state committees comes in. Compromises that could not be worked out in the public sphere of parliament, nor in the small government coalitions, were prepared in the backrooms of these committees. Often this political character of the committee deliberations was illustrated by the fact that party leaders and ministers themselves took place in these state committees. Next to this political function, the committees also served a function in providing expertise. Apart from politicians, usually some senior professors of law were invited to take place in the constitutional committees as well as specialists from for example the army or community politics. They made sure the committee recommendations were of a high scholarly level as well as down-to-earth to

handle with in administrative law. But these specialists also had – as authorities in their own fields – a kind of representative function. As soon as these authorities signed the committee report, it was hoped, no one – politicians or other specialists – would dare challenge it anymore.

In this way, though the formal decision making about constitutional change happened outside the constitutional committees, the debates within the committees were just as important. Almost all themes that would later be discussed in parliament and/or in the press would have been prepared in these committees – and often even more. It turns out however that in present historical, political and law studies on the Dutch constitution only the parliamentary debates are well analysed. This especially is the case for the period from 1883 to the present. Partly, this can be explained by the dominant place parliamentary political history took and still takes in Dutch political history. A more important reason for the invisibility of constitutional committees in present research is that only parliamentary debates and to some extent also legal and press debates are easily accessible for researchers. The sources in which the committee histories are hidden are kept in many different archives.

Thus, encouraging researchers to turn to constitutional history again, and more specifically to the role of constitutional committees, first calls for a guide to the many archives in which this history can be found. In the first two years of the *Constitutional Committees* project, we have collected data on the archives of the committees, but also on the archives of the committee members, and those of a number of other actors in the political and social arena who were closely involved, f.e. political parties and interest groups. This information, varying from factual information about the committees and their members to descriptions of documents and files relevant to students of constitutional history, will be published online in early 2010.[4] To this archival guide, the scanned minutes and reports of all 17 constitutional committees will be added. Note that the minutes only already comprise over 10,000 pages. Through the archival guide and the documents offered, researchers will actually be able to start enquiries from behind their computers.

The project's final result – but most probably the researcher's starting point – will be a printed documentary edition. Through a selection of the archival material of 100 years of constitutional committees, following five longstanding themes in the committees' debates, the rich content of these documents will be unveiled. The theme of 'religion' for example shows how Church and God were a part of the constitutional debate all through the twentieth century, even though state and church were separated from 1795 onwards. Some members,

for example, linked questions of sovereignty to some 'ultimate sovereign'; and the wish for a kind of preamble to the constitution that rose after 1945 again and again clashed with the many different views on state and religion that existed in Dutch society at the time. Next to these insights in the development of political thought and concepts however, the documentary edition will also serve researchers interested in questions of political participation, who will be stunned to see how church delegates and civil servants took over the work of politicians in preparing a new article in the constitution ending the financial relations between church and state in the 1960s. Students of political styles and traditions, to conclude with, will be impressed by the almost ritual dance between confessional and liberal politicians in their debates on religious education from the 1880s until 1917.

As the documentary edition, the scanned minutes and the archival guide will be closely linked, for the researcher it will be possible to move from this sometimes highly theoretical or ideological level to questions of actual decision-making, style or participation – and back. In this way, the traditional view on constitutional history can be enriched by the insights on 'political culture' it has lacked until present.

To this culture of politics-approach the second part of this paper is dedicated. More precise, it will focus on some of the rituals, rules and traditions within and around the post-war constitutional committees and discuss the way in which these cultural elements can play a role both in explaining the outcome of decision-making processes and in the analysis of a 'political culture' in a more broad sense. In contrast to the Dutch Parliament or to more permanent advisory bodies, constitutional committees seldom regulated the behaviour of its members by written rules. However, the minutes of constitutional committee meetings show that some rules, or more precisely, patterns of expected behaviour, were regularly discussed by its members.

In order to systematically identify the committee 'rules', debates within four constitutional committees about one small theme – the constitutional paragraph on constitutional change – were studied.[5] Next to the moments in which the committee rules – or: moral codes – were explicitly discussed, also some central moments in the committee's existence were considered: the installation of the committee and the inaugural speeches, the search for committee members, the presentation of the committee's conclusions and the debate on these conclusions in parliament. In this way, not only information about how the decision-making process worked from the viewpoint of the people involved was gathered, but also about why – according to their opinion – it had to work in that particular way.

One rule or tradition found in this way was the implicit character of

the representative nature of the committee membership. As all committees analyzed were composed of members of the different political parties, usually even up to their strength in parliament, it could be supposed that they were explicitly meant to represent these parties. However, the power of this rule was contested by several cases of committee members who in the committee defended one view on a particular question, and later, for example in Parliament, turned out to follow party lines that followed quite another direction. A very particular example of this situation can be found with the committee member named Kranenburg. In the Van Schaik committee in which he participated, Kranenburg had supported plans for changing the provisions on constitutional change, probably judging them as in public interest – as committees were supposed to. Outside the committee Kranenburg however opposed to these changes. This time, he had to judge them from the interest of the Dutch senate, which he chaired, and fearing that the changes threatened the position of the senate, Kranenburg decided to alter his earlier position. Newspapers and fellow MP's vehemently denounced this 'turn'. But wasn't Kranenburg not just following the existing expectations concerning constitutional committees on the one side and Parliament on the other side?

Though Kranenburg's decision to not stick to the autograph he had placed under the committee's report caused some upheaval, no further conclusions were drawn from this. The Minister of Interior Affairs, responsible for proposing the legislation on constitutional change, still based his bill on the committee advice, as this was supported by a large majority of the committee members. Only when his bill was rejected, the Minister, who himself had also been a member of the constitutional committee, found out that the rule of representation that he had expected to exist had let him down this time. As the Minister, according to the records of the council of ministers, really had counted on the rule to work, it might be said that next to more ideological and strategic reasons, the committee traditions here can be considered part of the explanation of the failure of this particular bill.

Another rule concerning the representative function of the constitutional committees was the rule that committees were supposed to put forward just one proposal for constitutional change. The only alternatives allowed for were the so-called 'minority visions'. Interestingly, in the 1960s this rule seemed to disappear as several options then were presented in the same report. How can this be explained? The traditional code, still vivid in the 1950s, that only one advice could be presented, could easily be linked to the representative, 'political' function of the committees. A cabinet, when installing a committee like this, usually hopes for clear majority advices that can be

implemented right away. After all, defending constitutional changes in parliament, the government's position would be much stronger if it was not defending 'just' its own choice, but defending the uniform advice of a powerful committee with members of different political colours and professional backgrounds. But why then did this rule seemingly disappear in the 1960s?

In this case, the shift in the apparently insignificant constitutional committee rule seems to indicate a much larger shift in the culture of politics. Until the 1960s, the constitutional committees had perfectly fitted the Dutch political culture that is often described as 'accommodation'.[6] Political elites were expected to find compromises in order to unite the function of representation of different political groups with effective decision-making. As Parliament mainly served the first function – representation of the varying groups through an almost perfect proportional representation – the compromises had to be made elsewhere, preferably backstage. In the 1960s, this backstage politics was increasingly criticised. Voters did not recognise their political group in the compromises, the critics said. So politicians were challenged to stick to their views and make political decision-making more transparent for the people. At the end of the 1960s, because of this argument, compromises were blocked by the interests of the political parties that were indirectly represented by the committee members. These members, merely non-political specialists but appointed by the different political parties, felt obliged to hold on to their political ideas instead of negotiating compromises. The committee thus could not but report the main views discussed. Some of the elder members of this committee were annoyed by the behaviour of their fellow committee members. Shouldn't the constitutional committee represent the public interest, in stead of different party interests?

As the examples make clear, constitutional committees, which at first sight might seem 'just' advisory committees to the 'real' politics, provide access to the study of political history in a variety of ways. Formally, the committees did not have any representative function: government itself already has a complex relationship to parliament and, behind that, to the people. However, as the committees' advices played an important role in changing the most fundamental law of the state, committee members as well as outsiders expected the committees to take into consideration the desires of all political and social groups as well as all individual wishes and law theories. The 'rules' analysed in the second part of this paper illustrate the importance of this representative function of the committees. Committee members informally did act as representatives of these different views – mediating between the 'public interest' and the political decision-making

that would follow after their advices were presented. Behind their discussions on rules and roles, complex questions unfold, like the problem of legitimising the constitution or the increasing demand of citizens to participate in decision-making.

Next to these key questions on the functioning, but also on the scope of 'politics', in their substantive debates the constitutional committees touched upon many other issues central in the analysis of what actually can be described as 'politics' in a certain period. As this paper has tried to demonstrate, for new insights on these complicated questions, research of unconventional sources and political bodies like the archives of constitutional committees is essential. It is therefore to be expected that the Constitutional Committee project's result will pave the way for various groundbreaking studies in this respect.

Notes

[1] This project is part of the ING programme 'Representation and governance in the Netherlands, 1250-1983'. The author wants to thank project leader Marijke van Faassen and programme coördinator Ida Nijenhuis for their comments on earlier versions of this paper.

[2] R. P. Formisano, 'The Concept of Political Culture', *The journal of interdisciplinary history*, 31, (2000), pp. 393-426, 395.

[3] For instance 'cultural turn pioneer' Lynn Hunt, *Politics, culture and class in the French Revolution* (Berkeley, 1984).

[4] http://www.inghist.nl/Onderzoek/Projecten/Grondwetscommisies1883-1983/index_html_en

[5] The four committees were the 1946 Beel Committee; the 1950-1954 Van Schaik Committee; the 1963-1964 Donner working group and the 1967-1971 Cals/Donner Committee,
http://www.inghist.nl/Onderzoek/Projecten/Grondwetscommisies1883-1983/Lijst_grondwetscommissies

[6] A. Lijphart, *The politics of accommodation. Pluralism and democracy in the Netherlands* (Berkeley, 1968).

Jan Burger

The Prince and his Subjects. The Administration of the County of Holland in the First Half of the Fourteenth Century: the Evidence from the Registers

In the first months of the year 1320 the good people of Westwoud in West-Friesland had serious complaints about their parish priest, who obviously did not function as he was supposed to do. The same complaints were expressed in neighbouring Veenhuizen, where other troublesome priests were reported besides. The exact nature of these problems is not known, but they were not necessarily of a spiritual nature. In the same period, a priest in Oosterland (also in West-Friesland), called Doede van Herch, was accused of stealing two cows from a woman named Tembela. And an unnamed priest in Lutjebroek, in the same region, allegedly stabbed a man in his side with a knife.

Parishioners with malfunctioning or even criminal priests would put their complaints before the lord who owned the church, that is, had the right to appoint the pastor. This is exactly what the people in Westwoud, Veenhuizen, Oosterland and Lutjebroek did. The lord of the churches in these villages was no other than the lord of the land of West-Friesland: William III, also count in Holland and Zeeland and in Hainaut (reigning 1304-1337). The problem for the Frisians was that William never personally visited their land, as he was much too occupied with his chief principalities to have the time (or probably the wish) to travel to this distant corner of his territories. But as lord of the land, it was his duty to rule the people and administer justice to his subjects. Therefore, at the end of March 1320 he sent as his representatives some members of his Council to act in his name. These commissioners met with so many complaints and other pressing affairs, that they returned on June 1st to finish the job.

Luckily, a report of these sittings of the Council in West-Friesland has been kept in the archives of the counts,[1] and it is from this document that we are informed about the priests gone wrong mentioned above. Thanks to this report, we know the precise activities of the councillors at these two sessions. It appears that they acted exactly as the count would have done: they heard the complaints of the 'poor people about their priests, their judges and their neighbours', as it is stated verbally in the document, they administered

justice, they acted as arbiters between quarrelling parties, and they guarded the public – and even private – morals, as in the cases of a man called Wouter, who had allegedly married two women, and of a couple that had indulged in marital intercourse during Lent. They remitted a number of cases to a spiritual court, and a lot of minor offences were passed on to a local officer such as the bailiff. In a few special cases, sometimes involving persons of high rank or government officials, their verdict was that the decision should be left to the count. Moreover, in reaction to the actual problems, the Council put forward general rules devised to deal with them in the future. For instance, they decreed that criminal priests from then on should be judged by the bailiff of the district together with the representative of the bishop.

In addition to questions like these, the commissioners spent a lot of time on the care of the dikes, an important issue in these low lying lands that were hemmed in by the sea from three sides.[2] In the previous year the dikes had been badly damaged by a heavy storm surge, which had given rise to many problems involving the question who was responsible for which part of the sea defences, and who had to pay for their repair and maintenance. In order to make just decisions in this matter, the Council had ordered a measurement of the exact length of all the dikes protecting West-Friesland, which had been duly done in the first weeks of March; this survey is also copied in the document under discussion. As a matter of fact, this might even be the reason this document survived in the first place – there must have been many reports like this one, but nearly all of them have disappeared.

The particular document which contains all this information was copied into one of the registers that were made by the administration of the count in the Hague, which covered the lands of Holland, Zeeland and West-Friesland. In these registers, the clerks wrote the texts of the charters issued by the count as well as other related documents that were deemed worthy to preserve, such as charters received by the count, lists of fiefs, and reports by commissioners such as the one in West-Friesland. The texts in these registers thus offer a rich source for historical research, the more so because at the time the number of charters was steadily increasing. These charters contain a lot of information, not only on the government and the political institutions of Holland, Zeeland and West-Friesland, on the nobles and gentry and on the other vassals of the count, but also on matters pertaining to the common people in the towns and the countryside. The importance of the registers is enhanced by the fact that for Holland in the first half of the four-

teenth century charters are still our most important sources of information, as other types of historical documents such as account books and historiographical records are mostly lacking.[3]

Better still, these registers hold valuable information that is not present in the original charters. From 1318 onward, the clerks writing the registers added a marginal note to many texts, containing the name or names of the persons from the administration that were involved with the deed laid down in the act, or with its execution. Sometimes these marginal notes mention the count himself (*per dominum comitem* or *per dominum comitem personaliter,* 'by the lord count himself'), sometimes the Council as such (*per commune concilium,* 'by the Common Council'), but most often we find a name or a number of names of individual persons. Clearly, these names indicate the members of the Council.[4] This is important information which gives us insight in the people manning that institution, information which is only sporadically found in other records. From these marginal notes we learn that the most prominent councillors, those mentioned most often, were not members of the high nobility of Holland and Zeeland, but instead sons of the lesser gentry. Often these were young men of little means, who found a profitable career at court. The most conspicuous example of these upstarts is set by Willem van Duivenvoorde, an illegitimate son from a poor branch of the noble family of Wassenaar, who from these humble beginnings managed to obtain a dominant position at court – he was chamberlain and most trusted adviser to the count – and on that basis was able to amass a startling array of lordships and other goods and incomes in Holland as well as in Brabant. In the registers, his name is mentioned time and again in the marginal notes, and he obviously was one of the most important members of the Council.[5] Other lesser nobles who are often mentioned as councillors are Gerard van Raaphorst and Simon van Benthem. Another very influential member of the Council was Jacob of Denmark, who, notwithstanding his exotic name, was born from the lesser gentry in Holland, and who was able to study and to make a career as a clergyman in Utrecht; in 1312 he was appointed by the pope as sufragan bishop of Utrecht; he also was the titular bishop of 'Zuden' (on Naxos, Greece), hence his name 'Jacob van Zuden'. In 1313 he became a vassal of count William, and from 1318 he is mentioned as a member of the Council; thanks to his exalted clerical position his name is listed immediately after that of the count himself. Jacob also functioned some time as *receptor* (steward) for the count in the districts of Amstelland and Woerden.[6] It is furthermore remarkable that the stewards – in this period often clerks or other persons of non-noble birth – are also mentioned in the marginal

notes, especially in documents concerning their own districts; obviously these officials were active as members of the Council when their own region was concerned. The same goes for the bailiffs, who are mentioned on a regular basis as well, also in connection with matters relating to their own district. Unlike the stewards, however, bailiffs were members of the nobility.[7]

The overall picture is clear: during the reign of William III, the daily administration of the county was run by a more or less fixed and permanent institution, the Council. As we have seen, in the sources it is called the *commune concilium*, the 'Common Council', to distinguish it from the old feudal Council, the *curia comitis,* comprising all the vassals of the lord. This Common Council was staffed by persons that were not elected on the ground of their noble birth or high rank, but on account of their close relations with the count or their administrative expertise. This development marks a transitional stage in the evolution of the old personal reign by the prince to a more anonymous government by an intermediate layer of administrative institutions, manned by professionals, which would take shape in the fifteenth and sixteenth centuries. In Holland, already in the first half of the fourteenth century the personal contact between prince and subject gradually became a thing of the past. People often had to take their complaints to the Council instead of the count. Later, for a short period during the middle of the fourteenth century, the Council, together with the principal towns, even became the official reigning body in the absence of the prince, an experiment which was discontinued in the second half of the century in favour of the assembly of the States, where the prince or his councillers consulted the nobility and the towns.[8]

Let us finally return once more to our primary source, the registers.[9] In 1316 the chancery of Holland was reformed and expanded, as can be deduced from the growing number of scribes writing the charters and from the increasing uniformity of their script and *dictamen*, the wording of the diplomatic formulas at the opening and closing of the text.[10] It was also in this year that the chancery clerks started to write the registers. The reason for the latter initiative is obvious: in a rapidly expanding administration such reference books must have been useful or even necessary instruments. A careful study of the contents as well as the codicological and palaeographical aspects of the registers that are still extant, has shed much light on the time they were made and the way their production was organized. From the beginning, this registration was handled systematically. Seven different registers were set up for the various districts of the county: Noordholland, Kennemerland, Zuid-

holland, Zeeland, Amstelland-Waterland, Friesland, Woerden and Hainaut. Moreover, five different registers were established for the various foreign countries the count was in contact with: Utrecht, Brabant, Guelders, and Germany-England. Initially, the registers were probably made up of separate paper quires, which however are all lost. Fortunately, we know their contents thanks to the duplicates that were made in 1324. These were neat copies, written in parchment volumes of a large size and in a neat type of script (Ill. 1); their appearance was probably in stark contrast to that of the original registration. At about the same time, from the beginning of 1324 onward, the chancery clercs started to register the outgoing charters in quires of a smaller size, made of parchment of a rather poor quality, and written in a careless script (Ill. 2). In the 1330s these small registers were made complete when another copy of the registrations of the years 1316-1324 was included in them. Most of this new series of primary registration has survived. From all these activities we can infer that in the beginning of 1324 the chancery, or at least the department responsible for the registration of the charters, was subject to another reorganization. Perhaps things had gotten sloppy over the course of time. A sign of such a slackening of the discipline could be the fact that from the end of 1321 the marginal notes all but disappear from the registers. With this fresh start these entries again are written, in a rather methodical way.

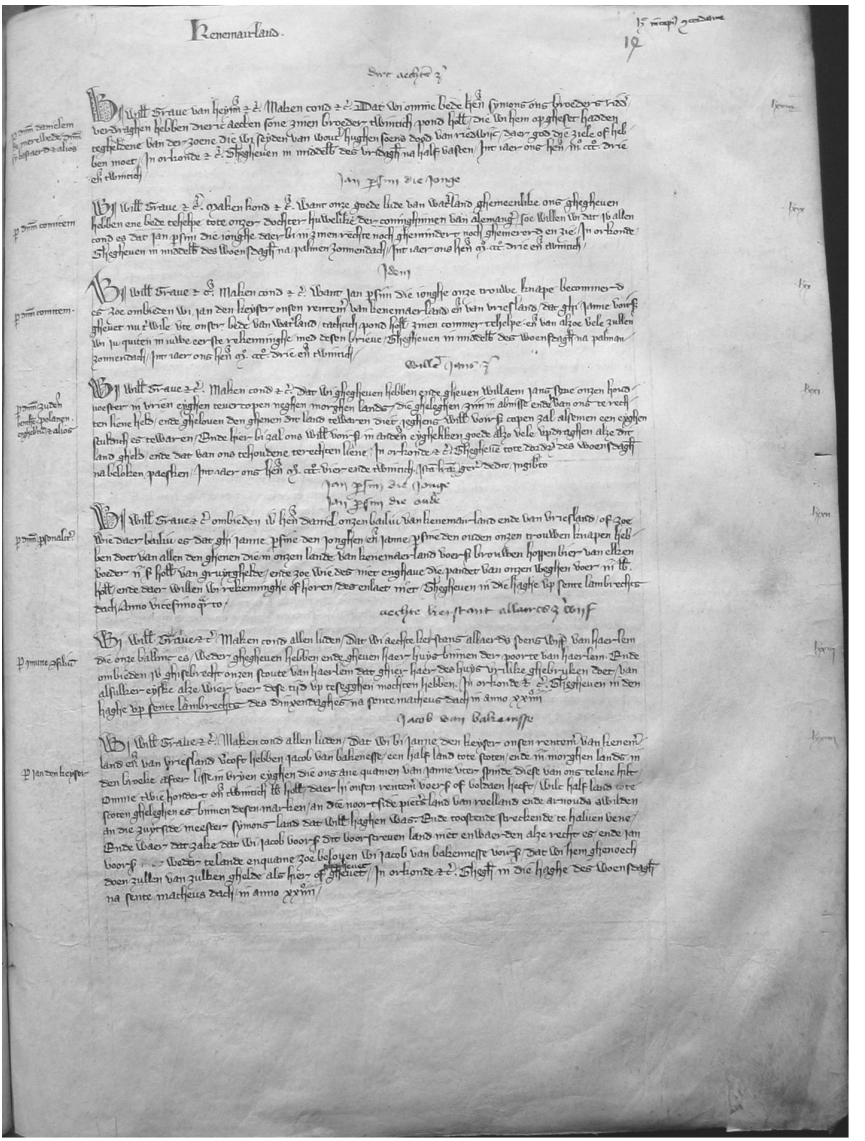
Thus, from 1324 onward the chancery produced two series of registers: the small series containing the primary registration (and for the period 1316 to the beginning of 1324 transcripts of the original registration), and the large series consisting of duplicates of the primary registration. Most of these volumes have withstood the ages: there are 21 registers left from the reign of William III, twelve large ones and nine small ones;[11] of the small primary registers three have been lost. This laborious system of registration was somewhat modified under William's successor, count William IV (reigning 1337-1345): now all texts were written in one volume, although the old regional classification was maintained in this book. However, of this single register only the duplicate volume, in a large format, has been handed down. It is therefore possible, or perhaps even probable, that the original primary registration was done as before in separate quires, one for each different region.

At the Institute of Netherlands History (ING) in the Hague an edition is being prepared of these 22 registers spanning the years 1316-1345. Together these volumes amount to nearly 1,000 tightly written folios, which contain some 3,400 different documents (not counting the duplicates). From a scholarly point of view, such an

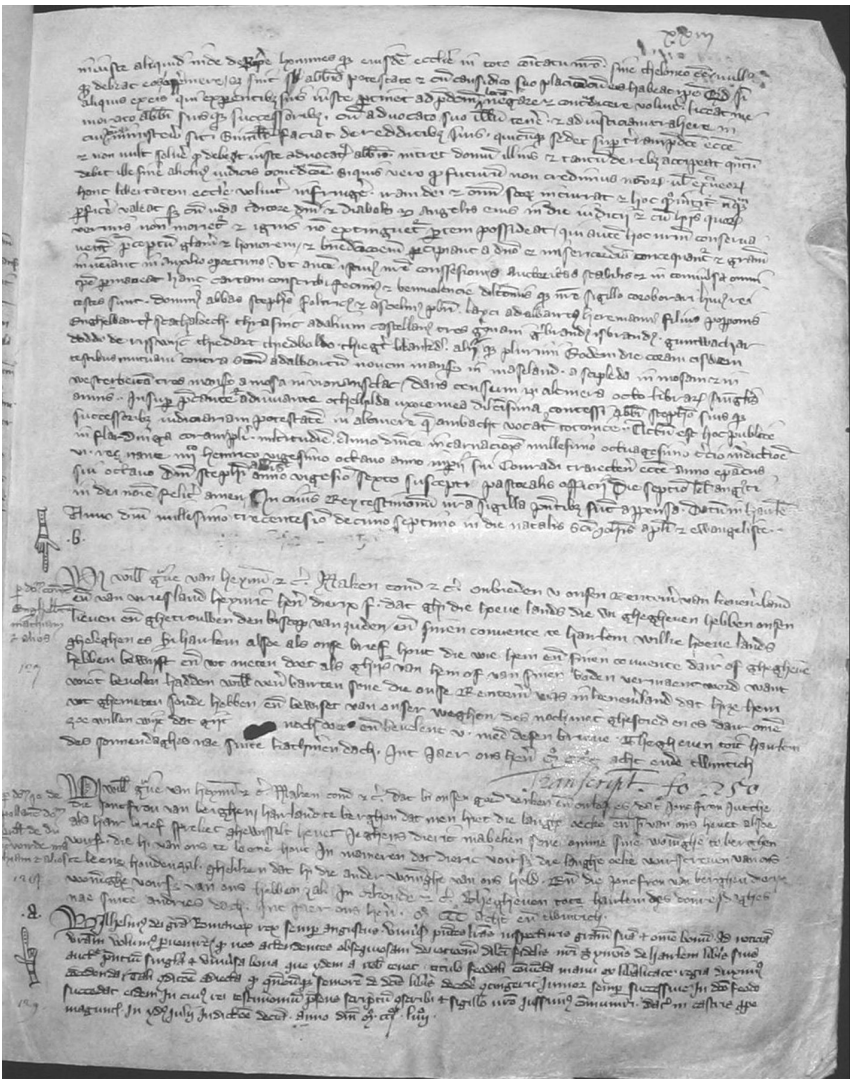
edition is badly needed, as a modern edition of these texts is lacking. The only relevant work available is the *Groot charterboek* by Frans van Mieris, published in 1754 and at present of course very much outdated.[12] It is also very incomplete, as is shown by the supplement published in Muller's *Regesta Hannonensia* in 1881.[13] The latter work is however of little use for the historian, as it does not give the full text of the charters but only an abstact, mostly in a very short and rather imperfect form. And again Muller is not complete: in the registers of Kennemerland and Woerden for instance, 21 and 25 percent respectively of the texts are not mentioned by Muller, nor printed by Van Mieris, who gives only 5 percent of the charters in these registers.[14] It is probably because of this lack of an adequate edition of its charters that there are very few historical studies on Holland in this period.[15]

The edition of the registers of the counts of Holland will be an exclusively digital publication. It will consist of a full transcript of the texts from the primary registers, or of the earliest copy of the primary registers over 1316-1324 that have been lost. The variant readings from the duplicates will be given in the footnotes. The edition will be accompanied by pictures from all volumes, the primary registers as well as their copies. Thus, scholars will be able to leaf through each register as well as to study each separate document.[16] The digital edition is modeled loosely after the example of the traditional books of charters as they were issued by the Institute before.[17] Searching, selecting and presenting the documents is of course much more flexible than it was in a paper edition.

Thus, these important sources for the history of Holland, Zeeland and Friesland in the first half of the fourteenth century will become widely available for the scholar and the general public alike. It is to be expected that this edition will greatly enhance the research into the evolution of the political institutions of the county during this period.



1. AGH, no. 255, the large register Kennemerland (duplicate) f. 14r.



2. AGH, no. 256, the small register Kennemerland (primary registration), f. 23r.

Notes

[1] Den Haag, Nationaal Archief, Archief van de graven van Holland (AGH), no. 324, f. 9-12; another copy in ibid., no. 325, f. 7-10v.

[2] For the dikes in West-Friesland during the Middle Ages and the early modern period see J. Beenakker, *Van rentersluze tot strijkmolen. De waterstaatsgeschiedenis van de Schager- en Niedorperkoggen tot 1653* (Alphen aan den Rijn, 1988).

[3] Most of the accounts made up for the counts have been lost; the few remaining ones have been edited in H.G. Hamaker, *De rekeningen der grafelijkheid van Holland onder het Henegouwsche Huis* (Utrecht, 1875-1878) , 3 vols; idem, *De rekeningen der grafelijkheid van Zeeland onder het Henegouwsche Huis* (Utrecht, 1879-1880), 2 vols; H.J. Smit, *De rekeningen der graven en gravinnen uit het Henegouwsche huis* (Utrecht, 1939), 3 vols. Two (Latin) chronicles were written in Holland during the period under discussion, both in the abbey of Egmond: one in 1322-1329 by Willem Procurator (Willem Procurator, *Kroniek,* ed. and transl. M. Gumbert-Hepp with J.P. Gumbert (Hilversum, 2001)) and one shortly before 1350 by Jan Beke (*Chronographia Johannis de Beke,* ed. H. Bruch ('s-Gravenhage, 1973)).

[4] On these marginal notes see J.W.J. Burgers, 'De registers van de grafelijkheid van Holland in de Henegouwse periode (1299-1345). Een eerste onderzoek naar aanleiding van de uitgave ervan', in E. Dijkhof and M. van Gent (red.), *Uit diverse bronnen gelicht. Opstellen aangeboden aan Hans Smit ter gelegenheid van zijn vijfenzestigste verjaardag* (Den Haag, 2007), pp. 23-49, esp. 38-41.

[5] On Willem van Duivenvoorde see H.M. Brokken, *Het ontstaan van de Hoekse en Kabeljauwse twisten* (Zutphen, 1982), pp. 219-252.

[6] On Jacob van Zuden see F.W.J. Koorn, 'Networking for the Holy Land – Jacob van Suden and the early years of the Convent of the Hospitalers of St John in Haarlem', in Hajo van Lengen (red.), *Zur Geschichte des Johanniterordens im friesischen Küstenraum und anschließenden Binnenland. Beiträge des Johanniter-Symposiums vom 11. bis 12. Mai 2007 in Cloppenburg-Stapelfeld* (Cloppenburg, 2008), pp. 99-110.

[7] The Council is treated more fully in J.W.J. Burgers, 'De grafelijke Raad in Holland en Zeeland ten tijde van graaf Willem III (1304-1337)', in *Jaarboek voor Middeleeuwse Geschiedenis* 12 (Hilversum, 2009), pp. 114-145.

[8] Brokken, *Het ontstaan,* pp. 148-159. The sources related to the States of Holland are being edited in J.G. Smit a.o., *Bronnen voor de geschiedenis der dagvaarten van de Staten en steden van Holland voor 1544* ('s-Gravenhage, 1987-2010) , 6 vols; those related to the States of Zeeland in J.W.J. Burgers a.o., *Bronnen voor de geschiedenis der dagvaarten van de Staten en steden van Zeeland tot 1574* ('s-Gravenhage, 2010), forthcoming.

[9] The registers are studied in Th. van Riemsdijk, *De tresorie en kanselarij van de graven van Holland en Zeeland uit het Henegouwsche en Beyersche huis* ('s-Gravenhage, 1908); J.G. Kruisheer, 'De registers van Pieter van Leiden. Het papieren cartularium van de graven van Holland (1299) en het begin van de systematische registratie ter kanselarij (1316)', *Nederlands Archievenblad* 72 (1968), pp. 27-110; Burgers, 'De registers'.

[10] For the chancery in the first decades of the fourteenth century see J.W.J. Burgers, 'Grafelijke kanselarij en ambtenaren in Holland in de eerste jaren van het Henegouwse Huis (november 1299-circa 1320)', in D.E.H. de Boer a.o. (red.), *1299: één graaf, drie graafschappen. De vereniging van Holland, Zeeland en Henegouwen* (Hilversum, 2000), pp. 107-127. Forthcoming are two dissertations on the chanceries in Holland and Hainaut in this period, by Jinna Smit (Amsterdam University) and Valeria Van Camp (Ghent University).

[11] AGH, nos. 242-243 (Noordholland), 255-256 (Kennemerland), 289-290 (Zuidholland), 303-304 (Zeeland), 316-317 (Amstelland and Waterland), 324-325 (Friesland), 398 (Woerden), 401-402 (Utrecht), 574-575 (Brabant), 620 (Guelders), 645 (Germany and England), 2180-2181 (Hainaut).

[12] F. van Mieris, *Groot charterboek der graaven van Holland ...,* (Leiden, 1754), vol. II.

[13] P.L. Muller, *Regesta Hanonensia. Lijst van oorkonden betreffende Holland en Zeeland uit het tijdvak der regeering van het Henegouwsche huis, 1299-1345, die in het charterboek van Van Mieris ontbreken* ('s-Gravenhage, 1881).

[14] Burgers, 'De Registers', p. 24 with notes 9 and 10.

[15] Apart from some studies mentioned in the other footnotes in the present article, especially the monography by Brokken, *Het ontstaan,* we have only a substantial biography in S.A. Waller Zeper, *Jan van Henegouwen, heer van Beaumont. Bijdrage tot de geschiedenis der Nederlanden in de eerste helft der veertiende eeuw* ('s-Gravenhage, 1914), and a few books with a broader scope, such as H.S. Lucas, *The Low Countries and the Hundred Years' War, 1326-1347* (Ann Arbor, Mich., 1929), and F.W.N. Hugenholtz, *Ridderkrijg en burgervrede. West-Europa aan de vooravond van de Honderdjarige Oorlog* (Haarlem, 1959). Holland in the thirteenth century and in the late Middle Ages has found a much fuller treatment.

[16] On the edition see J.W.J. Burgers and Rik Hoekstra: 'The registers of the counts of Holland, 1316-1345: a digital edition', in Georg Vogeler (ed.), *Digitale Diplomatik. Neue Technologien in der historischen Arbeit mit Urkunden* (Köln etc., 2009), pp. 56-69.

[17] Especially after A.C.F. Koch, J.G. Kruisheer and E.C. Dijkhof, *Oorkondenboek van Holland en Zeeland tot 1299* ('s-Gravenhage etc., 1970-2005), 5 vols.

Coleman A. Dennehy

Privilege, Organization and Aristocratic Identity in the Seventeenth-Century Irish House of Lords

The purpose of this chapter is to try to come to some understanding as to how the nobility of Ireland in the seventeenth century portrayed their sense of self-identity as aristorcrats in the way that they organized themselves in their representative house of parliament. As such, it will attempt to see the developments in the Irish house of lords with a particular attention being given to the procedures and processes in the house and how we might identify attempts by the peers to organize themselves in a fashion that preserved and promoted their nobility.

In the absence of a vigorous historiographical debate on the Irish house, we might first look to the English house of lords, from where the Irish house took some example. In what has been termed an orthodox history of the English parliament, the house of lords tended to be portrayed as the easily manipulated servants of the crown whilst the commons were traditionally seen as the organizers of opposition, and their role was highlighted by Neale, Notestein, Pollard, and Namier. George Sayles, a historian of both Irish and English medieval parliaments made a valid point when he wrote that

> …to still pretend that the history of the medieval parliament is being written when the sparse and uninformative details of the obscure lives of obscure men are laboriously collected because they made a fitful appearance among the commons is merely to veil the hard realities…the place of biography in constitutional history is a subordinate one. If we see in parliament merely a public spectacle of political struggles between crown and commons and of democracy in embryo, we shall certainly never understand the medieval parliament.[1]

Elton shared these sentiments, when he wrote of 'Namier's obsession with the persons of individuals – his belief that the history of parliament equals the history of individual members of the commons … The lords, once again, lie forgotten'.[2]

This criticism is perhaps somewhat excessive. Biographical histories of members of the commons are, of course, very useful. Put simply, previous parliamentary history took the focus off the institution of parliament, and apparently supported the assertion that the history of parliament is the history of the house of commons. These strong words seem to have had the desired effect as a revisionist school emerged in parliamentary history that rejected the idea that there

was a sure emergence of a strong opposition in Elizabeth's time, which was apparently where the roots of the Civil War were to be found. Michael Graves, Conrad Russell, and Geoffrey Elton, amongst many, all played a role. In rejecting the orthodox specialization on the house of commons and party politics, they opened the door to the study of the lords also. At the very core of this approach is to take a widespread consideration of the activity of parliament over a period. Statistical evidence of the work rate gleaned from such a study produced histories where all elements of parliament for the most part cooperated in the process of getting the work of parliament done, and developments in procedure were no longer to be seen as constitutional weapons to fight a political war, but simply aids for parliament to dispatch its constantly growing work-load. Above all, the rate at which legislation could be processed was to be the barometer of parliaments.[3]

So how does one account for the house of lords in the early modern period in Ireland? It does not necessarily make sense to take English historiographical exchanges and apply them to the Irish problem. The Irish parliament was a very different institution, which operated in a different environment and under different circumstances. We know, for example, that the provisions of Poynings' Law made the process of legislation considerably different and introduced a fourth part to the traditional parliamentary trinity – lords, commons, king & English council, and lord deputy & Irish council.[4] Although there were religious pressures in the English parliament, the differences were all the more stark in Ireland, and also the ethnic distinctions made the situation a little more complex. In addition to this, if the situation was not to be clarified until the 1720 Declaratory Act, Ireland was clearly being treated as being much more of a colony than a partner kingdom. However, there were also some similarities. The general political crisis of the seventeenth century can be, and frequently is viewed through the prism of a 'three kingdoms' approach. As such this necessitates the acknowledgement that the history of England, Scotland and Ireland is inter-dependent and to study the history of one of these kingdoms in isolation runs the risk of failing to understand the influence of events in the other two kingdoms on the subject matter.[5]

In many ways, the Irish parliament had developed in similar ways to the English one. Because so many other facets of royal government were modelled on the English example, it was always likely that the Irish parliament would evolve in a similar manner. However, because the Irish government was generally staffed with figures from the Irish lordship up until the growing Anglicization of government from the mid-sixteenth century onwards, there were aspects of parliament that had a certain local particularism to its organization and devel-

opment.[6] By way of example, we might consider that fact that the clerical proctors remained in the Irish house of commons a long time after they had disappeared from the English house. An indication of the growing Anglicization of government affecting parliament can be seen in the abandonment of the law with regards to MPs residency and property qualifications in the boroughs they represented and the laws regulating where parliament should sit, not just for reasons of political expediency, but also because their knowledge of parliaments rested on their experiences and that of their assistants in the English assembly.[7] As such then, whilst we must be cognizant that the Irish parliament was dependent on local conditions for its development as an institution, it was also shaped, particularly from the mid-sixteenth century onwards, by the knowledge of the workings of the English parliament.

For the most part, writing on the Irish parliament has concentrated on confrontation also, perhaps due to an English historiographical influence, although not always between executive and commons. More often it highlighted religious and ethnic distinctions. When reading more generally on Ireland in the seventeenth century the same issues usually seem to be mentioned. In 1613 the fall-out from the election of the speaker and a sharpening religious divide in the commons created by the wholesale creation of Protestant dominated boroughs. In 1634, denial of the graces and the creation of a government party to play the settler interest against the Catholic interest is prominent and in 1640, partially as a result of policies in the previous parliament, the fall of Wentworth. In 1661 an all-Protestant commons and the land settlement features, and in 1689 Catholic domination and the land settlement – a swinging pendulum to the previous assembly. In most histories of seventeenth-century Ireland, parliament is used to illustrate the growing distrust and animosity between the competing interests. Whilst it is important to acknowledge that the Irish parliament could of course be an important forum in playing out the confrontational episodes of Irish history, an institutional study of parliament may give us a different perspective. For example, the 1634-5 parliament could be regarded as being, legislatively at least, a very active parliament having by far the strongest record. In this parliament, the lords read 78 bills in 77 days sitting and the commons read 103 bills in 104 days sitting, a much higher rate than any other. Having said that, one aspect of the English revisionist school is that they place a very strong emphasis on production of legislation, an emphasis that is perhaps a little too strong. Certainly in the seventeenth century, the English parliament, and the Irish for that matter, took on a massive amount of legal cases, which took up a considerable amount of parliament's time and attention.[8] Altogether, for the

sources available to us, the Irish houses heard 1,664 petitions or counter-petitions initiating or answering either first instance or appellate cases. This aspect of parliament's, and particularly the house of lord's, work has been to a large extent ignored by parliamentary historians in Ireland, with the exception of when these petitions were politicized, such as in 1640 and 1641.

In terms of the general historiography, we do not have a huge amount of published work on the house of lords. Francis James's work on the Irish house of lords stands out as the only recent monograph on the house and its members, but even here it tends to focus on the eighteenth century more, and frequently more a study of the nobility than of their work in the house.[9] There have also been a handful of very useful articles on the lords' house in Ireland.[10] One of the issues that prevent a fuller appreciation of the role of the house of lords is something similar to the situation commented upon by Sayles and Elton earlier. There seems to be too heavy an interest in the house of commons. The lords simply do not feature as much in the political historiography of early modern Ireland. A perfectly good example of this is the *History of the Irish Parliament*. Published in six volumes in 2002, with a supplementary volume in 2006, it comes to a total of 3,392 pages, yet writes off the house of lords in a few lines. It 'does not consider the house of lords as a separate entity, partly because of its constitutional status as part of a dependent legislature and its nebulous quality, for honours tended to be spread across the British Isles and not precisely confined to Ireland, and partly because it was so integrated with the Irish house of commons'.[11] If the lords are sometimes written off because there are so many absentees amongst their number, many of the commons would need to be omitted on the same principle. On occasion in the seventeenth century, the house of commons could operate with between just 15-20% of their overall membership sitting. Whilst acknowledging the positive impact of the *History of the Irish Parliament*, it has done something of a disservice to the house of lords and reinforces the idea that the upper house is of less relevance. Studying the commons in its own right is of course a worthy endeavour, but it does not change the fact that the lords has gotten far less attention than its position within the constitution surely merits. Another example can be found in the Restoration parliament. It is generally remembered as being the first all-Protestant parliament and the vast majority of references to this parliament refer to it as such.[12] This is not the case, as there was an active and reasonably influential Catholic membership in the lords that combined with moderate Protestant opinion to produce a generally conservative house that was usually very supportive of government initiatives and could be sympathetic to some Catholic concerns. One of the explana-

tions for this is that an all-Protestant commons was simply understood by many commentators, whether consciously or not, to mean an all-Protestant parliament. As such, the commons and parliament seem to be inter-changeable terms and the house of lords is thus made less relevant. It does seem very strange, in general, that the commons are so frequently seen as being behind parliamentary activity and development and were always taking the initiative in Ireland. Most historians willingly acknowledge the strong role played by patronage in Irish elections, and frequently this patronage was exercised by members of the nobility either exerting influence in, or simply owning parliamentary boroughs outright.[13] Thus there must have been considerable noble influence in membership of the lower house and from this, influence in the activities of the lower house.[14] In the 1640-41 sessions, of the 23 highly active temporal peers, all had family, clients, and friends in the lower house.[15]

On a more positive note, for institutional histories in general we have, on occasion, been reasonably well served. Richardson & Sayles's work on the medieval Irish parliament took such an approach, as does much of Prof Ellis's work and that of D.B. Quinn.[16] In the eighteenth century, much of the work of Prof Hayton follows an institutional approach, as does Dr Kelly's recent work on Poynings' Law.[17] Indeed the collaborative project on Irish legislation by Prof Hayton and Drs Kelly, Bergin, and Sneddon, on the Queen's University Belfast website, is a superb example of such an approach, with legislation at its core.[18]

A consideration of the house of lords in the seventeenth century through an institutional approach in the manner undertaken by Foster or Graves might provide a fresh understanding as to how the nobles organized their own house, how they conducted business, and how their perception of their own nobility might have been expressed through this.[19] Many of the ways in which the house of lords conducted their work was given to them by medieval predecessors. The early modern house of lords was essentially the remnants of the king and council in parliament. By the end of the fourteenth century or the early decades of the fifteenth century, the house of lords had found a shape quite similar to its later form, especially with regard to members' growing self-awareness of being peers of parliament.[20] The house of commons, containing representatives of the lower clergy, some towns, and the shires, all by this stage regularly expected to attend, were sitting in their own house and were beginning to establish their own particular responsibilities.[21] The king's justiciar (later known as lord deputy or lord lieutenant) had also, by this stage, absented himself from parliament except for the important ceremonies, although he had conveniently left his council in situ. But these councillors, mostly judges and legal officers, were no longer the active and

probably the more prominent members of parliament, instead they were denigrated to the position of servants of parliament, only to speak when spoken to. At some stage, probably later in the fifteenth or in the early sixteenth century, the role of clerk of parliament was converted from what had been a seconded position out of chancery into a position responsible solely to the house of lords, in the process creating a new record of the house, the journals, to replace the medieval rolls. However, the most important development from this period, for the purposes of this paper, is the development of the peerage in Ireland. By the second half of the fifteenth century, the rather vague term of 'magnate' was obsolete and the peerage was defining itself into its varying ranks of baron and earl, with the first viscount appearing in 1478, whilst the Irish parliament had to wait until 1642 for its first sitting marquis and 1689 for it first sitting duke.[22]

It is not abundantly clear when the status of nobility conferred the automatic receipt of a writ of summons. In all likelihood, the process probably followed that of England, in that the summons became the norm for almost all peers in the fifteenth and sixteenth century and this summons to attend became an integral part of one's noble status.[23] Indeed in Ireland, the writ of summons became an important part of the Tudor Anglicization process when Gaelic Irish magnates, clearly nobles within Gaelic society, were actively encouraged to attend the Irish house of lords in accordance with their newly awarded peerage.[24]

Rank of peerage was of fundamental importance to those who sat in the chamber, and this is clearly borne out by the way the house of lords conducted its business. In the first instance, seating was arranged by rank. Barons sitting with barons, earls with earls, and so on. Precedence within these seating arrangements was frequently discussed and long drawn disputes were fought between members over the issue of who sat below who, such as was the case in 1665 between Lord Courcy of Kinsale and Lord Kerry & Lixnaw.[25] This issue had begun two parliaments previous in 1634.[26] Rule I in the house of lords, decided upon in July 1634, but probably codifying previous arrangements, insisted that every peer, upon a new creation, should have a place according to the date of the creation, and for those who inherited titles, their place was decided upon by the antiquity of the creation.[27] A similar but inverted arrangement was used when voting. When voting 'the lowest being first, and every man in his own turn riseth and only saith content, or not content'.[28]

Indeed the division of the house of lords into its respective benches was to replicate itself at committees, where, when allowed by sufficient numbers, the committees were normally divided equally amongst the benches, including the spiritual peers. The use of com-

mittees by the house of lords was to increase throughout the century and mirrors the house of commons in the way that an increasing workload meant an adaption of the way in which parliamentary business was conducted. They were usually attended by one or more of the legal community from within the house. Unless infirm and given permission, the judges remained on their feet and with their hats taken off.[29] Generally, in the seventeenth century, the lords had only one standing committee, that for privileges and grievances. In the eighteenth century this number had expanded to five, splitting the former committee and adding trade, religion, and justice.[30] When fees had to be paid to various officers for various services such as introductions, the costs were usually graduated on the basis of their rank.[31]

A similar deference to the position of the nobility is to be found in the inter-house committees or conferences. Before these could take place, the chairman of the commons group, when requesting a meeting would courtesy three times to the lord chancellor, who usually played the role of the speaker in the house. When the lords wanted a conference, they would use a judge to act as a messenger.[32] When preparations were being made for a meeting, it is the lords who chose the location, time and even the number of MPs that the house of commons were to send, always twice as many as the lords. This was a matter of some umbrage when the commons disputed what the lords insisted was 'the undoubted right of this house to name the time and place' but the lords won out.[33] When the meeting did take place, the members of the commons remained standing and spoke uncovered, whilst the lords sat covered. In mid-July 1666, paralysis of inter-house conferences was encountered when the commons, perhaps suffering from parliament fatigue, refused to stand with their hats in their hands. The lords, to a man, stood up and began to leave, claiming that the commons 'had minds to be lords', to which Captain Adam Mullineux, a member of the commons, replied 'Another rebellion may make some of us lords, as former rebellions did make some of your lordships predecessors'.[34] The comment was reasonably fair, as for all their efforts to preserve, or perhaps produce, their noble dignity in their house and in parliament in general, there was a considerable amount of new blood, not only in terms of recent creations, but also the fact that the powerful ecclesiastial benches were made up entirely of non-nobles. For reasons of political and financial expediency, the Irish house of lords had seen a large rise in its membership in the seventeenth century. In 1613 there had been 25 temporal lords, but by 1634 this had risen to 99, with as many of them as a third being non-resident.[35] This was have distinct political ramifications in the lords and also to have procedural implications with regards to the use of proxies. It is no surprise that in the aftermath of Wentworth's undue

influence in the lords by means of manipulating proxy distribution, the lords introduced a limit of two on the amount of proxies that any lord could receive and also questioned the right of peers to have a right to send proxies if they were devoid of estates in the kingdom.[36]

The house of lords further distinguished themselves from the commons by having a certain dress code. Whereas the commons undertook business in their regular apparel, the lords, on ceremony days at least, had (by law) to wear their parliament robes.[37] Such ceremony days were the processions at the opening of parliament, when the lord lieutenant was present, either giving royal assent to legislation of for some other reason, and usually on the dissolution of parliament and may have been worn more frequently. The introducing or accompanying sponsors who introduced a peer new to the house also had to wear their robes. It is quite certain that robes were not worn all the time. When the Earl of Clancarty was introduced to the house in May 1661, he could not be introduced by other earls as none of them had their robes with them, and as a result was introduced by Viscount Shannon and Viscount Ranelagh instead.[38] The robes signified the dignity of the peer and highlighted certain days in the parliamentary calendar. The lord lieutenant reciprocated the compliment by wearing royal robes and bringing other royal paraphernalia into the house with him.[39] He never visited the commons – they always attended at the lords, restoring the uni-cameral medieval parliament. The commons, when they attended the lords for such an occasion, stood below the bar and were bareheaded and in no particularly distinctive dress or order. The lords' robes were generally scarlet with an ermine collar, and then ermine bars of varying numbers down the right hand side to denote the rank – two bars for a baron, two and a half for a viscount, three for an earl, three and a half for a marquis, and four for a duke.[40]

By the seventeenth century, all peers of the kingdom being 21 or older (except 'idiots') and all bishops were entitled to sit, and the lords were giving expression to the principle that they decided upon issues of fines for non-attendance, the admittance of sons of peers in an observing role, and all other self-governing matters.[41] Once the king had decided to call parliament and it convened, the peers themselves took control of their own organization. Obviously the monarchy could have a closer control of the ecclesiastical benches, but once a lay individual had been made noble, they or their heirs could not be reduced, except in extreme circumstances such as outlawry. Although in theory, perhaps elections should have made the house of commons less controlled, the nature of the small corporations, self-perpetuating in religious make-up, that emerged in the early seventeenth century indicated that the government could and quickly did change the religious and ethnic make up of the commons far easier that it could the lords.

The commons swung from mixed in 1613, exclusively Protestant after 1642, to almost exclusively Catholic in 1689, and back to all-Protestant three years later. The lords, however, continued to have a mixed religious representation up to 1692, even during the mid-1640s and 1689, and generally continued to be a force for moderation in the big political issues of the day. As such, the lords gave a form of stability to the Irish parliament in the seventeenth century, despite the large influx in the earlier half of the century, which in any case, was partly negated by the fact that many of the newly created peers never sat in person.

Aside from the preservation of the privilege of their caste, the nobility of Ireland were vociferous in preserving the individual privilege of peers as members of parliament. Outside of parliament, the nobility had many privileges, but during parliament, these were enhanced, and although strictly speaking the bishops and archbishops were not peers, they were entitled to full privileges as members of the house of lords. One of the main cornerstones of parliamentary privilege was the act of 1463, which provided that 'no minister of the said parliament coming or going to the said parliament, during forty days before, and forty days after the said parliament finished, should not be impleaded, vexed, nor troubled by no mean'.[42] A later act also protected the family and servants of members.[43] The original act also stipulated that 'every minister, as well lords, proctors, as commons be discharged and quitted of all manner actions had or moved against them, or any of them during the times aforesaid'. An act of 1635 removed the part of privilege that any actions taken during parliament time were killed off for good, meaning that the action could be renewed forty days after the dissolution of parliament.[44] A strong majority of the lords' petitions to their own house dealt with the issue of privilege, and in particular with the right of freedom from arrest (both for the peer and all his dependent family and servants), for their preservation from any civil actions, and in the 1660s in particular, the preservation of their estates.[45] Not only did the family of peers have parliamentary protection, but it would appear that peeresses had privilege in their own right. The Marchioness of Antrim petitioned for the preservation of her property against the Earl of Clanrickard and the Lady Dowager of Kerry successfully petitioned against her son, a sitting peer himself, for possession of a house citing the 40-day rule and 'as a peeress of the realm, she claimeth her privilege'.[46] Of course such a protection was exceedingly valuable, too tempting for some. In 1666 Connel Molloy was found guilty of the forgery of a protection of Viscount Ranelagh and it was 'the opinion of the committee, that the said Connel Molloy shall be made exemplary, by being put to stand in the pillory, in Corn-Market, Dublin, from the hour of ten in the morn-

ing till the hour of twelve, for three market-days, and there to have his ears nailed to the said pillory, and his crime to be written in paper, to be fixed upon his breast, and to be imprisoned during the pleasure of the house'.[47] Interestingly, a bill for the temporary setting aside of parliamentary privilege due to the damage done to commerce by the non-payment of debt during parliament, was passed by the commons but rejected by the lords in 1666.[48] It is not abundantly clear why this was the case for the lords had previously agreed to a bill for waiving parliamentary privilege 'in all suits and actions of law, in any of the kings' courts, provided that the individual persons of parliament-men be free from restraint'.[49] It is quite possible that the breakdown in inter-house communications caused by Captain Mullineux, described above, was to blame for the lords throwing out of the bill.

The lords also had the benefit, although it was rarely mentioned as such, of the Statute of *Scandalum Magnatum*. This had originally been provided for in England in the fourteenth century and the lords vigorously pursued those who defamed their members.[50] For example on his complaint to the lords, Oliver Fitzwilliam, Earl of Tyrconnell, had one malcontent by the name of Rowse put into the stocks at Ringsend and another called Wright was pilloried near the Tholsel and stood there with a paper on his chest indicating that he stood there for calling the Earl of Tyrconnell a rogue.[51] The lords also brought an inn-keeper from Corn Market in Dublin to account for 'speaking scandalous words against the Earl of Drogheda and all the nobility of this kingdom'.[52] During the Restoration parliament, Lord Courcy of Kinsale petitioned the house of lords, 'complaining that William Broadbeare and several other of the inhabitants of the town of Kingsale, whose names are in a schedule annexed, have, in a most violent and opprobrious manner with uncivil language, in derision of his lordship, invaded his lordship's privilege'.[53] In 1641, Ralph Gee, a creditor of the Earl of Antrim was arrested and incarcerated 'for some fowle words spoken of the Earl of Antrim'.[54]

One of the interesting aspects of some of the examples that have been provided above is that there is a mix of Protestants and Catholics. Whatever the personal opinions of many of the members, it would appear that their common bond as members of the aristocracy was more important than their religious differences. There appears to be no evidence that Catholics peers were left disappointed when claiming any one of the many benefits of parliamentary privilege attached to the house of lords. A quick look at many of the proxies will illustrate this camaraderie. Generally, when designating the recipients of their proxies, peers tended to stay within their own rank, so obviously the bishops tended to keep within the ecclesiastical ranks. However, amongst the lay peers, whilst many kept within their reli-

gious groups, there are plenty of examples of proxies going across the confessional divisions. Orrery (an apparent anti-Catholic bigot) gave this right to speak and vote on his behalf to Murrough O'Brien, Earl of Inchiqin, a Gaelic Irish Catholic.[55] Frequently it will appear that family or regional ties were as important as religion. Whilst there was a fine of one shilling for members of the established Protestant church who were absent when prayers were said at the beginning of each day, the lords allowed that members who were Catholic were to be fined only for being absent a quarter of an hour after the commencement of the sitting, thereby not forcing them to attend prayers led by one of the Protestant bishops.[56]

If the commons were to have control over the initiation of money bills, as they proclaimed in 1661, the lords had a very strong control over the adjudication of law.[57] In response to the request of the commons not to become involved in appeals against judgements of the original court of claims of 1661, the house of lords responded 'That this house will be very careful how they admit of any petitions concerning the proceedings of the commissioners for executing his majesty's gracious declaration, and they hope they shall have no occasion offered; but if any complaint be made of any injustice done, this house being the highest and supreme court of judicature of this land, cannot deny the complaint right'.[58] This position as the high court of parliament had always been, in theory, within the remit of the house of lords, but in the seventeenth century they began to use it with gusto, mirroring what happened in England about the same time. There was a massive increase in the amount of cases they were willing to accept, both first instance and appellate and from the 1640s onwards, they regularly overturned judgments of the common law courts. There could be many advantages to going through the lords, particularly the possibility of a quick, relatively cheap judgement in a time when the common law courts were notorious for delays. There was no occasion for the trial of a peer in the seventeenth century when parliament was sitting, but there is nothing to suggest that it would not have taken place. The peers also were prepared to accept an impeachment case in 1641 of four leading members of the executive, two of whom were members of the house, the Bishop of Derry and the lord chancellor. The trial never came to fruition but many of the issues surrounding such a trial, such as the position of the bishops as judges in a capital trial, were discussed and resolved.[59] In general, the lords worked with, and occasionally took advice from their legal assistants, but it was always the peers who decided upon these issues. The fact that the house of lords had the right to overturn judgements from all other courts made them the most senior court in the kingdom when sitting, far exceeding that of the house of commons which occasional-

ly undertook what was essentially first instance cases in the forms of petitions for the redress of grievances, both of their own members and from the public.

The house of lords, in most aspects of the work they undertook and the way they performed their duties, were conscious of and pronounced their nobility. From their seating and clothing arrangements to the important matters of making and adjudicating laws they took every opportunity to emphasize their nobility and preserve and maintain the privileges that came with it. Whilst it is hoped that a greater understanding of parliamentary privilege and procedure is worth understanding in its own right, on occasion it can also inform and explain developments in the political field also.

Notes

[1] G.O. Sayles, *The King's Parliament of England* (London, 1975), p. 18.

[2] G.R. Elton, *Political History: Principles and Practices* (New York, 1970), p. 35. Both Sayles and Elton were venting their frustration at the History of Parliament Trust, but since then the trust has work currently underway on publications on the English house of lords, including volumes on the house as an institution considering it operations, business, and procedures.

[3] For a useful synopsis, see D.L. Smith, *The Stuart Parliaments, 1603-1689* (London, 1999), pp.1-3; M.A.R. Graves, *Elizabethan Parliaments, 1559-1601* (London, 1996), pp. 19-24.

[4] See J. Kelly, *Poynings' Law and the Making of Law in Ireland, 1660-1800* (Dublin, 2007).

[5] For some useful thoughts on this, see T. Harris, 'Restoration Ireland: Themes and Problems', in C.A. Dennehy (ed.), *Restoration Ireland: Always Settling and Never Settled* (Aldershot, 2008), pp. 1-17.

[6] B. Bradshaw, *The Irish Constitutional Revolution of the Sixteenth Century* (Cambridge, 1979); S.G. Ellis, *Reform and Revival: English Government in Ireland, 1470-1534* (London, 1986); *Ireland in the Age of the Tudors, 1447-1603: English Expansion and the End of Gaelic Rule* (Harlow, 1998), p. 294. The decision of Lord Deputy Sidney to dispense with residency rules may have been influenced the MP for Athenry, John Hooker, a specialist in English procedure. See V.F. Snow, *Parliament in Elizabethan England: John Hooker's Orders and Usage* (Yale, 1977). Indeed, by 1634, the Irish house of commons had deposited a copy of Hooker with the clerk that 'he shall give copies thereof unto such as desire them, to the end, those, that have not been formerly acquainted with the orders of parliaments, may the better inform themselves, how to demean themselves in the house.' *The Journals of the House of Commons of the Kingdom of Ireland* (Dublin, 1752) [*CJ Ire.*], 18 July 1634.

[7] 33 Henry VIII, Sess. II, c. I; 18 Edward IV, Sess. IV, cc. VII, VIII.

[8] J. Hart, *Justice upon Petition: The House of Lords and the Reformation of Justice, 1621-1675* (London, 1991); C.C.G. Tite, *Impeachment and Parliamentary Judicature in Early Stuart England* (London, 1974).

[9] F.G. James, *Lords of the Ascendancy: The Irish House of Lords and its Members, 1660-1800* (Dublin, 1995)

[10] J. Ohlmeyer, 'The Irish Peers, Political power and Parliament, 1640-1', in C. Brady & J.H. Ohlmeyer (eds), *British Interventions in Early Modern Ireland* (Cambridge,

2005), pp. 161-79; V. Treadwell, 'The House of Lords in the Irish Parliament', *English Historical Review*, 80 (1965), pp. 92-107.

[11] E.M. Johnston-Liik, *History of the Irish Parliament, 1692-1800* (Belfast, 2002), vol. 1, p. 7; *MPs in Dublin: Companion to the History of the Irish Parliament. 1692-1800* (Belfast, 2006).

[12] See C.A. Dennehy, 'The Restoration Irish parliament, 1661-6', in Dennehy, *Restoration Ireland*, p. 55, n. 9.

[13] T.C. Barnard, '"Considering the Inconsiderable": Electors, Patrons, and Irish Elections, 1659-1761' in D.W. Hayton (ed.) *The Irish Parliament in the Eighteenth Century: The Long Apprenticship* (Edinburgh, 2001), pp. 107-27; Johnston-Liik, *History of the Irish Parliament,* vol. 2, pp. 91-120.

[14] In the fraught days of Spring 1663, the Earl of Orrery, who had considerable influence over the composition of the house of commons, declared that the moderate group in the house were called 'Orreronians'. Orrery to Clarendon, 12 February 1663, Bodl., Clarendon MS 79, ff. 104-10.

[15] Ohlmeyer, 'The Irish Peers, Political Power and Parliament, 1640-1', p. 165, n. 22.

[16] Ellis, *Reform and Revival*; D.B. Quinn, 'Parliaments and Great Councils in Ireland, 1461-1586', *Irish Historical Studies*, 3 (1942-3); H.G. Richardson, & G.O. Sayles, *The Irish Parliament in the Middle Ages* (Philadelphia, 1952).

[17] J. Kelly, *Poynings' Law;* D.W. Hayton, 'Introduction: The Long Apprenticeship', in Hayton (ed.) *The Irish Parliament*, pp. 1-26.

[18] http://qub.ac.uk/ild/

[19] E.R. Foster, *The House of Lords, 1603-1649* (Chapel Hill, 1983); M.A.R Graves, *The House of Lords in the Parliaments of Edward VI and Mary I* (Cambridge, 1981).

[20] Richardson & Sayles, *The Irish parliament*, pp. 119-36.

[21] Ibid., p. 145.

[22] Ibid. Viscount Gormanston was created in 1478, the Marquis of Ormond in 1642, and the Duke of Tyrconnell in 1689.

[23] D.L. Smith, 'The House of Lords, 1529-1629', in C. Jones (ed.) *A Short History of Parliament: England, Great Britain, The United Kingdom, Ireland and Scotland* (Woodbridge, 2009), p. 30.

[24] Ellis, *Ireland in the Age of the Tudors*, p. 154.

[25] *The Journals of the House of Lords of the Kingdom of Ireland* (Dublin, 1779-1800) [*LJ Ire.*], 9 November 1665.

[26] *LJ Ire.*, 14 July 1634.

[27] *LJ Ire.*, 23 July 1634. These rules were expanded at the end of the seventeenth century and reiterated the importance of place according to rank. National Library of Ireland [NLI], MS 2091; *LJ Ire.*, 2 November 1692.

[28] *LJ Ire.*, 23 July 1634.

[29] *LJ Ire.*, 23 July 1634; NLI MS 2091; *LJ Ire.*, 2 November 1692.

[30] James, *Lords of the Ascendancy*, pp. 74-5.

[31] For an example of the fees to be paid to the king of arms, the clerk, the gentleman usher and yeoman usher, see *LJ Ire.*, 15 March 1666.

[32] There are some exceptions to this rule when, in 1613-15, the commons' journals record peers being used as messengers, but as the lords' journals have not survived, it has not been possible to give this issue a full explanation. *CJ Ire.*, 4 November 1614, 10 May 1615.

[33] *LJ Ire.*, 8 March 1666.

[34] *LJ Ire.*, 16 July 1666.

[35] H.F. Kearney, *Strafford in Ireland, 1633-41: A Study in Absolutism* (Manchester, 1959), p. 49.

[36] Kearney, *Strafford in Ireland*, pp. 50-2; *LJ Ire.*, 14 May 1661.

[37] 16 & 17 Edward IV, c. XXII.

[38] *LJ Ire.*, 20 May 1661.

[39] British Library, Add. MS 5754, f. 101.f.

[40] The robes themselves could be expensive. Robes stolen in 1607 in England were valued at £74 and Lord Vaux revealed to Lord Burghley in 1592 that poverty had forced him to pawn his robes. Foster, *The House of Lords*, p. 11-12.

[41] Even from his prison cell in Dublin Castle, Lord Dunsany still petitioned the lords as a peer and the Baron of Upper-Ossory was permitted by his house to sit, being only indicted of treason but not outlawed. *LJ Ire.*, 24 November 1642, 6, 13 December 1642, 18 April 1644, 20 May 1661.

[42] 3 Edward IV, c. I.

[43] 11 &12 Edward IV, c. LXXX.

[44] 10 & 11 Charles, c. XII.

[45] For example, from 1661 to 1666, 134 petitions dealt with issues of privilege out of a total of 157 petitions where the issue is known.

[46] *LJ Ire.*, 22 July 1661, 16 February 1663.

[47] *LJ Ire.*, 24 July 1666.

[48] *LJ Ire.*, 11 July 1666.

[49] *LJ Ire.*, 12 April 1666.

[50] J.H. Baker, *An Introduction to English Legal History* (London, 1990), pp. 496-7.

[51] *LJ Ire.*, 29 July 1661.

[52] *LJ Ire.*, 5 March 1662.

[53] *LJ Ire.*, 4 December 1665.

[54] NLI MS 9607, p. 129.

[55] *LJ Ire.*, 13 February 1666.

[56] *LJ Ire.*, 27 June 1662.

[57] *CJ Ire.*, 31 May 1661.

[58] *LJ Ire.,* 30 May 1661.

[59] The eventual decision by the house was that the bishops were entitled, but not obliged, to be involved. NLI MS 9607, pp. 126-7.

Roland Kleinhenz

Berichte über Debatten des britischen Unterhauses aus der Zeit zwischen 1740 und 1750: die Briefe von John Tucker, M.P.

1. *Biografische Anmerkungen zu John Tucker*[1]

John Tucker (1701-1779) entstammte einer unternehmerisch wie politisch aktiven Familie aus Weymouth, einer Hafenstadt in Südengland in der Grafschaft Dorset. 1735 zog er zum ersten Mal für den Wahlkreis Weymouth und Melcombe Regis in das britische Unterhaus ein, übrigens im selben Jahr wie der berühmte ältere Pitt. Dieser Wahlkreis mit nur wenigen hundert Wahlberechtigten gehörte zu den sogenannten Borough-Wahlkreisen, die die Mehrzahl der Unterhausabgeordneten stellten. Als einziger dieser Wahlkreise neben London entsandte der Borough von Weymouth und Melcombe Regis aber nicht zwei Abgeordnete, sondern vier. Daher war er für Unterhauswahlen durchaus von besonderem Interesse. Die politische Führungsfigur im Wahlkreis war George Dodington. Als dieser im Frühjahr 1740 die Fronten wechselte und fortan ein Gegner der Regierung des Premierministers Walpole wurde, folgte ihm Tucker in die Regierungsopposition nach. Einschüchterungsversuche Walpoles 1740/41, mit dem Ziel, John Tucker als Anhänger der Regierung zurückzugewinnen, fruchteten nicht. Im Gegenteil verfestigte sich Tuckers regierungsfeindliche Haltung. Nach Walpoles Sturz im Februar 1742 blieben John Tucker, wie sein politischer Mäzen George Dodington, zunächst weiterhin Anhänger der Opposition im britischen Unterhaus. Ende 1744 gelang es Dodington, als Schatzmeister der Marine in die Regierung unter Premierminister Pelham einzutreten. Anfang 1745 belohnte Dodington dann John Tucker für seine Treue mit der Übertragung des Amtes des Kassier beim Schatzmeister der Marine. Dies veranlasste Tucker wieder die Seite zu wechseln und in das Regierungslager überzutreten. Nach endgültiger Stabilisierung der Regierung Pelham wird er von ihr 1746 als sogenannter 'neuer Verbündeter' ('new ally') geführt. Bei den allgemeinen Wahlen zum Unterhaus 1747 kann sich Tucker nicht zur Wiederwahl stellen, weil sein Amt des Kassiers aufgrund eines Gesetzes aus dem Jahr 1742 nicht mit dem Mandat als Abgeordneter vereinbar ist. Tucker scheidet als Abgeordneter aus. Er bleibt bis 1749 Kassier und verliert das Amt, als sein Schirmherr George Dodington als Schatzmeister der Marine ausscheidet. 1754 läßt sich Tucker als Regierungskandidat erneut bei den Wahlen zum Unterhaus aufstellen und zieht wieder ins Unterhaus ein. 1757 wird Tucker dann erneut mit

einem Amt belohnt, diesmal als Zahlmeister der Marineinfanterie ('Paymaster of Marines'). 1770 erhält Tucker noch den Posten als Bewahrer der königlichen Privatwege ('Keeper of the King's Private Roads'). Er bleibt, mit diesen Ämtern bekleidet, bis 1778 Abgeordneter des Unterhauses und treuer Anhänger der Regierung. Als Redner im Unterhaus ist Tucker während seiner ersten Zeit als Abgeordneter überhaupt nicht und während seiner zweiten Zeit nur durch zwei kurze Beiträge hervorgetreten. Er gehörte demnach zur Kategorie der sogenannten 'Hinterbänklerabgeordneten' (back bench MP). Zwischen 1726 und 1772 war John Tucker im übrigen sechsmal Bürgermeister von Weymouth.

2. *Die Tucker Papers in der Bodleian Library/Oxford*[2]

Die schriftlichen Unterlagen der Familie Tucker ('Tucker Papers') wurden von den Freunden der Bodleian Library/Oxford 1969/70 erworben und nach Erwerb der Bodleian Library übergeben, wo sie sich seither befinden. Insgesamt bestehen die Unterlagen aus mehreren tausend Blatt. Ich konnte sie mit Hilfe von Professor Jeremy Black im Jahre 1998 einsehen. Die Berichte über Debatten des britischen Unterhauses befinden sich fast ausschließlich innerhalb der Abteilung c., wo der Briefwechsel zwischen John Tucker und seinem Bruder Richard Tucker aus den Jahren 1740-1757 und 1775, verwahrt wird (c. 105-112). In der Abteilung b. befinden sich lediglich zwei Briefe von John Tuckers Vater Edward an seinen Sohn John aus Edwards Zeit als Abgeordneter des Unterhauses. Er berichtet dort über Debatten des Unterhauses aus den Monaten April 1729 und Januar 1734. Desweiteren befindet sich in dieser Abteilung ein Brief John Tuckers an Richard Tucker vom 24. Februar 1737. Dort berichtet John Tucker ausführlich über die delikate Debatte des Unterhauses zu einem Antrag des führenden Oppositionsabgeordneten William Pulteney, einen eigenen Etat (Zivilliste) für den Prinzen Friedrich von Wales einzurichten. Der besagte Briefwechsel zwischen John und Richard Tucker aus der Zeit zwischen 1740 und 1757, 1775, hat einen Umfang von 1736 Blatt. Davon entfallen auf den Zeitraum von 1740-1749 insgesamt 1295 Blatt. Die Anzahl der Briefe ist naturgemäß geringer als die Blattzahl. Die Berichterstattung John Tuckers über Debatten des britischen Unterhauses erstreckt sich nur auf den Zeitraum 1742-1747. Auf diesen Zeitraum entfallen 387 Briefe von John an Richard Tucker, die ich eingesehen habe. Selbstverständlich habe ich umgekehrt auch die Briefe von Richard an John Tucker eingesehen. Von den 387 Briefen berichtet John Tucker in insgesamt etwa 50 Briefen über Debatten des Unterhauses, also durchschnittlich etwa in jedem achten Brief an seinen Bruder Richard. Die Masse der Berichterstattung fällt in die Jahre 1742 (15 Briefe), 1744 (15 Briefe) und 1745 (12

Briefe). Soweit in den Briefen John Tuckers über Debatten des Unterhauses berichtet wird, habe ich den Text entweder ganz abgeschrieben oder die wesentlichen Teile davon. Veröffentlicht wurde diese Parlamentsberichterstattung John Tuckers meines Wissens noch nicht. Historiker haben von den Tucker Papers nach Auskunft von Professor Black bislang nur wenig Gebrauch gemacht. Dabei sind neben den Briefen John Tuckers, wo er über Debatten des Unterhauses berichtet, weitere Briefwechsel in politischer Hinsicht interessant, so Briefe von teilweise bekannten Persönlichkeiten, wie Premierminister Henry Pelham, Henry Fox, Spencer Compton, Lord Wilmington, George Dodington. Interessant sind aber auch die Briefe Richard Tuckers, wenn es um politische Themen geht. Hier berichtet Richard seinem Bruder gegenüber entweder aus eigener Erkenntnis oder was er von anderer Seite gehört hat. Diese Berichte Richards über das, was außerhalb der Commons vorgeht, sind für John Tucker wohl ein wichtiger Seismograph besonders über Stimmungen und Meinungen in der Bevölkerung gewesen. Dies spürt man aus der gesamten Korrespondenz. So ergänzen sich die Berichterstattung Richard Tuckers und die parlamentarische Berichterstattung John Tuckers gegenseitig. Auch oder gerade das macht den Reiz dieses Briefwechsels aus.

3. *Historische Bedeutung der Parlamentsberichte John Tuckers*

Speziell für die Zeit zwischen 1740 und 1750 gibt es wenige authentische Überlieferungen parlamentarischer Debatten.[3] Dies gilt für das Unterhaus und noch mehr für das Oberhaus. Die offiziellen Verhandlungsprotokolle über die Debatten in beiden Häusern des Parlaments, gesammelt in den Journalen der Commons und der Lords (Commons Journals, Lords Journals), schweigen sich darüber aus, was welche Redner in den Debatten jeweils gesagt haben. Offizielle Wortprotokolle für beide Häuser des Parlaments wurden ohnehin erst 1909 eingeführt.[4] Die Zulassung der wichtigen Presseberichterstattung setzte sich nach der Wilkesaffäre von 1768 erst ab den 1780er Jahren durch.[5] Von nun an konnte immer genauer und umfangreicher über die Debatten in den Häusern des Parlaments berichtet werden. Insbesondere konnte genauer wiedergegeben werden, was tatsächlich während der Debatte von den jeweiligen Rednern gesagt wurde. Eine Gewähr für die Richtigkeit gab es allerdings, wie bisher, nicht. Immerhin war der Parlamentsberichterstattung durch Pressereporter verschiedener konkurrierender Zeitungen gerade wegen deren gegenseitiger Kontrolle eine gewisse Authentizität immanent. Andererseits war es durch die Zulassung von Pressereportern nahezu ausgeschlossen, dass Abgeordnete, wie in früheren Zeiten teilweise üblich, nachträglich geschönte Redebeiträge zur Veröffentlichung in Magazinen oder anderen Publikati-

onsorganen einreichten. Das Unterhaus, als das schon Anfang der 1740er Jahre politisch wichtigere der beiden Häuser des Parlaments, war dagegen jedenfalls zu dieser Zeit noch besonders darauf bedacht, sein Privileg der Vertraulichkeit seiner Verhandlungen (privacy of proceedings)[6] zu verteidigen. So verabschiedete es vor allem wegen der immer umfangreicheren Debattenberichterstattung in monatlichen Magazinen, wie dem London Magazine oder dem Gentleman's Magazine, noch am 13.IV.1738 eine klarstellende Resolution, wonach die Publikation von Debatten sowohl während als auch außerhalb der Sitzungsperiode des Unterhauses verboten war.[7]

Für die historische Rekonstruktion dessen, was von wem tatsächlich während der Debatten (und nicht nachträglich in veränderter Form!) gesagt wurde, ist es günstig, verschiedene Versionen über Parlamentsdebatten zu besitzen und zwar von Abgeordneten, die tatsächlich an der betreffenden Sitzung teilgenommen und mitbekommen haben, was wer gesprochen hat und dies, wenn nicht wörtlich, so doch zumindest sinngemäß berichten können. Und hier ist der Befund für die Zeit zwischen 1740 und 1750 dürftig. Als die Hauptquellen der Überlieferung von Parlamentsdebatten zu dieser Periode sind zu nennen: das bis Anfang März 1746 reichende Tagebuch des Ersten Earl von Egmont,[8] das parlamentarische Journal von Edward Harley, Dritter Earl von Oxford, das für das Unterhaus bis 1741 reicht,[9] dasjenige des Abgeordneten für Seaford, William Hay, das bis Januar 1744 reicht[10] sowie das bereits von Zeitgenossen als sehr zuverlässig eingestufte parlamentarische Journal von Philip Yorke, welches die Zeitspanne von Ende 1743 bis 1748 und 1750 umfasst.[11] Unter dem Blickwinkel der umfassten Zeitspanne sind die Berichte John Tukkers über Parlamentsdebatten in der Form von Briefen also ähnlich bedeutsam wie die Aufzeichnungen Philip Yorkes. Besonders wertvoll sind Tuckers Briefe aber deshalb, weil er sie zumeist am selben Tag oder am Tag nach der jeweiligen Sitzung des Unterhauses, über die er berichtet, verfasst hat. So ist sein Eindruck, und das kommt bei der Darstellung der Debatten durchweg zum Vorschein, besonders frisch und so hat er das Erlebte augenscheinlich auch zu Papier gebracht. Selbstverständlich geschah dies mit den möglichen menschlichen Irrtümern, insbesondere sich verhört zu haben, etwas falsch verstanden zu haben und unrichtig wiederzugeben, manches wichtige überhaupt nicht gehört und deshalb nicht wiedergegeben zu haben oder Redebeiträge dem falschen Redner zugeordnet zu haben. Aber diese Fehlerquellen gelten für jeden Berichterstatter und damit muss der Historiker leben. Jedenfalls sind Überlieferungen wie bei Tucker, die sehr zeitnah zu Papier gebracht wurden, anderen vorzuziehen, die vielleicht erst Wochen oder Monate danach aufgeschrieben wurden.

4. *Die Briefe John Tuckers über Debatten des Unterhauses*

Die parlamentarische Berichterstattung John Tuckers beginnt mit einem Brief an seinen Bruder Richard vom 25. März 1742. Dort berichtet er sehr ausführlich über die Debatte des Unterhauses zwei Tage zuvor, wo mit sehr knapper Mehrheit die Einsetzung eines Untersuchungsausschusses zur Aufklärung von Verfehlungen des im Februar 1742 gestürzten Premierministers Sir Robert Walpole beschlossen wurde.[12] Es ist nicht bekannt, warum die parlamentarische Berichterstattung Tuckers erst so spät einsetzt, obwohl er bereits seit 1740 als 'opposing Whig' gegen die Regierung votiert.[13] Tucker schreibt in seinen Briefen darüber nichts. Deshalb kann man nur Vermutungen anstellen. Der bereits seit 1721 im Amt befindliche Premierminister Sir Robert Walpole sah sich nach Ausbruch des Krieges zwischen Großbritannien und Spanien Ende Oktober 1739 immer stärkeren Angriffen der Opposition, besonders im Unterhaus, ausgesetzt. Vor allem bröckelte seine Mehrheit durch Abwanderung von Regierungsanhängern in das Lager der Opposition.[14] Ein Höhepunkt der Kampagne gegen Walpole wurde erreicht, als die Opposition am 13. Februar 1741 in beiden Häusern des Parlaments beantragte, den König zu bitten, Sir Robert Walpole aus allen Ämtern zu entfernen.[15] Leider berichtet Tucker zu dieser sehr interessanten Debatte, worüber ein wichtiger Augenzeugenbericht des der Regierung nahe stehenden Abgeordneten Thomas Tower vorliegt,[16] nichts. Er berichtet leider auch nichts über die Unterhauswahlen von 1741, wo Tucker als einer der vier Abgeordneten seines Wahlkreises wieder in das Unterhaus einziehen kann, ohne dass Walpole dies verhindern konnte[17] und bei denen Walpole noch mehr Anhänger unter den Unterhausabgeordneten verliert, so dass sein Abgang nur noch eine Frage der Zeit sein musste.[18] Der Berichterstattung Tuckers nach dem Sturz Walpoles ist aber zunächst eine ungeheuere Zuversicht Tuckers zu entnehmen, dass sich die Verhältnisse jetzt, wo der (sole minister) Walpole[19] als großes Übel weg ist, grundlegend ändern werden. Tucker drückt in seinen Briefen die Hoffnung aus, dass dem von ihm so genannten Walpolischen Regierungssystem ('Walpolean System of Government'),[20] das wesentlich von der Korruption gelebt habe, gerechtere und freiere Verhältnisse folgen werden, insbesondere eine freiere Volksvertretung durch die Unterhausabgeordneten möglich werde.[21] Und es ist vielleicht diese Zuversicht, dieser Enthusiasmus, die ihn gerade jetzt bewogen haben könnten, beim Eintritt in eine neue politische Ära mit der Berichterstattung über das, was nun im Unterhaus geschieht, zu beginnen. Dazu mag auch beigetragen haben, dass führende Oppositionelle, wie die Abgeordneten William Pulteney, Samuel Sandys oder einer der führenden Oppositionspeers im Oberhaus, Lord Carteret, nunmehr in der Regierung vertreten sind, eine Art große Koalition, ein 'broad bottom' Mini-

sterium oder 'mixed administration', wie Tucker es in einem Brief nennt,[22] am Ruder ist und die Chancen für einen politischen Systemwechsel damit real erscheinen. So geht aus dem Brief Tuckers über die Einsetzung eines Untersuchungsausschusses hervor, dass er ein vehementer Befürworter dieses Ausschusses ist und dafür plädiert, ihm die notwendigen Kompetenzen an die Hand zu geben, seine Arbeit effektiv verrichten zu können.[23] Um so mehr ist er enttäuscht, als die Vertreter des alten Systems, die innerhalb der Regierung das Übergewicht haben, was Tucker so nicht wahrgenommen haben mag, bei der Besetzung des Untersuchungsausschusses mehrheitlich Abgeordnete auf die Liste bringen, die Anhänger Walpoles sind, sich die sogenannte 'Hofliste' durchsetzt. Dabei zeigt sich vor allem Henry Pelham, der dann 1743 Premierminister werden sollte, als vehementer Verteidiger Walpoles.[24] Nachdem der Hof seine Liste bei der Besetzung des Untersuchungsausschusses durchgebracht hat und die Gesetzesvorlage zur Verkürzung der Legislaturperiode des Unterhauses von sieben auf drei Jahre am 31. März 1742 scheitert,[25] macht sich bei Tucker Ernüchterung breit. Gerade diese Gesetzesvorlage war in den Augen Tuckers ein wesentliches Mittel, um das Übel der politischen Korruption zu bekämpfen.[26] Tucker schreibt dann in einem Brief vom 3. April 1742 an seinen Bruder Richard, dass er mit der mixed administration, die Walpole abgelöst habe, nicht zufrieden sei. Wörtlich heißt es: *'to what End have we struggled for a Change'*.[27] Vollends enttäuscht ist Tucker dann, als das Oberhaus die von den Commons verabschiedete Gesetzesvorlage verwirft, wonach Personen Straffreiheit zugesichert werden soll, die Konkretes über den Mißbrauch öffentlicher Gelder und Ämter durch den vormaligen Premierminister Walpole (nun als Lord Orford im Oberhaus), sagen können.[28] Die dadurch heraufbeschworene Konfrontation zwischen Unter – und Oberhaus erlebt ihren Höhepunkt in der Debatte des Unterhauses vom 27. Mai 1742. Tucker berichtet in einem Brief an seinen Bruder vom selben Tag darüber, dass nach fünfstündiger Debatte, wo er insgesamt 20 Redner auflistet, 12 dafür und acht dagegen, der Antrag abgelehnt worden sei, die Obstruktion des Oberhauses gegen die zuvor genannte Gesetzesvorlage zu missbilligen.[29] Interessant aus politisch-taktischer Sicht ist seine Bemerkung, dass in der Debatte niemand von den bedeutenden Politikern gesprochen habe (*'...none of the great People Spokes'*).[30] Tucker berichtet dann nur noch in 2 Briefen vom 28. Mai und 1. Juni von Ereignissen im Unterhaus rund um die Untersuchung zu Walpoles Amtsführung.[31]

Dann bricht die Berichterstattung über das Thema Walpole ab. Wie man weiss, verlief die Untersuchung gegen Walpole im Sande.[32] Nach Eröffnung der neuen Sitzungsperiode im November 1742 berichtet Tucker ausführlich über bedeutende Debatten im Unterhaus.[33] Dort geht es – Großbritannien befindet sich nunmehr in einem europäischen

Konflikt (Österreichischer Erbfolgekrieg!) – ganz wesentlich um die Frage, ob 16000 hannoveranische Soldaten von Großbritannien bezahlt und Teil des britischen Militärbudgets werden sollen. Diese befinden sich dabei bereits seit dem Spätsommer 1742 in den österreichischen Niederlanden (Flandern) im Einsatz, um Frankreich vor einer Invasion dieses Gebietes abzuschrecken.[34] Die Debatten werden, was in den Briefen Tuckers zum Ausdruck kommt, mit äußerster Heftigkeit und unter großer Beteiligung geführt. Dabei scheint nicht nur die parlamentarische Redekunst zu neuer Blüte gekommen zu sein, sondern, was politisch interessant ist, sich eine neue politische Freund-Feind Kategorie, Engländer gegen Hannoveraner statt Hof gegen Land ('Court-Country'), etabliert zu haben. Insofern schreibt Tucker am 14. Dezember 1742: '*In all the time I have sate in Parliament I have not heard so fine Debates as this Session but particularly the two last upon the Hanover Troops*'[35] und über die Eingliederung der Hannovertruppen: '*a measure which all time Englishmen think a very Dangerous one-Whig & Tory has been laid aside …and the distinction of Court & Country is now sunk into that of Englishmen and Hanoverians, which is propagated with great industry by the Pamphleteers*.'.[36] In diesen Debatten über die Hannovertruppen, die auch in den kommenden Jahren eines der beherrschenden Themen in beiden Häusern des Parlaments bilden sollten, kam die Problematik der Personalunion zwischen Großbritannien und Hannover – der britische König Georg II. war ja gleichzeitig Kurfürst von Hannover – offen zum Vorschein. Sahen die Gegner einer Einverleibung der Hannovertruppen in das britische Militärbudget, allen voran William Pitt, die Interessen Großbritanniens gegenüber denen Hannovers vernachlässigt, meinten die Befürworter, dass Großbritannien auf dem Kontinent verteidigt werden müsste.[37]

1743 berichtet Tucker dann fast überhaupt nicht über Ereignisse im Unterhaus. Seine Berichterstattung beginnt erst wieder gegen Ende des Jahres, im Dezember. Hier berichtet er in einem Brief vom 8. Dezember über eine weitere große Debatte zu den Hannovertruppen vom 7. Dezember 1743.[38] In einem weiteren Brief vom 15. Dezember berichtet Tucker über ein Treffen oppositioneller Abgeordneter am 14. Dezember in der Fountain Tavern, wo Einigkeit bestanden habe, die Übernahme hannoveranischer Truppen in britischen Sold abzulehnen.[39] Ergänzend bemerkt er, nachdem er noch über eine weitere Debatte im Unterhaus zur Frage der Unterstützung der Königin von Ungarn (Maria Theresia) berichtet, dass die Opposition 230 Abgeordnete stark sei, aber ihre Anwesenheitszahl im Unterhaus zu wünschen übrig lasse.[40]

1744 ist Tucker in bezug auf die parlamentarische Berichterstattung in den Monaten Januar und Februar sehr aktiv,[41] dann berichtet er im März noch über zwei Sitzungsgegenstände des Unterhauses[42] und bis Ende des Jahres 1744 überhaupt nicht mehr. Seine Briefe aus dem Ja-

nuar 1744 drehen sich fast nur um das beherrschende Themen der Hannovertruppen. Sie zeigen die Gespaltenheit unter den Abgeordneten. Einmal, als der Etat für die britische Armee ohne Hannovertruppen beschlossen wird (am 10. Januar 1744), geschieht dies mit einer Mehrheit von 112.[43] Ein andermal, als es um den Etat für die Hannovertruppen geht (am 18. Januar 1744), ist die Mehrheit der Regierung in einem selten so gut besetzten Unterhaus auf 45 zusammengeschmolzen.[44] Hier ist die Liste der Redner interessant, die Tucker in seinem Brief vom 19. Januar wiedergibt, wieder getrennt nach Befürwortern und Gegnern.[45] Ein Vergleich zu den Aufzeichnungen des Abgeordneten Philip Yorke in dessen Parlamentsjournal zeigt, dass kaum Abweichungen zu Tuckers Rednerliste bestehen.[46] Auch ein Vergleich zu anderen Quellen, etwa dem parlamentarischen Journal Edward Harleys, zeigt, wie akkurat Tucker berichtet.[47]

Am 14. und 21. Februar 1744 berichtet Tucker über ein innenpolitisches Thema zur Frage der Erhebung eines zusätzlichen Einfuhrzolles auf Zucker ('duty on sugar'). Hier kann sich die Regierung nur knapp mit einer solchen Maßnahme durchsetzen.[48]

Weitere Berichte Tuckers vom 16. und 21. Februar 1744 drehen sich um Verhandlungen im Unterhaus über den Einsatz der Marine gegen Frankreich.[49]

1745 setzt die Berichterstattung Tuckers erneut im Januar ein. Hier äußert er am 15. Januar zunächst die Hoffnung, dass das Budget für die Armee ohne großen Widerstand bewilligt werden müsste, da die Hannovertruppen herausgenommen seien.[50] Am 24. Januar berichtet er dann davon, dass das Budget für die Armee am 23. Januar einstimmig verabschiedet worden sei.[51] Im Januar 1745 wird Tucker dann zum Kassier beim Schatzmeister der Marine ernannt.[52] Damit gehört er nunmehr, wie der neue Schatzmeister der Marine, George Dodington,[53] dem Regierungslager an. Glückwünsche zur Amtsernennung erhält John Tucker in einem Brief seines Bruders Richard vom 2. Februar 1745.[54] John Tucker berichtet dann im Februar noch zweimal, am 12. und 18. Februar, über Vorgänge im Unterhaus,[55] dann kommt die Parlamentsberichterstattung erst einmal zum Erliegen. Ab August 1745 ist dann die Rebellion in Schottland gegen die Krone und das Haus Hannover das beherrschende Thema. Am 17. August berichtet John Tucker an seinen Bruder, dass der Sohn des Pretender, Charles Edward Stuart, mit 200 Getreuen in Schottland gelandet sei.[56] Anschließend berichtet Tucker in kurzer zeitlicher Abfolge in langen Briefen an seinen Bruder Richard über die Entwicklung der Lage in Schottland.[57] Diesen Briefen ist sowohl vom Inhalt, von der Länge und der Art der Schilderung, die ganze Dramatik des Geschehens zu entnehmen, dessen Ausgang aus damaliger Sicht ungewiss war. Die Briefe sind jedenfalls eine Fundgrube für Historiker, die sich mit dieser Rebellion be-

schäftigen. Tuckers parlamentarische Berichterstattung setzt dann wieder im Oktober 1745 ein. Hier will William Pitt für die Opposition die kritische innenpolitische Lage ausnutzen und beantragt im Unterhaus, alle britischen Truppen aus Flandern abzuziehen und nach Großbritannien zurückzuholen. Tucker berichtet über diese Debatte vom 23. Oktober 1745 im Brief an seinen Bruder vom 24. Oktober.[58] Die Regierung entgeht einer Niederlage nur knapp, indem sie über einen Verfahrensantrag, eine sogenannte 'previous question', abstimmen lässt.[59] Weitere Berichte Tuckers handeln über das Budget der Armee und die Aufstellung spezieller Regimenter durch Adlige.[60] In dem betreffenden Brief vom 2. November 1745 ist dabei die Bemerkung Tuckers zu der sich anbahnenden Regierungskrise interessant, die dann im Februar 1746 mit dem geschlossenen Rücktritt der Regierung Pelham offen ausbrechen sollte. Tucker spricht im Zusammenhang mit der Aufstellung spezieller Regimenter davon, dass eine Abstimmungsfrage im Unterhaus für die Regierung verloren gegangen sei und deshalb Premierminister Pelham nur eine kurze Regierungszeit vor sich hätte, wenn er nicht Unterstützung aus der Opposition suche.[61]

Im weiteren nimmt dann die Rebellenberichterstattung wieder breiten Raum in den Briefen John Tuckers ein[62] und nur im Brief vom 21. Dezember berichtet Tucker noch über eine Unterhausdebatte vom 19. Dezember 1745 zu einem Oppositionsantrag gegen die Anheuerung ausländischer Truppen.[63]

Das Frühjahr des Jahres 1746 ist beherrscht vom Aufstand der Rebellen und dem Ausbruch der Regierungskrise der Pelham-Administration im Februar. Tucker berichtet am 14. Januar 1746 von einer Debatte im Unterhaus vom selben Tag, wo ein Oppositionsantrag – Tucker spricht von 'some of the Tories' – zur Untersuchung der Lage der Nation zurückgewiesen wurde.[64] Dann folgt wieder die Berichterstattung über den Aufstand der Rebellen und ein Schlachtbericht vom 25. Januar 1746 über die Schlacht von Falkirk Moor.[65] In den Briefen vom 11. und 13. Februar spricht Tucker dann über die Regierungskrise und davon, dass die Pelham-Administration am Ende und der Earl of Granville (Carteret) zum Staatssekretär ernannt worden sei.[66] Tukker spricht aber interessanterweise nicht davon, dass diese Krise nach 48 Stunden schon wieder vorbei war und die Pelham-Administration daraus gestärkt hervorging und von nun an ihre Herrschaft stabilisierte und ausbaute.[67] In Briefen vom 11. März 1746[68] und 12. April 1746[69] berichtet Tucker dann wieder über Debatten des Unterhauses mit Abstimmungen zugunsten der Regierung.[70] Interessant ist dabei die letzte Debatte, wo entschieden wurde, die bisherige Strategie im Österreichischen Erbfolgekrieg beizubehalten und Flandern nicht den französischen Truppen zu überlassen.[71] Außer im Brief vom 10.Mai 1746[72] berichtet Tucker dann nur noch über die Niederschlagung der

Rebellion und sehr ausführlich über den Österreichischen Erbfolgekrieg.[73]

1747 schließlich berichtet Tucker nur einmal über eine Debatte des Unterhauses und zwar am 19. Januar 1747 über eine innenpolitische Frage, wo die Regierung nur einen knappen Sieg erzielen konnte.[74]

Es ist nicht bekannt, dass John Tucker während seiner langen zweiten Zugehörigkeit zum Unterhaus, von 1754-1778,[75] Berichte über Parlamentsdebatten verfasst hat. In den Tucker Papers finden sich solche nicht.

Insgesamt handelt es sich bei den Briefen John Tuckers und auch seines Bruders Richard um eine hochinteressante Quelle, von der Historiker verschiedener Richtungen regen Gebrauch machen sollten.

AnmerKungen

[1] Für die nachfolgende kurze biografische Skizze verweise ich auf folgende ausführlichere Darstellungen: R. Sedgwick (Hrsg.), *The History of Parliament: The House of Commons 1715-1754* (2 Bde., London, 1970) [im folgenden: *HPC, 1715-1754*], II, pp. 484-5 (Biografie Tuckers bis 1754), I, pp. 238-9 (zum Unterhauswahlkreis Weymouth and Melcombe Regis; die Zahl der Wahlberechtigten wird dort mit ungefähr 300 angegeben, wobei allerdings in den Bänden der History of Parliament für die Zeit von 1690-1715 die Zahl der Wahlberechtigten für das Jahr 1713 mit mindestens 481 angegeben wird, s. E. Cruickshanks, S. Handley und D.W. Hayton (Hrsg.), *The History of Parliament: The House of Commons 1690-1715* (5 Bde., Cambridge, 2002), II, pp. 171-4); Sir L. Namier and J. Brooke (Hrsg.), *The History of Parliament: The House of Commons 1754-1790* (3 Bde., London, 1964 (repr. 1985)), III, p. 565 (Biografie Tuckers bis zu dessen Tod 1779), I, pp. 272-3 (zum Wahlkreis). B. Harris/J. Black, 'John Tucker, M.P., and Mid-Eighteenth-Century British Politics', *Albion* 29, (1997), pp. 15-38.

[2] Zur Beschreibung der Tucker Papers s. die Nachweise in Fußnote 1 und ferner ausführlich: J. Black, 'The Tucker Papers', in *Notes and Queries for Somerset and Dorset*, 32 (1990), pp. 817-823.

[3] Für eine Übersicht s. D.L. Jones, *Debates and Proceedings of the British Parliaments* (London, 1986), pp. 54-6; H. H. Bellot, 'Biographical Aids to Research: I.-General Collections of Reports of Parliamentary Debates', *BIHR*, 10 (1932-33), pp. 171-177; J. Black, *Parliament and Foreign Policy in the Eigtheenth Century* (Cambridge, 2004), pp. 137-63; zur Zuverlässigkeit parlamentarischer Berichterstattung in der 1. Hälfte des 18. Jahrhunderts noch immer wertvoll: M. Ransome, 'The Reliability of Contemporary Reporting of the Debates of the House of Commons 1727-1741', *BIHR*, 19 (1942-3), pp. 67-79.

[4] Siehe Jones, *Debates and Proceedings*, p. 73.

[5] Siehe hierzu etwa J. Redlich, *Recht und Technik des Englischen Parlamentarismus* (Leipzig, 1905), pp. 291-2; D.L. Keir, *The Constitutional History of Modern Britain 1485-1951* (5. Aufl., Oxford, 1953), p. 343.

[6] S. etwa P.D.G. Thomas, *The House of Commons in the Eighteenth Century* (Oxford, 1971), pp. 336-7.

[7] *Journal of the House of Commons* (London, ab 1742) [*CJ*], XXIII, p. 148.

[8] Historical Manuscripts Commission, *Diary of John Perceval, 1st Earl of Egmont* (3 Bde., London, 1920-23) [*Egmont's Diary*].

[9] Herausgegeben mit einer umfangreichen Einleitung von S. Taylor und C. Jones, *Tory and Whig: The Parliamentary Papers of Edward Harley, third Earl of Oxford, and William Hay, MP for Seaford, 1716-1753* (Woodbridge, 1998) [*Edw. Harley's Jnl.* oder *Wm. Hay's Jnl.*].

[10] Fundstelle wie Fn. 9.

[11] British Library, Add. MS 35337, teilweise abgedruckt in *Cobbett's Parliamentary History of England. From the Norman Conquest, in 1066. To the year 1803* (12 Bde., London, 1806-12), fortgeführt als *The parliamentary history of England, from the earliest period to the year 1803* (24 Bde., London, 1812-20) [*Cobbett*], XIII.

[12] Bodl., MS Don. c. 105 ff. 43-4 (Datumsangaben sind sämtlich nach dem julianischen Kalender, also 11 Tage zurück); das Abstimmungsergebnis war 252 (Yeas) zu 245 (Noes), aaO., f. 44 und *CJ*, XXIV, p. 146; s. zu dieser Debatte *Edw. Harley's Jnl.*, pp. 57-8; *William Hay´s Jnl.*, pp. 181-3; *Egmont's Diary*, III, p. 263 (254:247); *Cobbett*, XII, pp. 532-586; R. Chandler, *The history and proceedings of the House of Commons from the Restoration to the present time* (14 Bde., London, 1742-4) [*Chandler*], XIII, pp. 139-82.

[13] *HPC, 1715-1754,* I, pp. 45, 502, II, p. 484; Harris/Black, 'John Tucker', p. 23.

[14] *HPC, 1715-1754,* I, pp. 44-5.

[15] *CJ*, XXIII, p. 648; *Journal of the House of Lords* (London, ab 1767) [*LJ*] XXV, p. 596; *Edw. Harley's Jnl.*, pp.50-1; *Egmont's Diary*, III, pp. 191-2; *Cobbett*, XI, pp. 1223-1303 (House of Commons, aus dem London Magazine), pp. 1303-88 (House of Commons, aus dem Gentleman's Magazine), pp. 1047-1153 (House of Lords, aus dem London Magazine), pp. 1153-1215 (House of Lords, aus dem Gentleman's Magazine), pp. 1047-62 (House of Lords, Secker Manuskript); *Chandler*, XII, pp. 65-121.

[16] I.G. Doolittle, 'A First-hand Account of the Commons Debate on the Removal of Sir Robert Walpole, 13 February 1741', *BIHR*, 53 (1980), pp. 125-40.

[17] S. hierzu *HPC, 1715-1754*, I, pp. 238-9.

[18] Walpoles Mehrheit im Unterhaus reduzierte sich gegenüber den vorangegangenen Wahlen von 1734 um 23 Abgeordnete, von 42 auf nur noch 19, s. *HPC, 1715-1754*, I, p. 46.

[19] So wurde Walpole häufig von seinen Gegnern bezeichnet (respektive in der Debatte in beiden Häusern des Parlaments am 13.II.1741, s. Nachw. o. Fn. 15, 16).

[20] Bodl., MS Don c. 105, ff. 94-6.

[21] S. etwa Bodl., MS Don c. 105, ff. 51-2, 55-6; 57-8; 114; 122; 124-5; 127-9; s.a. Harris/Black, 'John Tucker', pp. 24-5.

[22] Bodl., MS Don c. 105, ff. 57-8 (3.IV.1742).

[23] Bodl., MS Don c. 105, ff. 43-4 (25.III.1742).

[24] Tucker erwähnt Henry Pelham noch mehrfach bei dessen späteren parlamentarischen Aktionen, wo er das alte System verteidigt, s. etwa Bodl., MS Don c. 105, ff. 68 (10.IV.1742), 114 (18.V.1742), 127v (28.V.1742).

[25] S. hierzu Tuckers Brief vom 1.IV.1742, Bodl., MS Don c. 105, ff. 55-6; zur Debatte s. *Cobbett*, XII, p. 590; *Chandler*, XIII, pp .219-20; *CJ*, XXIV, p. 160 (No-

es: 204; Yeas: 184).

[26] S. dessen Briefe vom 30.III.1742 (Bodl., MS Don c. 105, ff. 51-2) und vom 1.IV.1742, aaO..

[27] Bodl., MS Don c. 105, ff. 57-8.

[28] S. hierzu Tuckers Brief vom 24.V.1742, Bodl., MS Don c. 105, f. 122.

[29] Bodl., MS Don c. 105, ff. 124-5; zur Debatte im Unterhaus s. *Cobbett*, XII, pp. 716-32; *Chandler*, XIII, pp. 248-63; *CJ*, XXIV, p. 260 (Noes: 245; Yeas: 193).

[30] Bodl., MS Don c. 105, f. 125v.

[31] Bodl., MS Don c. 105, ff. 127-9 und 134-5.

[32] S. hierzu *Edw.Harley's Jnl*., p. 63 (der Antrag, die Amtsführung Walpoles zu untersuchen, wurde im Unterhaus am 1.XII.1742 mit 253 zu 186 Stimmen abgelehnt, s. *CJ*, XXIV, p. 348).

[33] S. Tuckers Briefe vom 18.XI.1742 (Bodl., MS Don c. 105, ff. 154-5) und 14.XII.1742 (Bodl., MS Don c. 105, ff. 197-8) und zu den Debatten: *Cobbett*, XII, pp. 853-73 (16.XI.1742), pp. 940-1053 (10.XII.1742); *Chandler*, XIV, pp. 7-26 (16.XI.1742) und XIV, pp. 99-194 (10.XII.1742); *Egmont's Diary*, III, p. 267 (16.XI.1742), p. 268 (10.XII.1742); *CJ*, XXIV, p. 337 (16.XI.1742, Yeas: 259; Noes: 150), XXIV, pp. 361-2 (13.XII.1742, 230:177 über Oppositionsamendment, *Chandler*, XIV, p. 194).

[34] S. hierzu besonders U. Dann, *England und Hannover, 1740-1760* (Hildesheim, 1986), pp. 60-5.

[35] Bodl., MS Don c. 105, f. 197v.

[36] Ibid.

[37] Vgl. insbesondere die Monographie von U. Dann (o. Fn. 34) sowie W. Michael, *Englische Geschichte im achtzehnten Jahrhundert* (5 Bde., Hamburg, Berlin, Leipzig, Basel, 1896-1955), Bd. V: Englands Aufstieg zur Weltmacht (Basel, 1955), pp. 48-61; B. Simms, 'Pitt and Hanover', in: B. Simms and T. Riotte (Hrsg.), *The Hanoverian Dimension in British History, 1714-1837* (Cambridge, 2007), pp. 28-57, hier: 32-5; J. Black, *Foreign Policy*, pp. 85-8.

[38] Bodl., MS Don c. 106, ff. 113-6. Obwohl die Berichterstattung in diesem Brief schon recht ausführlich erscheint, entschuldigt sich Tucker dort (f. 115v) für die kurze Zusammenfassung der Debatte, die er in aller Eile niedergeschrieben habe und seine Unfähigkeit, diese Debatte wiederzugeben. Zu dieser Debatte s. *Cobbett* XIII, pp. 138-46; *The History, Debates, and Proceedings of both Houses of Parliament of Great Britain, from the Year 1743 to the Year 1774*, printed for J. Debrett (7 Bde., London, 1792) [*Debrett*], I, pp. 271-287; *Egmont's Diary*, III, p. 278; *Edw. Harley's Jnl*., p. 66; *CJ,* XXIV, p. 487.

[39] Bodl., MS Don c. 106, ff. 119-23.

[40] Ibid., ff. 122v, 123.

[41] Insgesamt liegen für diesen Zeitraum 20 Briefe an seinen Bruder Richard vor (c. 106, f. 128 [10.I.1744]; ff. 130-2 [12.I.1744]; ff. 139-41 [17.I.1744]; ff. 142-6 [19.I.1744]; ff. 149-52 [21.I.]; ff. 153-6 [23.I.]; ff. 159-60 [26.I.]; ff. 164-5 [28.I.]; ff. 169-71 [20.II.]; f. 172 [4.II.]; ff. 178-9 [4.II.]; ff. 182-5 [9.II.]; ff. 189-92 [11.II.]; ff. 194-6 [14.II.]; ff. 198-9 [16.II.]; f. 206 [18.II.]; f. 209 [21.II.]; ff. 210-11 [23.II.]; ff. 214-5 [25.II.]; ff. 221-2 [28.II.]).

[42] Bodl., MS Don c. 107, f. 16 (8.III.1744).

[43] Bodl., MS Don c. 106, ff. 142-6, hier 145 (277:165).

[44] Ibid., f. 146v (Abstimmungsergebnis: 271:226); zur Debatte s. *Cobbett*, XIII, p. 463; *Wm. Hay's Jnl.*, pp. 189-91; *Edw. Harley's Jnl.*, p. 67; *Egmont's Diary*, III, p. 283; ähnlich knappe Mehrheiten gab es bereits bei der Debatte über die Hannovertruppen vom 7.XII.1743 (181:231, s. Bodl., MS Don c. 106, f. 144 und *CJ*, XXIV, p. 487; zur Debatte s. die Fundstellen oben Fn. 38).

[45] Bodl., MS Don c. 106, f. 146v (hier ist besonders zu bemerken, dass der Speaker des Unterhauses, Arthur Onslow, als Nummer 16 auf der Rednerliste erscheint und zwar als Redner für die Regierung!).

[46] S. *Cobbett*, ibid.

[47] *Edw. Harley's Jnl.*, p. 67.

[48] Bodl., MS Don c. 106, ff. 194-6, hier 195v (13.II.1744, 176:153) und f. 209 (20.II.1744, 176:168); zu diesen Debatten s. *Cobbett*, XIII, pp. 640-1 (Debatte vom 13.II.1744) und XIII, 652 (Debatte vom 20.II.1744); *CJ*, XXIV, p. 577 (Debatte vom 20.II.1744).

[49] Bodl., MS Don c. 106, ff. 198-9 und f. 210; s. zur Debatte vom 15.II.1744: *Cobbett*, XIII, pp. 645-50; *Egmont's Diary*, III, pp. 285-6; *CJ*, XXIV, pp. 568-9 und zur Debatte vom 20.II.1744: Cobbett, XIII, pp. 651-2; *CJ*, XXIV, p. 576; die Kriegserklärung an Frankreich erfolgte am 31.III.1744, s. *Edw. Harley's Jnl.*, p. 68.

[50] Bodl., MS Don c. 107, ff. 71-2, hier f. 71: *'Tomorrow we go into Consideration of the Army for the year ensuing which tis hoped will pass without any great Opposition as the H———-ns are left out of the Estimates'.*

[51] Bodl., MS Don c. 107, ff. 79-80; zur Debatte s. *Cobbett*, XIII, pp. 1050-6.

[52] S. hierzu die Anmerkungen o. Fn. 1.

[53] Zu dessen Ernennung s. o. Fn. 1 und *Edw. Harley's Jnl.*, p. 71 (dort ist als Tag der Ernennung der 22.XII.1744 angegeben).

[54] Bodl., MS Don c. 107, f. 86.

[55] Bodl., MS Don c. 107, ff. 94-5 und ff. 99-100; s. zur Debatte vom 12.II.1745: *Cobbett*, XIII, pp. 1125-72; *CJ*, XXIV, p. 749; zur Debatte vom 18.II.1745 s. *Cobbett*, XIII, pp. 1174-80.

[56] Bodl., MS Don c. 107, f. 107; Charles Edward Stuart landete am 23.VII.1745 auf der Insel Eriskay der Äußeren Hebriden, s. zu dem gesamten Unternehmen etwa J. Black, *Culloden and the '45* (Stroud, 1990). Zu dieser Zeit befand sich König Georg II. in Hannover und kehrte erst am 31.VIII.1745 nach Großbritannien zurück, s. *Edw. Harley's Jnl.*, p. 73 und Dann, *England und Hannover*, p. 83.

[57] S. insbesondere Bodl., MS Don c. 107, ff. 108-31 (Briefe zwischen dem 20.VIII. und 26.IX.1745) und weiter insbesondere c. 107, ff. 171-83 (Briefe vom 19.XI. bis 12.XII.1745) sowie ff. 186-8, 191-6 (Briefe vom 21.XII., 28.XII. und 31.XII.1745, 2.I.1746).

[58] Bodl., MS Don c. 107, ff. 150-3.

[59] Ibid., ff. 151-2 (auf f. 151v ist erwähnt, dass Henry Pelham gegen Pitts Antrag war); *CJ*, XXV, p. 10 (der Antrag, den Hauptantrag jetzt zu stellen, wurde mit 148:136 abgewiesen).

[60] Bodl., MS Don c. 107, ff. 157-9 (Brief vom 2.XI.1745) und f. 160 (Brief vom 5.XI.1745); zur Debatte vom 4.XI.1745 über die Aufstellung spezieller Regimenter zur Niederschlagung der Rebellion, die zeitlich befristet für nur vier

Monate im Etat berücksichtigt werden sollten, s. *Cobbett*, XIII, pp. 1382-91; *Debrett*, II, pp. 63-70; *Edw. Harley's Jnl*., pp.74-5; *CJ*, XXV, p.14.

[61] Ibid., f. 159: '*Tho I have wrote a good deal I can give you but a very imperfect idea of this Debate' 'seems to me to indicate but a Short Reign to Mr. P_____ unless he takes some imediate assistance from among the Opposition…'.*

[62] S.o. Fn. 56, 57.

[63] Bodl., MS Don. c. 107, ff. 186-8. Der Antrag wurde mit großer Mehrheit abgelehnt (190:44) und Tucker berichtet, dass er auf Seiten der Mehrheit gewesen sei (ibid., f. 186). Zur Debatte s. *Cobbett*, XIII, pp. 1392-4; *Debrett*, II, pp. 70-1; *Edw. Harley's Jnl*., p. 75 (es ging um die Anheuerung und Entsendung von 6000 hessischen Söldnern nach Schottland); *CJ*, XXV, p. 25.

[64] Bodl., MS Don c. 107, ff. 205-6; das Abstimmungsergebnis war 249:53, ibid., f. 206 und *CJ*, XXV, p. 27; zur Debatte s. *Cobbett*, XIII, pp. 1395-7.

[65] Bodl., MS Don. c. 107, f. 213 (Brief vom 23.I.1746) und ff. 214-6 (Schlachtbericht Falkirk Moor [17.I.1746], wo die Rebellen siegreich waren), ff. 217-8 (Brief vom 28.I.1746).

[66] Bodl., MS Don c. 107, ff. 226-7 (11.II.1746), hier f. 226: '*The whole Pelham Administration is at an End'* und f. 228 (Brief vom 13.II.1746).

[67] Zu den Vorgängen s. den Bericht des Duke of Newcastle an Lord Chesterfield vom 18.II.1746, in D.B. Horn and M. Ransome (Hrsg.), *English Historical Documents* (London, 1957), X, pp. 109-11; *Edw. Harley's Jnl*., pp. 75-6.

[68] Bodl., MS Don c. 107, ff. 255-6; s. zu dieser Debatte vom 10.III.1746: *Edw. Harley's Jnl*., pp. 76-7; *Egmont's Diary*, III, p. 315.

[69] Bodl., MS Don c. 108, ff. 25-6.

[70] Debatte vom 10.III.1746: die Regierung gewann die Abstimmung mit 231:132, s. Bodl., MS Don c. 107, f. 255v, *Edw. Harley's Jnl*., p. 77; Debatte vom 11.IV.1746: hier gewann die Regierung die Abstimmung mit 255:122, s. Bodl., MS Don c. 108, f. 26, *Edw. Harley's Jnl*., p. 77.

[71] Bodl., MS Don c. 108, f. 25v: '*The Parl[t] last night resolved not to abandon Flanders to the French in this critical conjuncture even tho the Dutch will not Declare War…*'.

[72] Bodl., MS Don c. 108, ff. 66-7. Dies ist ein Kurzbericht über ein Vote of Credit in Höhe von £ 500.000 zur Unterdrückung der Rebellion in Schottland und Fortführung des Österreichischen Erbfolgekrieges.

[73] Zur Rebellion: Bodl., MS Don c. 107, ff. 249-50 (4.III.1746), f. 251-2 (6.III.1746), c. 108, ff. 29-30 (15.IV.1746), ff. 33-4 (17.IV.1746), ff. 38-9 (22.IV.1746), ff. 42-3 (26.IV.1746), f. 194 (19.VIII.1746), c. 109, ff. 47-8 und 49-50 (13. und 16.XII.1746), c. 109, f. 189 (19.III.1747).

Zum Österreichischen Erbfolgekrieg: c. 108, ff. 29-30 (15.IV.1746), ff. 62-3 (8.V.1746), ff. 121-2 (17.VI.1746), c. 109, f. 8 (11.IX.1746, Tucker berichtet über den österreichisch-französischen Krieg), ff. 83-4 (10.I.1747), c. 110, f. 10 (14.IV.1748), c. 110, ff. 17-8 (26.IV.1748), c. 110, ff. 64-5 (22.IX.1748), ff. 71-2 (4.X.1748), ff. 79-80 (13.X.1748).

[74] Bodl., MS Don c. 109, f. 151, hier 151v (197:150). Interessant ist die Bemerkung Tuckers, dass die 150 Gegner als '*a very formidable Number'* einzuschätzen seien.

[75] S. hierzu *HPC, 1754-1790*, I, p. 272 und III, p. 565.

Patrizia De Salvo

Publicising the Official Records of Parliamentary Proceedings in the Season of the Early Sicilian Constitutionalism

1. *Foreword*

The importance of periodical publications has been well-known for sometime, and numerous are the works that have been dedicated mostly to the papers that appeared in seventeenth and eighteenth centuries.[1] Looking at these sources from a 'different' angle, it is possible to pick out several aspects to give new reading and significance to the role played by these periodicals in the training of public opinion.[2] In particular, I would like to focus attention on the spreading of parliamentary proceedings through this kind of source.

While Spanish historiography has inquired into the theme of the publication and diffusion of parliamentary proceedings in nineteenth century Spain, it seems enough to recall here Marta Lorente's work, *La voz del estado*,[3] there is probably in Italy a lack of such an interest aimed at giving an account not only of the mechanisms related to the coming into force of bills and rules, but also of the access of the citizens to the knowledge of parliamentary activity.

Following this observation, I think it is possible to conceive a path that, through the reading of official and unofficial periodicals, this leads us to verify if and how, during what is usually indicated as the season of the early Sicilian constitutionalism (that is to say from 1808 to 1814), the principle of the publicity of the law, even when the bill on the freedom of the press was concerned, is respected.

2. *The French revolutionary model*

The French model is the one from which we can start. It should not be forgotten, in fact, that the need of the publicity of the law was imposed throughout the revolutionary experience.

From a rapid reading of the constitutional writings emerges the French revolutionaries' apprehension whilst at the same time being conscious of how publicity was fundamental to the parliamentary institution. This was the reason why bourgeois revolutions always associated the concept of state of right to the proclamation of the principle of the publicity of the law.

The Constitution of 1791, in fact, implied the obligation to publicising legislative deliberations and to printing the sessions' proceedings: 'The deliberations of the legislative body will be public, and the statement of

the meetings will be printed' (article 1, title III, chapter III, 2nd section). All the following Constitutions introduced a similar commitment.

The constitutional act of the French republic dated 24 June 1793, at the articles 45 and 46, established that 'the National Assembly's meetings are public', and that 'the meetings' statements will be printed'; the same duty was also imposed by the article 64 of the French Constitution of the 5 Fructidor, III year (22 August 1795).

Moving from the French to the Jacobin Constitutions[4] in Italy the outcome is the same, in fact there isn't any Constitution which doesn't imply the obligation to promulgate the proceedings of the legislative body.[5]

More and more frequently since the eighteenth century, though in a more evident manner between the end of that century and the beginning of the nineteenth, governments had to deal with an issue, which the growth of printed publications rendered more stressful every day, that is to say the access to information by a wider number of people.[6]

Almost every political event of a certain importance gave birth to a multitude of writings, which initially diffused perhaps privately or clandestinely, though quickly destined to spread amid a broader (and sometimes, less culturally aware) public.

Consequently, governments soon felt the need to confront the enlargement of the circulation of ideas and information among rough people, generally uneducated, and often ready to warm up and show their unrest with revolution.[7]

False information almost became a rule of good governance, able to give the illusion of fulfilment of the people's desires, though keeping state secrets safe, and aiming at the creation of a 'controlled public opinion' within strictly limited contexts. Very often, this proved to be not a successful experiment in the Italian peninsula, because of the great amount of journals, of different vocation, which inevitably started opposite ways of thinking and produced conflicting news, thus frustrating any attempt to propose standardised, harmless messages.

Announcements, leaflets, and gazettes were, in fact, very compliant instruments that could be adapted to different situations and needs, and so less likely to be restricted in the rule of censorship.

The question of answering to the need of knowledge and publicity of government and parliamentary legislative activities remained, even after the revolutionary movement was over: the so-called tribunal of public opinion, as Filangeri defined it,[8] kept on claiming its right to know political power's decisions, still during the first decades of the nineteenth century.

With this intention, a number of official gazettes and newspapers came into being, which aimed at spreading not only information about European wars, but also official measures and deliberations taken in the several courts and parliaments.

3. *Right of information and public opinion in constitutional Sicily*

Sicily was not excluded from this movement, which saw the population more and more interested in what was decided at government level. It does not seem a chance, in fact, if Niccolò Palmieri, writing on the Sicilian constitutional period, stated: 'If in 1810 few people understood what Constitution meant, since then there has not been a single cobbler who doesn't know his rights and doesn't feel the violence of being divested of them'.[9]

Some of the numerous political-cultural periodicals that came into being in Sicily by the end of the eighteenth century kept on being published at the beginning of the nineteenth, along with other new ones. Particularly effective for British strategic objectives and propaganda was the *Gazzetta Britannica*. That as a contemporary observer recalled: 'was lately founded in Messina, precisely since the English are there, and that naturally gives only military details of well limited interest, modelled on the hopes and aspirations of its editor, which are sincerely patriotic'.[10]

In Messina, under the protection of the British Army, a careful campaign against Jacobins and Napoleon began right through the pages of the *Gazzetta Britannica*.[11] At the same time, in Palermo, now the official seat of the Bourbon royal court, journalism took upon itself the task not only of denouncing 'some French or Italian leaflets, which are on purpose made to uphold, or legitimate the interests of Corsican usurpers',[12] but also of consenting the knowledge of court instructions.

From 1 January 1810, in fact, the idea of publicising government decisions brought about the publication, at the 'Royal Printing-Office of Palermo, until another place will be found', of the *Giornale Politico e Letterario*.

In the journal's *Prospectus* the editor underlined that its main object publication was rightly to allow the improvement of common culture and prosperity: 'Here is the noble aim, which determined the most honest people to ask our good Government the compilation of a periodical leaflet which, printed in this capital, spreads in every part of the Kingdom, and even out of it if circumstances are favourable'.[13]

From the title it emerged clearly what the journal's main goals were: divided in two sections, it reported both 'domestic and foreign' political news, and 'scientific memorials, literary articles containing Extracts of domestic or foreign works, and most of all arguments of public economy'.[14]

As far as politics was concerned, the 'news' included 'public despatches, containing new general statements, or modifications of any previous statements, coming from the Ministry of Home Affairs, of Commerce, of Justice, for War and Ecclesiastical Affairs …'.[15]

It was right through the pages of the *Giornale Patriottico e Letterario* that people knew of the opening of the general parliament of 25 January 1810, a meeting where 'extraordinary and emergency aids' were

asked to arrange the Kingdom's defence because of the 'unhappy circumstances occurring in Europe'.[16]

4. *The promulgation of the Constitution and the publicising of parliamentary proceedings*

Nevertheless, it was only with the promulgation of the Constitution of 1812[17] that the publication of parliamentary proceedings were officially legitimated and authorized, also through local papers. Since the first session, the Parliament that gathered on 20 July 1812 stated that:

> Il Parlamento volendo che in vero così interessante siano palesi alla M.S. ed alla nazione tutta i detti, e le Mozioni dei membri, che la compongono, per giustificare al Re i sentimenti del loro rispetto, ed al pubblico quelli del loro patriottico zelo, determina, e supplica V.A.R.le, di voler sanzionare di far pubblicare nel foglio periodico tutto ciò che si proporrà e si voterà dai Parlamentari de' tre Bracci, ancorché non fosse sanzionato.[18]

Soon after, the Sicilian Parliament voted the bill concerning the freedom of the press. From a reading of the constitutional text we can make our hypothesis on the first system of publication and circulation of the rule that, as Marta Lorente has studied for Spain, and in my opinion could be valid also for Sicily, shaped itself with the hierarchical transmission of legislative dispositions. Article 3, chapter I, concerning the Legislative Power, in fact, implied that: 'Ogni legge dovrà inserirsi nei registri del Regno, ed il Segretario di Stato del Ripartimento sarà tenuto di farne arrivare a nome del Re la copia in istampa a tutti i Magistrati, e pubblici Funzionarj per l'esecuzione'.[19] This rule obtained the king *placet*, though they said: 'resti inerente nella Corona il diritto di proclamarle, ed al bisogno richiamarle in osservanza, ed inculcarne la esecuzione con degli Editti'.[20]

The article did not include the principle of publicity as a constitutional value, though it prescribed the hierarchical transmission of the dispositions, because it meant that addressees of the constitutional rule should not be single individuals but the authorities, which could have an access to it through well regulated institutional mechanisms.

Parliamentary intention to allow people to be *tout court* acquainted with legislative dispositions emerged again in the article 10 of chapter XVII, which stated: 'Vi sarà una Stamperia del Parlamento dentro le mura del suo edifizio. La sua spesa dovrà aggiungersi alle altre sopra mentovate'.[21] As well as in the article 11 of the same chapter, stating that: 'Il Direttore della medesima dipenderà immediatamente, ed unicamente dai Presidenti delle due Camere, i quali dovranno dare, ad esclusione di ogn'altro, gli ordini per la stampa di tutte le mozioni, o atti, che si risolveranno nelle Camere rispettivamente'.[22] This last disposition received, nonetheless, the king *vetat*.

The attention for the knowledge of parliamentary works was even more guaranteed thanks to the predisposition inside the Houses of 'banisters for people, who are not members of Parliament', even if, to be admitted to the meetings, 'these people will enter via a Ticket signed by one of the members, or by the President'; obviously, a certain behaviour was to be taken during the meetings and public order maintained, so that 'Chiunque però avrà l'ingresso non potrà portare armi, bastoni, batter le mani, parlare ad alta voce, e commettere qualunque indecenza, sotto pena non solo di essere cacciato dalla camera, ma ben anche di essere arrestato, e quando la camera si formerà in comitato segreto non potrà rimanervi'.[23]

Besides the publicity of his acts, the legislator tried to let the legislative provisions reach even the less culturally prepared social classes, imposing not only the 'dovere di conoscere la Costituzione del Regno, e tutte le Leggi, che la compongono',[24] but also establishing the obligation 'de' Parrochi, e de' Magistrati Municipali l'istruire della Costituzione del 1812 tutti coloro, che appartengono ai loro quartieri, ed al loro Comune; come ugualmente sarà dovere delle Università, e delle Scuole pubbliche, e private il leggere due volte l'anno la Costituzione'.[25]

Encouraged by the promulgation of the decree on the freedom of the press, the Sicilian editors gave birth to a huge production of journals and gazettes,[26] even though the role of official paper for the publication of parliamentary proceedings remained to the *Periodico di Sicilia* that, in the first issue of 1813, underlined the importance of 'sincere magazines' as historical elements, because:

> Nel momento in cui seguono i fatti non può aversene appien distinta la idea: e quando cesseranno le cause da cui le agitazioni del Globo sono state prodotte, e la penna degli scrittori si accinge a delinearne il resoconto; non potrassi ad altre fonti ricorrere, se non a quelle, che nel confronto de' documenti di già pubblicati il carattere portino di una incontrastabile sincerità.[27]

For this reason the paper had the specific task of including, and even adding pages, 'all the instructive matters, and all the official documents, concerning the government and Sicily'.[28]

It doesn't seem to be the case that the *Periodico di Sicilia*,[29] the way it had been stated in the course of the first parliamentary session, in the supplement to the 14th issue of 1813, published the 'Bases' of the Constitution [the fundamental articles] and the chapters concerning the composition of the two Houses of Parliament, as well as the fact that, at the end of each issue, the editor printed a notice reporting that 'In the *Periodico di Sicilia* will be included the orders related to Parliament, and the fronts inside of it', almost confirming the obligation the paper had taken on both towards royal authority and the Sicilians.

The Sicilian government was troubled by the freedom of the press introduced with the Constitution of 1812. Fearing this, with the circulation of papers, gazettes and periodicals in general, 'despatches, and other government papers, apocryphal and vitiated, could be spread', the Official of the Real Segreteria for Home Affairs, don Antonino Scaduti Genna, editor of the *Periodico di Sicilia*, put forward an objection for the 'great expenses the public revenue had to undertake when, on their account, those Articles should be printed, referring to objects that must be submitted to public knowledge'.[30]

For this reason, Scaduti offered to keep on printing his leaflet, including Royal Despatches, Magistrates' Orders, and all the acts and news related to parliamentary issues.

The attention given by the Prince Vicar to the publication of the official records of parliamentary proceedings, which implied nonetheless their inclusion in only one official leaflet, didn't stop the private editorial activity of those many journals which took their news from the *Periodico di Sicilia*, in a continuous and fruitful exchange of information between editors and printing-offices.

This circumstance carried new concern to the Ministerial Compiler, so much so as to make him write a notice on the paper saying that:

> ci crediamo nel dovere di usare ogni mezzo per rendere sempre più soddisfatti i nostri associati. Quindi siccome in questo Regno, nello stesso periodo del nostro foglio ne circolano degli altri; e può da taluno supporsi che questi contengano delle più copiose notizie; perciò all'oggetto di allontanare si fatta idea; adotteremo il sistema d'indicare espressamente gli articoli che si trovano tanto nel *Monitore*, che nella *Gazzetta Britannica*; a parte degli altri, che in quelli non si trovan compresi. In questa guisa i nostri associati avranno il comodo di leggere in un unico foglio tutte le notizie, che in molte gazzette si trovan disperse.[31]

It probably was just another system to check what citizens read: believing that the leaflet gave also news from other papers, the reader thought he received complete information, and probably he felt at ease though reading a single edition.

All this persuaded H.R.H. the Prince Vicar General of how useful a ministerial leaflet was to publicise the official legislative acts and that, thanks to its authenticity, it could be different from every other paper or gazette circulating in Sicily.

The editor was so given the title of Ministerial Compiler, though with the obligation of printing twice-weekly a new ministerial leaflet, the *Giornale di Palermo*, which replaced the *Periodico di Sicilia*,

> con dovere in detto foglio inserire, non che le notizie straniere, visate dal Segretario di Stato per gli Affari Esteri, o da chi sarà da lui destinato, ma eziandio i Reali Dispacci di tutte le Reali Stamperie, visati dai rispettivi Segretari di Stato, o da persone da loro espressamente incaricate,

> le Lettere Circolari, e gli atti, e le notizie del Parlamento, senza sue riflessioni.[32]

And with the following limit:

> Malgrado la libertà della Stampa, inserire non si possano nel cennato foglio, se non quei documenti, ordini circolari, e Reali Dispacci, che sieno contrassegnati da chi abbia diritto di autorizzarli; dovendo l'Estensore del Giornale in caso diverso incorrere nelle pene dalle leggi prescritte.[33]

Moreover, owing to the fact that two weekly publications were not probably sufficient to expose to the public with the proper and convenient promptness every subject that will be dealt with during parliamentary meetings, the royal edict established for the compiler the obligation to prepare, during parliamentary sessions,

> Un Giornale straordinario, in cui diariamente si espongano le proposte, le mozioni, le discussioni, e gli articoli tutti, che progressivamente verranno sanzionati; … quali atti dovrà esso Scaduti ricevere dall'Ufficio del Protonotaro del Regno, muniti della firma del suo Coadiutore, senza la quale non possa pubblicarli. E finalmente, che per gli oggetti suddivisati i Ministri, ed i Magistrati Supremi stiano nell'intelligenza di comunicar, occorrendo, all'Estensore del detto Giornale, tutte le Carte, la cui pubblicazione interessar possa lo Stato.[34]

In the light of the facts, this statement cleared up that both the king and the most attentive of his subjects shared the same interest, that is to say, they cared and wanted the official leaflet of the kingdom to publish only those official acts that it received from the Office of the Protonotaro del Regno, to assure them correct information, guaranteed by public officers, without any thought, consideration or remark by the compiler.

In a few words, what the publication of an official leaflet assured and gave to the reader then was aseptic information, without any personal evaluation, in a perfect ministerial style.

Therefore, the final outcome consisted in an advantage for the central power, which created controlled information, specially ignoring the constitutional rule stating that: 'Ognuno potrà stampare, e pubblicare le sue idée senza bisogno di licenza, e senza obbligo di sottoporle ad una precedente revisione, e ciò dal momento, che S.R.M. avrà sanzionato il presente Capitolo'.[35]

Moreover, paragraph 21 of the title III of the Sicilian Constitution, *Potere Giudiziario*, shouldn't be undervalued: in fact, it established the crime of *counterfeiting*, or of *writing*, to which H.R.H. gave his *placet*, 'sia di scrittura, o di altro, e per tutti quei delitti, che sono contrari alla tranquillità, alla morale, e alla fede pubblica, come meglio dovrà divisare il nuovo Codice'.[36]

The postponement to a forthcoming new penal code would nevertheless remain a dead letter, since it was never published.[37]

This rapid survey of the Sicilian reality during the constitutional season evidently shows how the attention for the decisions taken by the local government reached a particularly high level, so much so to justify on the part of the public power the unconcealed use of a strict ministerial control over the news to be published. On the contrary, it gives evidence for the awareness of the 'public spirit', which was not willing anymore to remain apart from the most significant political events.

Notes

[1] Numerous works have been dedicated to the birth and the development of the press in Italy. In particular, see C. Capra, V. Castronovo and G. Recuperati, *La Stampa italiana dal Cinquecento all'Ottocento* (Roma-Bari, 1986), and the bibliography therein enclosed.

[2] According to Nicola Matteucci, the concept of public opinion is too multidisciplinary to produce any generally accepted definition. Jacques Necker is commonly considered both the forerunner of this expression and of the acknowledgement of its political meaning. His famous *Compte rendu au Roi* (1781) revealed the tragic state of French public revenue. See N. Matteucci, 'Opinione pubblica', in *Enciclopedia del Diritto*, vol. XXX, pp. 420-30. Any study on this theme cannot ignore Habermas' analysis, which has become a classic of modern political thought: J. Habermas, *Storia e critica dell'opinione pubblica* (Roma-Bari, 2002); see also the interesting monographic issue of the *Giornale di storia costituzionale*, 6, (II semester 2003), that through the analysis of public opinion gives an original and rich interpretation of the European constitutional movement. Lately, on a different direction, see also S. Landi, *Naissance de l'opinion publique dans l'Italie moderne* (Rennes, 2006).

[3] M. Lorente, *La voz del Estado. La publication de las normas. 1810-1889* (Madrid, 2001).

[4] C. Ghisalberti, *Le Costituzioni 'Giacobine'. 1796-1799* (Milano, 1973).

[5] A. Acquarone, M. D'Addio, and G. Negri (eds.), *Le Costituzioni italiane* (Milano, 1958).

[6] On this see F. Moureau, *La plume et le plomb. Espace de l'imprimerie et du manuscrit au siècle des Lumières* (Paris, 2006).

[7] With regard to Italy, this necessity, which started to emerge at the beginning of the seventeenth century, was analysed by M. Infelise, *Prima dei giornali. Alle origini della pubblica informazione. Secoli XVI e XVII* (Roma-Bari, 2005); for France see A. Farge, *Dire et mal dire* (Lonrai, 1992).

[8] This is how Gaetano Filangieri expressed his opinion on the tribunal of the public opinion: 'There is a tribunal, which exists in every nation; which is invisible, because there is no sign able to represent it, though it acts continuously, and is stronger than magistrates, laws, ministers, and kings; which can be perverted by bad rules; directed, corrected, made good and virtuous by the good ones; though it can't be contrasted or dominated by either. This tribunal, showing us how sovereignty constantly and actually lies in the people, keeping from its whatever rule, notwithstanding any deposit was done of it in the hands of the many, or of one single man, of a Senator, or of a King; this tribunal, I say, is that of the public opinion'; see G. Filangeri, 'Delle leggi che riguardano l'educazione, il costume e l'istruzione pubblica', in S. Carassali (ed.), *Scienza della Legislazione* (Torino, 1922), vol. IV, p. 297.

[9] N. Palmieri, *Saggio storico e politico sulla Costituzione di Sicilia infino al 1816* (Losanna, 1847), p. 11.

[10] In 1810, this situation was efficiently sketched by Thomas Wright Vaughan in his introduction to the English edition of Paolo Balsamo's *Giornale di Viaggio*. See M. D'Angelo, 'La "Gazzetta Britannica" di Messina e la Costituzione siciliana del 1812', in A. Romano (ed.), *Il modello costituzionale inglese e la sua recezione nell'area mediterranea tra la fine del '700 e la prima metà dell'800. Atti del Seminario Internazionale di Studi in memoria di Francisco Tomás y Valiente. Messina, 14-16 novembre 1996* (Milano, 1998), pp. 873-922 (in particular p. 873).

[11] On the *Gazzetta Britannica*, published twice-weekly in Messina from 1808 to 1814, see M. D'Angelo, 'La Gazzetta Britannica', introduction to G. Molonia, *La stampa periodica a Messina. 1808-1863* (Messina, 2004), pp. 7-42. I would like to recall that, within the P.R.A. (University Research Project) I'm co-ordinating, which is focused on the analysis of the relation between political power and public opinion in Sicily during the English Decade (1806-1814), I've included the anastatic printing of this paper with a broad introductive study.

[12] G. Arenaprimo, *La stampa periodica a Messina dal 1675 al 1860* (Messina, 1893), p. 47.

[13] *Giornale Politico e Letterario di Palermo, Prospetto del Giornale* 1, Monday 1 January 1810, p. 1.

[14] Ibid.

[15] Ibid.

[16] Ibid. 6, Monday 5 February 1810, p. 1.

[17] Among the most interesting essays on the spreading of European constitutional ideas in Sicily see: G. Bianco, *La Sicilia durante l'occupazione inglese 1806-15* (Palermo, 1902); F. Guardione, *La Costituzione siciliana del 1812* (Roma, 1912); G. Giarrizzo, '1812: Sicilia inglese', in Romano (ed.), *Il modello costituzionale inglese*, p. 59 and following; E. Sciacca, *Riflessi del Costituzionalismo europeo in Sicilia. 1812-1815)* (Catania, 1966); S.F. Romano, *La Costituzione di Sicilia riformata nel Parlamento del 1812* (Palermo, 1912); and the bibliography enclosed in A. Romano's preface to the *Costituzione del Regno di Sicilia* (Palermo, 1813 [anastatic printing, (Messina 1996)], p. XXVII and following, and in E. Pelleriti, *1812-1848. La Sicilia fra due costituzioni* (Milano, 2000). Finally, see also A. Romano, 'La costituzione siciliana del 1812 e il modello inglese', in *Atti dell'Accademia Peloritana dei Pericolanti, classe di Scienze giuridiche, economiche e politiche*, vol. LXX (2001), pp. 31-53.

[18] 'The Parliament, wanting the truth to be so interesting and clear to H.M. and to all the nation the speeches, and the motions of its members, to justify before the King the feelings of their respect, and to the public those of their patriotic zeal, determines, and pleads H.R.H., the sanction to publicising on the periodical leaflet everything that will be proposed and voted by the parliamentary members of the three Houses, even though unsanctioned': first parliamentary session, 20 July 1812.

[19] 'Every law must be inserted in the Kingdom's registers, and the Department Secretary of State must send a printed copy signed by the King to every Magistrate, and public Officials for their execution'. See art. 3, chapter I, title 1, 'Potere legislativo', in *Costituzione del Regno di Sicilia*, p. 14.

[20] 'The right to proclaim and to recall them and to force their execution by decree will remain inherent to the Crown': Ibid.

[21] 'The Parliament is going to have a Printing-Office within its wall. Its cost will be added to those above mentioned': Ibid.

[22] 'The Director of the same will depend immediately, and only on the Presidents of the two Houses, who will have to give, excepting any other, the orders for the printing of every motions, or deeds, that will be decided in the two Houses respectively': Ibid.

[23] 'Nobody will be allowed to take arms or sticks inside, to clap hands, to speak loudly, or to make any indecency, otherwise not only he will be turn out of the House, but he will also be arrested, and when the House meets in secret committee, he won't be able to remain': Ibid., art. 15.

[24] 'The duty to know the Constitution of the Kingdom, and every law composing it'.

[25] 'Of the Priests, and Municipal Magistrates to teach the Constitution of 1812 in everyone who belongs to their district, and Town; the same duty of reading the Constitution twice a year will be shared by universities and public and private schools': 'Della libertà, diritti, e doveri del cittadino', chapter IX, *Costituzione del Regno di Sicilia*, p. 95.

[26] On the flourishing of the Sicilian journalism during the nineteenth century see A. Boselli and N.D. Evola, 'La stampa periodica siciliana del Risorgimento', *Rassegna Storica del Risorgimento* 9, (1931), special issue containing the Proceedings of the XVIII Congresso Sociale di Palermo (7-8-9 maggio 1930), pp. 299-359; T. Mirabella, 'Il giornalismo siciliano dell'Otto-Novecento', in R. Romeo (dir.), *Storia della Sicilia* (Palermo, 1978), vol. IX, pp. 299-355.

[27] 'When facts are evolving, no clear idea can be achieved: and when the events that have produced the World's uneasiness end and the writers are about to make an account of them; we won't acquire any other source than that which, comparing all the documents that have already been published will prove the character of an unmistakeable truth': *Periodico di Sicilia* 1, 1 January 1813, p. 1.

[28] Ibid.

[29] The *Periodico di Sicilia* was the continuation of the *Giornale Politico e Letterario di Palermo*. From July 1813 it changed its name into *Giornale di Palermo*.

[30] *Periodico di Sicilia* 50, 24 June 1813, p. 1.

[31] 'We believe in the duty of using every means to make our associates more and more satisfied. So, seen that in this Kingdom, there are other papers besides our leaflet; and someone could say that these papers report more interesting news; then to keep this sort of idea away; we will adopt the system of indicating expressively the articles that can be found both in the *Monitore*, and in the *Gazzetta Britannica*; leaving aside those not included. In this way, our associates will be comfortably able to read in one single leaflet any news, that in other gazettes are dispersed: 'Avvertimento', *Periodico di Sicilia* 32, Wednesday 22 April 1813, p. 1.

[32] 'With the task of including in this same leaflet, not just the foreign news approved by the Secretary of State for Foreign Affairs, or by whom he will choose, but the Royal Despatches of all Royal Printing-Offices, approved by the respective Secretaries of State, or by people they will expressively indicate, the Circular Letters, parliamentary acts and news, without any further reflections': see *Periodico di Sicilia* 50, 24 June 1813, p. 2; the same Royal Edict was published in the first issue of the *Giornale di Palermo*. See 'Pezzi Officiali, Real Editto', in *Giornale di Palermo*, foglio ministeriale, 1, Wednesday 1 July 1813, p. 1.

[33] 'Notwithstanding the freedom of the press, only the documents, circular orders, and Royal Despatches, which are signed by authorised people; otherwise, the Compiler will undergo the prescribed punishment': Ibid.

[34] 'An extraordinary paper, wherein everyday every proposal, motion, discussion, and article, which are progressively sanctioned, must be included; … these acts the same Scaduti will receive from the Ufficio del Protonotaro del Regno, signed by his assistant, which is indispensable for their publication. And finally, for the above mentioned objects, Ministers, and the Supreme Magistrates must communicate, when it is necessary, to the Compiler of the same paper, every document whose publication could be of any interest to the State': Ibid.

[35] 'When H.R.M. sanctions this Chapter, everyone will be allowed to print, and publish his ideas without needing a licence, and without any obligation of undergoing any former revision': 'Decreto sulla libertà di stampa', *Costituzione del Regno di Sicilia*, pp. 81-88.

[36] 'For the writing or anything else, and for all these crimes, which are against public quietness, morals and religion, as the new Code will better point out': see paragraph 21, title III, 'Potere Giudiziario', *Costituzione del Regno di Sicilia*, p. 149.

[37] On criminal law in Sicily see D. Novarese, *Costituzione e codificazione nella Sicilia dell'Ottocento* (Milano, 2000); Ead., *Istituzioni e processo di codificazione nel Regno delle Due Sicilie. Le leggi penali del 1819* (Milano, 2000).

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*Notícia d'un projecte d'edició de Corts catalanes en marxa. El projecte d'edició de Corts catalanes modernes del Comitè Tècnic de Textos Jurídics Catalans**

1. *Un repàs a les fonts documentals sobre la Cort general*

En els darrers temps, la nostra historiografia ha fet un pas important en el coneixement del funcionament i els debats viscuts a la Cort general dels diferents territoris de la Corona d'Aragó en època moderna. Aquest avenç ha estat en bona part resultat de les contribucions d'un bon nombre d'historiadors en seminaris, congressos i efemèrides diverses celebrades arran de la commemoració d'aniversaris històrics. Però, sobretot, es deriva de la publicació de fonts de la mateixa Cort general: en aquells territoris on ens han pervingut més o menys completes, els estudis han partit principalment de l'anàlisi dels anomenats processos de Cort de cada braç.[1] Aquesta és una documentació bàsica que reflecteix el cerimonial, la substància dels debats (no així, sovint, la naturalesa de les posicions enfrontades i els subjectes concrets enfrontats), els greuges presentats i les disposicions aprovades, siguin de caràcter general, siguin d'aplicació a la delegació permanent de la Cort o Diputació del General.[2] És evident, tanmateix, que, sobretot, la legislació publicada ha estat un element clau en l'estudi dels resultats pràctics de la Cort general.[3]

A aquestes, que podríem denominar, fonts de registre oficial, podrien encara afegir-s'hi unes altres que, hipotèticament, haurien de resultar d'un interès cabdal. Malauradament, però, la recerca de documentació relativa a les reunions de les comissions reduïdes formades en cada Cort General, cada vegada més importants en el funcionament de la Cort, a Catalunya ha donat fins ara resultats del tot infructuosos. Existeixen testimonis eloqüents, però, que les darreres convocatòries, als inicis del segle XVIII, atorgaren una certa formalització a aquestes reunions, mitjançant el nomenament de notaris o escrivans específics per recollir-ne les actes.[4] En tot cas, la documentació dels arxius notarials, la importància de la qual ha assenyalat Leonardo Blanco per al cas ara-

* El nom complet d'aquest Comitè és Comitè Tècnic d'Edició dels Textos Jurídics Catalans el qual pertany al Departament de Justícia de la Generalitat de Catalunya. La tasca del Comitè té el suport econòmic de l'esmentat Departament i a efectes d'edició compta també amb el suport del Parlament de Catalunya.

gonès, pot donar encara molts fruits. Una tercera font habitual en els estudis clàssics sobre la institució ha estat la publicística de l'època sobre el cerimonial de la Cort, que pretenia fixar una 'mecànica processal de caràcter consuetudinari', present amb més o menys riquesa també a tots els territoris de la Corona d'Aragó, amb un caire eminentment pràctic de cara a la seva celebració, abocat a una interpretació fàcil de les normes i a omplir els buits no regulats.[5]

Des de fa algunes dècades, més enllà de la documentació produïda pels escrivans de la Cort general, la historiografia, bé per manca d'altres fonts,[6] bé sobretot preocupada per reflectir tota la riquesa social i territorial del país que confluïa en una Cort General, s'ha endinsat en l'anàlisi i estudi de les riquíssimes instruccions i la correspondència entre els síndics de les institucions representades a la Cort (viles, ciutats i capítols de les esglésies catedrals dels respectius braços reial i eclesiàstic) i els seus mandataris i principals. Alguns d'aquests estudis s'adrecen no només a descriure el comportament particular d'una vila o ciutat dins la Cort general, sinó que també pretenen oferir una visió general de l'activitat parlamentària.[7] Afortunadament, els arxius municipals, comarcals i capitulars catalans disposen d'un ampli ventall de documentació relacionada amb la Cort general, un molt extens territori de recerca no del tot encara explorat.[8] És per aquesta raó que les nostres edicions procuren i procuraran aplegar documentació parlamentària que no figura en els processos familiars però que està íntimament lligada a l'actuació de la Cort com són les instruccions i correspondència, especialment dels síndics del braç reial. En aquest sentit està en procés d'edició un volum de documentació complementària de la Cort de 1585. Finalment també cal tenir present que, entre aquesta documentació dels participants, no manquen als fons patrimonials i familiars, escampats pels arxius del país, algunes mostres de documentació relacionada amb la Cort, des de cartes de convocatòria a títols i privilegis originals obtinguts fins a referències en eventuals dietaris personals.[9]

En els darrers anys, ha suposat un nou salt endavant la incorporació decidida als estudis sobre la Cort general del que Xavier Gil ha denominat les 'fonts externes', és a dir, testimonis en forma epistolar o coneguts a través de dietaris i memòries procedents de personatges, amb dret d'entrada a la Cort o no, presents en el lloc de la convocatòria.[10] En destaquen els produïts per homes que acompanyaven el seguici reial, com ara els diplomàtics estrangers enviats en representació dels principals poders del continent davant del rei o príncep de la Monarquia hispànica. Aquests testimonis diplomàtics aporten nous detalls sobre molts aspectes materials del desenvolupament de la Cort general. Llur bagatge propi els fa observar la realitat política catalana des d'una perspectiva diferent i il·lustrativa. Però, sobretot, la proximitat dels

nuncis i ambaixadors als principals ministres reials en el curs dels debats ens permet albirar els punts de vista d'aquells i alhora observar la transformació de la cort reial que acompanya el monarca durant la Cort general dels regnes. Ens trobem en ple procés de canvi d'un entorn del monarca farcit de servidors, nobles i consellers d'acord amb el concepte de cort pròpia d'un rei encara de vegades itinerant (segle XVI)[11] a un reduït equip ministerial encarregat de conduir els debats i treballs de la Cort general d'un regne amb la màxima eficiència temporal i material en satisfacció dels objectius particulars del monarca (segles XVII-XVIII)[12].

2. *Processos i marc cronològic del Projecte. Feina feta i per fer*

La normativa constitucional catalana sobre Corts era relativament escassa i les Corts generals es regien pel costum la qual cosa explica l'existència del *Ceremonial de corts* de misser Miquel Sarrovira ciutadà honrat de Barcelona o de l'*Estil de celebrar corts* del doctor i jutge de l'Audiència Lluís de Peguera, entre d'altres. El títol 14 *De Celebrar Corts* del llibre primer del volum també primer de les Constitucions de Catalunya conté 19 disposicions relatives a la celebració de Corts, entre les quals, la periodicitat, la qual, segons la Constitució segona de la Cort general de Lleida de 1301, seria 'de tres anys en tres anys'. Tanmateix, el ritme de periodicitat mai no es complí. Amb tot, l'existència d'un organisme delegat com la Diputació del General amb competències fiscals, de vigilància de l'observança de les lleis i de pagament de la justícia reial), l'aplicació de la jurisprudència quan calia i les pràctiques del pactisme, segons model parlamentari, en forma de Juntes de Braços i Divuitenes, van permetre el funcionament polític del sistema, malgrat els llargs intervals interparlamentaris. L'existència de la Diputació del General fou un factor compensador governamental de primer ordre. Pel que fa al nostre període, aquest incompliment triennal redueix en gran mesura el nombre de convocatòries de Cort general. El tram cronològic que l'equip editor es planteja va de 1480-1481 a 1713. Aquestes dates venen determinades per dos fets. El límit cronològic de les edicions de la Reial Acadèmia de la Història de Madrid centrades en les Corts catalanes medievals[13] i el límit imposat per l'abolició de les institucions catalanes pel Borbó Felip V. La llista de Corts generals del període és la següent: Barcelona, 1480-1481; Barcelona, 1503; Montsó, 1510; Montsó, 1512; Lleida, 1515; Barcelona, 1519-1520; Montsó, 1528; Barcelona, 1529; Montsó, 1533-1534; Montsó, 1537; Montsó, 1542; Montsó, 1547; Montsó, 1552; Montsó-Barcelona, 1563-1564; Montsó, 1585; Barcelona, 1599; Barcelona, 1626-1632; Barcelona, 1701-1702 i Barcelona, 1705-1706. Les Corts generals no es poden o potser no s'haurien d'estudiar separadament, ja que l'actuació i la legislació parlamentària s'encavalca. Sovint, de convocatòria a convocatòria, malgrat

la distància en el temps d'una a l'altra, la Cort general es veu obligada a reiterar temes en la mesura que la legislació aprovada de vegades no compleix els requisits que els braços haguessin volgut, o en la mesura que una legislació hagi pogut quedar pendent d'aprovació en espera d'unes millors possibilitats, o no hi hagi hagut acord entre els tres braços i per tant hagin pogut quedar lleis penjades o no del tot resoltes o mal resoltes. Amb tot, si que cada moment parlamentari es correspon amb una conjuntura i és factible una lectura individualitzada i d'aquí que haguem iniciat la represa de la tasca d'edició de les Corts Generals no pas per la de 1480-1481 sinó per la de Montsó-Binèfar de 1585.[14] En el moment de fer una elecció inicial ens varem inclinar per la del 1585 amb el convenciment que era un període cruïlla dels segles moderns entre les Corts generals primeres modernes i l'etapa de 1599-1626/32. La intuïció històrica[15] no ens ha enganyat i els estudis de Miquel Perez Latre, de Lluís R. Corteguera i de Jordi Buyreu ho han demostrat.[16] Especialment, Pérez Latre ha pogut verificar que també hi hagueren torbacions a Catalunya entre 1588 i 1592.

La normativa catalana distingeix jurídicament entre Cort general[17] i Parlament. '*Cort general se diu* – defineix Lluís de Peguera – *la convocació y congregació dels tres Braços y Estaments de tota la Província de Cathalunya, és a saber del ecclèsiàstich, militar y real, feta per lo senyor rey en lo lloch per ell destinat y deputat per a tractar y disposar sobre lo estat y reformació de la terra, y per a fer y establir en ella lleys necessàries y convenients a la custòdia, govern y quietut de dita Província*'.[18] El mateix Peguera en relació a Parlament distingeix tres accepcions: com a Consell reial, com assemblea eclesiàstica i finalment en l'accepció que interessa ara i aquí: '*la tercera significació – escriu – de parlament és, quant lo president de la Província convoca Parlament universal per a proposar algun dubte y demana consell sobre alguna cosa que té respecte a la utilitat pública. Y diu-se universal no perquè tots los de la província se hajen de congregar, perquè això seria cosa dura, sinó tant solament algunes persones deputades com ha embaxadors de totes les ciutats o com ha syndich representant aquelles*'. I insisteix que el parlament es fa per alguna necessitat del príncep o utilitat del rei o de la república i no es pot convocar per causes universals '*sinó tant solament per certes y particulars al dit príncep occorrents*'.[19] Tota l'actuació parlamentaria catalana de l'espai cronològic dels segles moderns no fou sempre de Corts en el sentit jurídic pròpiament dit. Al costat de les Corts que responen a la noció jurídica de Cort general, en aquest període, també hi hagueren Parlaments i Juntes de Braços significats. Així, doncs, a la llista indicada més amunt, caldria afegir-hi la Junta general de Braços de 1640-1641, el Parlament de 1653 i la Junta general de Braços de 1713.

El nostre equip, tal com es fa en l'útil article de Rafael Conde, Ana

Hernández, Sebatià Riera i Manuel Rovira de 1991[20] pretén assumir el Parlament General de 1653. Convocat immediatament després de la caiguda de Barcelona i encara en plena Guerra dels Segadors, Fernando Sánchez Marcos ja ha indicat que les raons fonamentals d'aquest Parlament foren l'imperatiu del finançament per a la continuïtat de la guerra i la necessitat de trobar un consens en el tema dels allotjaments.[21] El Parlament, obert el 31 de març de 1653 al Palau Reial de Barcelona per Joan Josep d'Àustria, va quedar interromput el 6 d'agost del mateix any a causa de l'ofensiva francesa a l'Empordà i a Girona de juliol de 1653. La seva interrupció ha fet suposar la frustració de les aspiracions del virrei, però tot fa sospitar que amb o sense consens, la monarquia al llarg de la segona meitat del segle XVII va en part aconseguir imposar els seus criteris fiscals a Catalunya. El coneixement a fons de la resistència catalana en aquest Parlament col·laboraria molt a conèixer les argumentacions de la resistència després i malgrat la caiguda de Barcelona i la continuació de la guerra, una pàgina històrica jurídico-política bàsica per enfocar l'anàlisi de la segona meitat del segle XVII català. Per un altre cantó, si el rei podia convocar Parlaments, el país, en circumstàncies difícils, també podia o convocava Juntes Generals de Braços. Els estudis de Miquel Pérez Latre i de Jordi Buyreu, han demostrat l'existència i importància d'aquestes assemblees, les quals ja s'insinuen en l'estudi d'Àngel Casals sobre l'etapa històrica de Carles l'emperador. Elles no generen processos, però si que les seves activitats són recollides per les institucions. La documentació de la Diputació i la del Consell de Cent, ja sigui en llurs deliberacions o en llurs dietaris, deixen rastre de la seva existència. Hi ha hagut moments històrics en els quals l'actuació de Juntes Generals de Braços ha tingut una rellevància incontestable que n'ha permès una visualització històrica contundent. Tres moments han estat clau d'aquesta pràctica parlamentària sense rei. Primer, la protesta de Catalunya contra Joan II en defensa de Carles de Viana, el resultat de la qual fou l'anomenat, pel dietarista de Barcelona Jaume Safont, *Parlament General de tots los tres staments*[22] (1460), del qual havia de sorgir la capitulació de Vilafranca,[23] precedent de la Constitució de l'Observança de 1480-1481 comunament dita del *Poc Valdria*, per la categòrica frase inicial '*Poc valria fer leys e constitutions si no eren per nos e nostres officials observades*', clau de volta del pactisme. Un segon moment important és el representat per la Junta General de Braços de 1640-1641 que l'historiador P. Basili de Rubí no va dubtar d'anomenar Corts Generals de Pau Claris.[24] Tal com explica Basili de Rubí, el manuscrit relatiu a aquesta Junta General de Braços és un dietari o procés de corts, autentificat davant de notari, amb una intencionalitat justificativa: 'Procés dels braços per a que consti en tot temps de la justa satisfacció que de sa fidelitat té i ha tingut sempre a sa real persona i a la de sos progenitors

aquest Principat' 'que tots nostres mals i desditxes neixen de que lo excm. comte-duc, és mal afecta a esta província ... i desitja la desolació d'ella'.[25] El nostre projecte no preveu introduir en cap cas aquest Procés, el qual ja circula editat com a tal per Basili de Rubi i a més el seu contingut és present en bona part en l'edició del volum del Dietari de la Generalitat corresponent a aquestes dates.[26]

El tercer moment pertany a la Junta General de Braços de 1713 i en aquest cas hem optat per fer-ne l'edició. Hem decidit incloure-la perquè es tracta del darrer document parlamentari de la història de Catalunya, en la seva etapa constitucional anterior al decret de Nova Planta (1716) del primer Borbó Felip V, anihilador del model polític català. El document de 1713 que, per la seva condició d'esborrany, ha comportat dificultats específiques en la tasca de transcripció, és una manifestació significativa de l'evolució del model polític parlamentari català, abans del constitucionalisme liberal europeu. La convocatòria va ser iniciativa de la Conferència dels Tres Comuns o simplement de la Conferència,[27] un organisme nascut de la lògica del pactisme català enfront dels dèficits de l'Observança de les lleis pel rei i els seus funcionaris i de la necessitat de defensa de la legalitat constitucional en una fase de manca de convocatòria de Cort general. En definitiva una eina d'operativitat política per part dels nous sectors socio-econòmics emergents de la societat catalana. La Junta General de Braços de 1713, una actuació parlamentària sense rei, ha estat ja editada per l'historiador Joan Pons i Alzina dins la tasca del nostre equip.[28] És un document d'un gran interès parlamentari per la qualitat de la seva composició i els seus assistents i per les mesures que hi foren preses, entre elles, la decisió de continuar la guerra, tot i el tractat d'Utrecht i el tractat d'evacuació de l'Hospitalet. Aquesta Junta General de Braços, revela que la resistència fou una actuació destinada a salvaguardar el model polític català tot esperant resultats positius de la diplomàcia europea a través dels ambaixadors dels tres comuns Francesc de Berardo marquès de Montnegre des de Viena, Pau Ignasi Dalmases i Ros des de Londres i Felip Ferran i Sacirera comte Ferran des de La Haia.

Cal indicar, finalment, que no totes les Corts van acabar amb legislatura: La Cort General de Montsó de 1528 durà un mes i escaig de l'1 de juny de 1528 al 16 de juliol del mateix any. La guerra a la frontera impedí una Cort general amb legislatura, tot i que hi hagué donatiu,[29] perquè la mateixa guerra ho imposà. Però la Cort general més coneguda pel seu acabament inconclús a causa de la confrontació entre el rei i la terra fou la de 1626 que, malgrat els intents de posar-hi soli de clausura el 1632, va acabar inconclusa, tot i que any rere any una societat juridicista, com la catalana de l'època, anava recordant i fent relació ostensible dels ajornaments. El fet és que l'oferta reial de 1640 de venirles a clausurar amb exèrcit no va ser lògicament admesa i va quedar

històricament inacabada. Amb tot, però ja havia deixat una massa legislativa molt important que quedà inoperant.[30] Aquesta Cort interrompuda o inacabada ha deixat però documentació molt valuosa i per aquesta raó també està prevista la seva edició. De fet, la Cort general de 1626-1632 és una referència obligada en el camí de l'evolució institucional i socio-econòmica de la Catalunya del segle XVII en un moment clau per entendre i situar amb perspectiva la ruptura de 1640. Així, doncs, el nostre projecte integra els pocs folis de la Cort interrompuda de 1528 i la Cort general inconclusa de 1626/1632.

Finalment, tal com hem indicat més amunt, el nostre projecte considera molt valuosa la documentació parlamentària dels síndics que assisteixen a Cort general com a representants de ciutats i viles o dels capítols catedralicis. Així, l'edició contempla, la possibilitat d'aplegar per a cada Cort general documentació complementària vinculada però externa als processos de Cort com una aportació sovint fins i tot més rica o explícita que els mateixos processos familiars. Aquesta voluntat ja quedarà aviat reflectida amb la publicació d'un nou volum relatiu a la Cort de 1585 d'immediata sortida el qual aplega l'esborrany del procés familiar del braç reial d'aquesta Cort mes documentació parlamentària externa diversa, i ha quedat també reflectida en el volum de la Junta general de Braços de 1713 que integra la correspondència de l'ambaixador català a Londres Pau Ignasi de Dalmases i Ros i altra documentació vinculada a la Junta de Braços esmentada.

3. *Sobre el concepte d''original' entre la visió del dret, l'arxivística, la visió històrica i la crítica textual*

Segons Oriol Oleart quan apareixen els tres processos familiars, és a dir les actes dels tres estaments o braços els quals amb notaris propis participen en la Cort general, cal considerar procés familiar 'original' el manuscrit del braç eclesiàstic.[31] Però aquesta concepció és equívoca perquè no és possible prescindir dels coneixements històrics que tenim del procediment de la Cort ni tampoc de les aportacions de la crítica textual.

És cert que, en qualsevol circumstància, en els segles medievals i moderns, la jerarquia estamental feia de l'estament eclesiàstic el primer estament (això explica que la presidència de la Generalitat estigués dipositada en la persona extreta del braç eclesiàstic), el segon braç en jerarquia era el nobiliari i el tercer el reial, popular, municipal o dels comuns. Efectivament, la lectura dels processos familiars, ens permet observar que el procés de circulació dels debats, almenys en primera instància, comença pel braç eclesiàstic, segueix pel nobiliari i acaba en el reial. És a dir qui primer delibera és el braç eclesiàstic, li segueix el nobiliari i el darrer en la pauta de deliberació és el braç reial. Però aquest fet no ens permet sostraure'ns d'una qüestió més significativa i decisi-

va per un historiador i és que, encara que la proposició reial i la resposta o els documents inserits com les súpliques o les Constitucions finalment decretades, coincideixen o solen coincidir en tots tres processos familiars i encara que els tres braços debaten sobre les mateixes coses, ni els seus debats, ni les seves consideracions, ni les seves deliberacions són idèntiques. Cada procés familiar conté la nòmina de les persones, comuns o ens representats per cada braç i lògicament això és diferent en cada procés. Això vol dir que la consideració del procés familiar eclesiàstic com l'"original' no és convincent historiogràficament i ens ha inclinat per una visió més complexa del concepte d'"original'.

El procés familiar de cort de cada braç és així únic i 'original' tant com a fet històric com a text per si mateix. Però els problemes per l'editor no es clouen aquí, perquè pel que fa a algunes Corts ens ha pervingut més d'un manuscrit del procés de cada braç. D'ençà de 1552 una disposició de Corts (capítol 13 dels capítols del Redreç de 1552) obligava a fer còpies dels processos familiars, la qual cosa indica, la importància documental concedida als processos familiars i per tant el seu paper o funció de document de consulta i de fonamentació en cas d'al·legacions socials i polítiques.[32] Des de 1510, la legislació de Corts ja verifica la preocupació arxivística per la conservació de la documentació parlamentària. La lectura de suplicacions, declaracions o al·legacions de tota mena dels segles XVI i XVII, permet comprovar l'ús dels processos familiars en les argumentacions amb la indicació de vegades de folis concrets. Sense anar més lluny hi consten referències d'aquesta mena en l'edició de la *Pràctica* de Peguera i hom pot observar la coincidència entre els folis esmentats i la referència argumental.

Al Congrés *Les Corts a Catalunya* es presentà una valuosa comunicació on s'elaborava un catàleg dels processos i altra documentació de les Corts i Parlaments de Catalunya i on ja s'anunciava que discernir la condició d'original o còpia dels manuscrits comportava greus problemes. S'arribava a la conclusió que només es podia saber amb certesa que ens trobàvem davant d'una còpia quan així ho especificava el mateix document.[33]

Les dificultats d'establir l'"originalitat' del manuscrit de cada braç es veuen agreujades per la manca d'estudis concrets sobre el procés i sobre les fases de creació i redacció de la documentació de Corts. L'elaboració dels processos de Corts va experimentar variacions al llarg dels segles.[34] Aquestes variacions en l'estructura i natura dels processos, també han afectat la nostra decisió sobre els manuscrits en els quals calia basar-se per fer la transcripció. L'existència de més d'un manuscrit d'un procés familiar suposa haver de distingir entre original en el sentit comú de còpia o trasllat, cosa no sempre viable, doncs els processos no solen disposar, sempre, del requisit de la validació o autentificació formalitzada. Això ha fet que acceptéssim els trasllats quan ha

calgut o quan, en definitiva, res no ha permès distingir l'original d'un trasllat. Al costat de l'afer dels trasllats, encara existeix la possibilitat de localització dels esborranys. Aquests, si bé més complexos per a ferne una transcripció solen, en canvi, oferir detalls, gens menyspreables per a un historiador. En el cas de 1585, l'esborrany o minuta conservada del procés familiar del braç reial, per exemple, permet retenir expressions significatives poc formals que en l'"original' o trasllat consten en llatí o no hi consten i més precisió en la forma de votar i el nombre de vots de moltes deliberacions, que en l'"original' o trasllat podem trobar aprovades o no però que se'ns escatima la qualitat o el volum exacte de vots. En qualsevol cas una transcripció sigui d'una minuta o esborrany, d'un original o d'un trasllat, el que la transcripció no pot reproduir o visualitzar és la vivència d'uns manuscrits que pel seu caràcter dinàmic obliga al transcriptor a buscar maneres formals de retenir aquest caràcter: crides, documents inserits, notes marginals, escolis, espais, canvis de lletra i d'escrivà, etc.

4. *Aproximació sobre la noció d'un original en un exemple del segle XV*

Un exemple d'aquesta dificultat per editar l'hem trobat a l'hora d'identificar l'original del procés familiar general de la cort de 1480-1481. D'aquest document se'n conserven dos manuscrits: un a l'Arxiu de la Corona d'Aragó (ACA)[35] i un altre a l'Arxiu Històric de la Ciutat de Barcelona (AHCB)[36]. Fins ara el procés conservat a l'ACA havia estat considerat com l'original. Una millor comprensió del mètode que es seguia per confegir els processos i l'examen detallat dels dos manuscrits ens han dut a determinar que l'original segurament és el de l'AHCB. Tot i que cap dels dos exemplars s'identifica a sí mateix com a còpia, és inversemblant que l'original d'un procés familiar general fos guardat a l'Arxiu Reial. D'altra banda la perfecció i netedat del manuscrit – no conté ni un sol text interlineat i pràcticament cap ratllada –, i el fet de ser idèntics en contingut i distribució del text – només varien les anotacions marginals – ens duu a pensar que l'exemplar de l'Arxiu Reial podria ser una còpia en net del què es conserva a l'AHCB, que els braços haurien regalat al rei.[37]

Val a dir que, a finals de segle XV, els processos familiars de Corts encara no es presentaven dividits en tres volums, un per cadascun del estaments, sinó que constituïen un únic volum que agrupava les actuacions i deliberacions dels tres braços de Corts. Els braços, però, es reunien i deliberaven per separat. Això significa que els notaris i escrivans de cada braç havien de posar en comú les anotacions preses a les reunions dels braços respectius per tal d'elaborar un document final conjunt.

La transcripció de l'esborrany del procés del braç militar de la Cort de 1481[38] ens aportarà, sens dubte, més informació sobre com es redacta-

ven aquests processos parcials i, el que potser és més interessant, quines parts s'obviaven en fer la posada en comú. En una primera lectura ràpida ja podem avançar alguna de les característiques. Els escrivans del braç compareixien a les reunions equipats amb uns quaderns de paper d'uns 10 fulls de gruix aproximadament on anotarien el desenvolupament de les deliberacions del seu braç. Al primer full de cada quadern apuntaven un número correlatiu i sovint també les dates extremes que contenia: '*Cohern de la Cort comensant a XXVII de febrer any milCCCCLXXXI. Setè cohern. Est in processu*'.[39] Les anotacions, redactades de manera esquemàtica, es succeïen en lletra ràpida i molt més cursiva que la del procés comú, sense vírgules, plenes de paràgrafs ratllats i anotacions al marge. Sovint es limitaven a copiar l'encapçalament de les súpliques que es llegien a la reunió, deixant la còpia de la versió íntegra per a la redacció del procés comú. Altres vegades anotaven curosament al marge on podrien trobar el text íntegre dels documents que els mancaven, o que només tenien parcialment. Una mostra d'això és una de les notes que apareix al marge de l'esborrany tot indicant que la súplica consignada s'havia perdut però existia una còpia en mans dels procuradors fiscal i patrimonial dels reis.[40]

En confegir el procés familiar general, doncs, es reunia la informació continguda als processos de cada braç, es completava la documentació presentada a Corts, s'unificava l'estil de redacció i s'ometia la informació repetida. També es devia ometre la informació que afectava exclusivament al funcionament del braç i que, per tant, consideraven que no tenia cap transcendència en les deliberacions finals dels estaments. A l'esborrany del braç militar trobem descrita una elecció de representants efectuada per escollir els membres que havien d'integrar la comissió encarregada de discutir sobre el redreç de la mercaderia, de la justícia, de la moneda i de la Generalitat amb els altres braços.[41] El procés seguit per fer l'elecció, és clar, no va quedar consignat en el procés comú dels braços.

Un altre factor important a l'hora de decidir transcriure esborranys o còpies és que el seu contingut sigui complementari o completi l'original. Aquest és el cas del procés familiar general de les primeres Corts de Ferran II: l'original del procés comú dels braços acaba bruscament el 16 de març de 1481 – data en la qual el rei decretà la pròrroga de les Corts –, en canvi, l'esborrany del procés militar conté els apunts de les sessions fins el 29 d'octubre del 1481. En aquest cas és clar que la transcripció de l'esborrany ens permetrà intuir una part de la informació que ens manca en l'original. Emperò cal ser conscients de les limitacions de l'esborrany: només ens aportarà les deliberacions del braç militar, de manera esquemàtica, però sense haver estat objecte dels retocs i validacions finals que, com hem esmentat, comportava la seva posada en net.

5. *Experiències en el treball d'edició. El nostre model o proposta*

Les diferències i divergències estamentals foren la raó per la qual el nostre equip, en decidir transcriure els processos familiars dels segles moderns (etapa que gaudí dels tres processos familiars i que en alguns casos també conserva el procés del protonotari), s'inclinà per fer la transcripció completa dels tres processos més el del protonotari.[42] Aquest darrer, menys ric en el terreny de les deliberacions, té la significació de ser el procés del notari reial i conté singularitats importants pròpies, com la convocatòria i el llistat de les persones cridades en la convocatòria anterior i, en el cas de 1585, o millor dit en els casos de celebració de Cort pel conjunt de la corona catalano-aragonesa a Montsó, conté els assistents dels tres regnes de la convocatòria anterior, és a dir de la convocatòria dels tres regnes de Monstó de 1563-1564.[43]

Sabíem que en transcriure els tres processos assumíem transcriure, també, tota la documentació repetida però era l'única manera d'evitar l'edició mutilada dels braços considerats jurídicament no originals i, en canvi, permetre la visió global i completa del treball de cada braç així com poder demostrar la diferència entre un procés familiar i el procés del protonotari.

Pel que fa als criteris d'edició que varem triar, cal considerar el següent:

Tenint present el volum de text a editar, el període històric en el qual s'insereix i la necessitat de col·lacionar els testimonis coneguts de cada braç, varem decidir d'entrada desestimar la possibilitat de fer una edició diplomàtica o paleogràfica dels textos, tractament que té sentit per documents alt medievals, rars i conservats en còdexs únics. Ens varem decantar, en canvi, per fer una edició que podem considerar de crítica. Des del mateix moment en què es realitza una lectura d'un manuscrit es fa una interpretació. Aquesta consideració és important per a èpoques en les quals no hi havia normes ni per a l'accentuació ni per a la puntuació. Accentuar cognoms per exemple és tasca erudita que no sempre es resol amb certesa, però que cal emprendre.

L'edició dels textos antics a Catalunya, que ha estat encapçalada principalment per la col·lecció *Els Nostres Clàssics*, ha estat marcada per dues idees principals. Per una banda, per la voluntat de respectar, com a França i a diferència del model italià, escrupolosament la grafia dels originals; i per l'altra, la de revalidar i difondre la norma fabriana tot aplicant-la a textos de prestigi.

Tenint en consideració l'experiència acumulada per la tasca editora del país, així com també els seus bons resultats, hem procurat ser fidels a aquesta tradició. És a dir, hem respectat la morfologia dels manuscrits originals amb l'única excepció que hem normalitzat l'ús de la *u* per v amb valor consonàntic i hem aplicat les normes fabrianes. Tot plegat ha suposat desenvolupar totes les paraules abreujades que hem pogut, desfer

les aglutinacions i també ajuntar les paraules separades, normalitzar l'ús de majúscules i minúscules segons els criteris actuals, puntuar de bell nou el text, normalitzar l'accentuació i l'ús de la dièresi, fer servir l'apòstrof i el guionet en les formes aglutinades, fer servir el punt volat per aquelles elisions de lletres que no tenen representació en l'actual normativa, és a dir, aglutinacions de paraules amb pèrdua d'un element. Per altra banda, hem fet servir els triangles < > per a indicar les lletres o paraules afegides sense necessitat per l'escrivà, el claudàtor recte [ ] per inserir les parts oblidades o de difícil lectura i el mateix claudàtor recte amb tres punts [...] per indicar els fragments il·legibles del text.

En l'aparell de notes, la nostra intenció ha estat la d'intentar reflectir els trets morfològics que poden indicar dificultats o dubtes rellevants i significatius: escrits en els interlineats, els marges i ratlladures.

Amb tot, no hem tingut en compte, els canvis de lletra. Això és més important en el cas dels esborranys. No ho és tant en el cas dels 'originals' o trasllats en que sol treballar un sol escrivà. Amb tot, també entre les dues còpies existents pel que fa al procés familiar del braç reial de 1585 hauria estat interessant situar algunes diferències entre segurament un escrivà de català oriental i un escrivà de català occidental, però les nostres possibilitats no ens van permetre filar tan prim.

6. *La indexació de la informació continguda als processos de la Cort general*

En definitiva, amb l'edició dels processos de la Cort general no es pretén sinó facilitar la consulta, per part dels investigadors i els altres ciutadans interessats, d'una part fonamental de la memòria de la institució cabdal del sistema polític català anterior a l'ocupació borbònica. Creiem que facilitar la consulta d'aquests materials no consisteix només a multiplicar-ne els exemplars i normalitzar-ne la transcripció, adoptant una forma més actualitzada. Sens dubte, presentar als lectors alguna forma d'indexació de la informació continguda, és un pas fonamental en aquest intent d'apropar-los la documentació. Per aquest motiu hem aplicat al text original dels processos, en concret al relatiu als processos de la Cort general de 1585, un sistema d'indexació molt ric, amb la missió de sintetitzar i representar el contingut dels documents de la forma que considerem més útil.

D'acord amb les tècniques pròpies de la indexació hem procedit en primer lloc a la identificació i selecció dels conceptes principals, extrets dels processos mitjançant una anàlisi on s'ha tingut en compte, en el seu cas, l'emissor i el receptor, però sobretot el procediment, l'afer i el context de cada part dels processos de la Cort general.[44] Posteriorment, hem seleccionat els termes definitius capaços d'expressar els conceptes triats. Atesa la naturalesa de molts d'aquests conceptes, on el caràcter tècnic i legislatiu és determinant, hem optat habitualment per repre-

sentar els continguts respectant els termes originals expressats a la documentació; només quan s'ha fet imprescindible hem optat per emprar termes propis més representatius. Pensem que la forma original que contenen els processos com a document de dret històric és, en la majoria dels conceptes, un valor molt important en el seu tractament i que la seva adaptació a una terminologia actualitzada podria dificultar, més que no pas facilitar, la recerca per part dels lectors. Semblant elecció ens ha portat, doncs, a la utilització d'un llenguatge d'indexació de tipus lliure, en el que la informació ha estat llistada i ordenada alfabèticament per procediments intel·lectuals manuals no automàtics, evitant un excés de soroll amb l'extracció d'un nombre excessiu de conceptes no pertinents i la posterior necessitat d'homogeneïtzació.

Atesa la riquesa dels continguts de la documentació sobre la Cort general, hem optat per incloure sovint conceptes subordinats i dependents d'un altre de principal, arribant a la estructuració de fins a tres nivells dins una mateixa veu. En els conceptes compostos de diversos termes hem triat aquell més significatiu, al qual resta subordinat el conjunt de la construcció, tot assenyalant la seva posició concreta en fer referència a la resta dels elements que la complementen sintàcticament. En la tria de les veus de matèries hem atorgat preeminència a les institucions de dret públic i privat, així com als conceptes fonamentals de naturalesa jurídica, atès el fort component polític o directament legislatiu de bona part dels textos que integren els processos de Cort. Hem mirat d'organitzar de la manera més exhaustiva possible totes les referències relatives a les estructures i el funcionament de la mateixa Cort general, sense oblidar, però, tota la resta de conceptes imbricats en la seva celebració que abasten, de fet, la pràctica totalitat dels elements econòmics, socials i polítics regulats pel dret en una comunitat constitucional regida per l'imperi de la llei com és la Catalunya moderna. La indexació recull totes les referències del text a la legislació de Cort i a totes les disposicions en general vigents o derogades, fet que permet l'anàlisi al detall de quines són les fonts de dret que es tenen presents en la discussió entre els diferents actors del procés legislatiu. A més, es fa referència a la legislació en tots els seus diferents estadis d'elaboració i instàncies de deliberació, fet que permet resseguir el seu procés de proposta, debat i aprovació de forma molt prolixa.

El treball manual d'indexació s'ha dut a terme separadament en la definició de tres tipus de veus: temàtiques, onomàstiques i toponímiques. La presentació material dels llistats alfabètics de totes tres, però, es realitza conjuntament en un sol índex, a fi de donar major agilitat a les consultes; aquest fet, però, no impedeix la identificació de la procedència de cadascun dels conceptes mitjançant la presentació de les veus onomàstiques amb l'ús inicial de versaletes, les veus toponímiques en cursiva i les entrades de matèries mitjançant la lletra rodona conven-

cional. A continuació de cadascuna de les veus seleccionades apareixen ordenades totes les referències relatives als continguts del conjunt de la documentació editada procedent de cada Cort general, tant els processos de cada braç i del protonotari com altra de complementària de molt diversa procedència. Les referències apareixen agrupades per a cada veu i per a cada volum editat. Quan fan relació a les parts dels processos comunes als diferents braços i el protonotari (com ara els greuges generals i particulars o la legislació general i específica per a la Diputació del General) han estat marcades les mencions reiteratives entre claudàtors, a fi de deixar-hi constància i alhora d'evitar-les al lector que ho desitgi.

En la representació de les veus onomàstiques hem adoptat un criteri d'homogeneïtzació de noms i cognoms d'acord amb la forma comunament acceptada, fet imprescindible amb el propòsit d'evitar la dispersió de la informació. A fi de situar el lector, sempre que ha estat possible, a partir de la informació que proporciona la mateixa documentació indexada, assenyalem la procedència, rang, dignitat o ocupació del personatge a qui es fa referència, així com el càrrec, ofici o delegació que ostenta durant la celebració de la Cort general la documentació de la qual es objecte d'edició, o bé en convocatòries anteriors a les quals es fa referència. Pel que fa a les veus toponímiques, optem també per l'homogeneïtzació de les diverses formes en què apareix en una de comuna i autoritzada actualment. Els noms de lloc dels Països Catalans apareixen relacionats, quan no en són, amb el municipi i la comarca a la qual pertanyen actualment, amb l'única excepció dels accidents geogràfics; els forans, en canvi, amb el país del qual formaven part històricament en la data a la qual pertany la documentació indexada. Les veus toponímiques inclouen, així mateix, les referències a espais, institucions i oficis propis del lloc, amb el qual mantenen un lligam que convé respectar per la seva significació. Així mateix, remeten també a les veus onomàstiques amb fort lligam (normalment per via de representació) amb la població a la qual es fa referència.

Pensem que l'aplicació de tots aquests principis i procediments d'indexació al text original permet una recuperació de la informació capaç de satisfer una part fonamental de les necessitats de qui s'apropa als processos de Cort i a la seva documentació complementària. Tot i que exigeix un notable esforç suplementari al de la transcripció del text original, confereix a la publicació un valor informatiu molt més eficient, ampliant notablement el cercle dels qui en poden fer un ús plenament satisfactori. És precisament aquesta voluntat d'extensió de la seva difusió, (a més, entre d'altres, del d'assegurar la conservació de la informació que contenen en un futur més durador que el del seu propi suport original) el principal objectiu de l'edició d'aquests materials, que valorem com un patrimoni de tota la nostra comunitat nacional.

Notes

[1] A alguns primers estudis d'anàlisi monogràfic d'aquests processos del segle XVI, esperonats pel professor E. Belenguer (M. C. Costa, *Las Cortes de 1585 a través del Brazo Militar de Cataluña*, Tesi de llicenciatura, Universitat Autònoma de Barcelona, 1975; o M. J. Qui Fontanals, *Las Cortes catalanas de Felipe III. Barcelona, 1599*, Universitat Autònoma de Barcelona, 1978) ha seguit l'esforç d'edició dels volums corresponents a l'edat moderna pel grup autor d'aquesta comunicació.

[2] Per a la documentació sobre Catalunya, R. Conde, A. Hernández, J. Riera i M. Rovira, 'Fonts per a l'estudi de les Corts i els Parlaments. Catàleg dels processos de Corts i Parlaments', a *Les Corts a Catalunya. Actes del Congrés d'Història Institucional* (Barcelona, 1991), pp. 25-61. Vegeu també una presentació general de les fonts a l'abast per al cas aragonès al segle XVI, a L. Blanco, *La actuación parlamentaria de Aragón en el siglo XVI. Estructura y funcionamiento de las Cortes aragonesas* (Saragossa, 1996), pp. 17-26. També E. Serra i Puig, 'Buttletí bibliogràfic sobre les Corts catalanes', a *Arxiu de Textos Catalans Antics* 26 (Barcellona, 2007) pp. 663-738, on hi consta també informació del conjunt de la corona catalano-aragonesa.

[3] Per al cas del País Valencià durant la segona meitat del Cinc-cents ens hem d'acontentar amb l'estudi dels furs editats per E. Císcar, *Las Cortes valencianas de Felipe III* (València, 1973), p. 211, i E. Salvador, *Cortes valencianas del reinado de Felipe II* (València, 1974), p. 179. Per a Catalunya, vegeu M. Bajet, 'Les estampacions de quaderns de Constitucions i altres actes de Cort (notes per al seu estudi)', a J. Sobrequés, J. Agirreazkuenaga, M. Morales, M. Urquijo i M. Cisneros (coord), *Actes del 53è Congrés de la Comissió Internacional per a l'Estudi de la Història de les Institucions Representatives i Parlamentàries* (Barcelona, 2005), vol. I, pp. 554-567. Aquest treball completa el treball clàssic de G. M. de Brocà, *Taula de les stampacions de les Constitucions y altres drets de Catalunya, y de les Costumes y Ordinacions de sos diverses paratges* (Barcelona, 1907), p. 25-51.

[4] Sobre la importància clau dels notaris a la Cort, vegeu els treballs d'O. Oleart, 'Els notaris dels braços de la Cort General de Catalunya al segle XVI', a *Estudis sobre història de la institució notarial a Catalunya en honor a Raimon Noguera* (Barcelona, 1988), pp. 185-209; J. M. Bringué, P. Gifre, G. Marí, M. Pérez Latre i J. Pons, 'Els quatre processos catalans de la Cort de Montsó de 1585. Un avanç d'estudi comparatiu', *Ius Fugit*, 10-11 (Saragossa, 2003), pp. 774-778; i J. Buyreu, 'Els notaris dels braços i les seves activitats durant les Corts de mitjan segle XVI (1542-1564)', a *Estudis històrics i documents dels arxius de protocols*, XXII (Barcelona, 2004), pp. 57-75.

[5] E. Serra, 'La vida parlamentària a la Corona d'Aragó: segles XVI i XVII. Una aproximació comparativa', a *Actes del 53è Congrés de la Comissió*, vol I, pp. 501-504. Hi trobareu les referències bàsiques relatives a les obres de cerimonial i pràctica de Cort general als diferents regnes de la Corona d'Aragó moderna.

[6] En el cas valencià, la manca dels processos de Cort moderns ha portat a una perspectiva més municipalista: vegeu, per exemple, el treball de V. Graullera, 'La representación del brazo real de Valencia. 1585: Cortes Generales en Monzón', a *Actes del 53è Congrés de la Comissió,* vol. I, pp. 627-644. Pel que fa a l'estudi de les fonts medievals, cal destacar: M. R. Muñoz i M. J. Carbonell, 'Las Cortes valencianas medievales: aproximación a la historiografía y fuentes para su estudio', a *Les Corts a Catalunya*, pp. 270-281. Sobre les fonts medievals aragoneses, vegeu, a la mateixa obra, l'estudi d'E. Sarasa, 'Las Cortes de Aragón en la edad media. Estado de la cuestión y planteamiento general' (pp. 296-303).

[7] L'aprofitament d'aquestes fonts traspua en diversos treballs de caire general sobre la política catalana del Cinc-cents on l'estudi de la Cort general ocupa un lloc central, com ara el de J. L. Palos, *Catalunya a l'imperi dels Àustria. La pràctica de govern. Segles XVI i XVII* (Lleida, 1994), pp. 218-323; À. Casals, *L'Emperador i els catalans. Catalunya a l'Imperi de Carles V. 1516-1543* (Granollers, 2000), p. 512; M. Pérez Latre, *Entre el rei i la terra. El poder polític a Catalunya al segle XVI* (Vic, 2004), pp. 149-180

i 246-258; o J. Buyreu, *Institucions i conflictes a la Catalunya moderna. Entre el greuge i la pragmàtica. 1542-1564* (Barcelona, 2005), pp. 71-167; així com en treballs específics sobre la participació de les institucions locals a la Cort, com demostren el treball de J. Giménez Blasco, 'Les Corts catalanes dels segles XVII i XVIII des d'una perspectiva local', a *Les Corts a Catalunya*, pp. 256-260, o els monogràfics de M. González sobre Barcelona, 'Barcelona i la vint-i-quatrena de Corts a les Corts de Montsó de 1585', a *Tercer Congrés d'Història Moderna de Catalunya*, a *Pedralbes. Revista d'història moderna*, 13-I (Barcelona, 1993), p p. 299-307, d'E. Serra sobre la capital dels Comtats, 'Perpinyà, una vila a Corts catalanes (Montsó 1585)', a *Afers. Fulls de recerca i pensament*, 28 (Catarroja, 1997), pp. 573-626 o el de J. Capdeferro sobre Girona, 'La participació de Girona a la Cort general de Catalunya de 1599' a *XVII Congrés d'Història de la Corona d'Aragó. El món urbà a la Corona d'Aragó del 1137 als decrets de Nova Planta* (Barcelona, 2003), vol. III, pp. 109-132.

[8] Només a tall de mostra, per al cas de Tortosa, vegeu J. Massip, 'La documentació de Corts a l'Arxiu Històric de Tortosa', a *Les Corts a Catalunya*, pp. 111-122.

[9] Seria el cas de 'Diari de Frederic Despalau (1572-1600)', dins A. Simon i Tarrés, *Cavallers i ciutadans a la Catalunya del cinc-cents* (Barcelona, 1991), pp. 89-177 o de les informacions del *Dietari de Jeroni Pujades (1568-1635)*, edició a cura de J. M. Casas Homs (Barcelona, 1975-1976), o el cas de les memòries de Perot de Vilanova, A. Simon, *Flix i la Catalunya del cinc-cents segons les memòries de Perot de Vilanova* (Tarragona, 2006).

[10] Per a la convocatòria de 1585, sens dubte, el més ric i conegut és el d'H. Cock, *Relación del viaje hecho por Felipe II, a Zaragoza, Barcelona y Valencia* (Madrid, 1876), pp. 8-173. En el tractament d'aquestes fons, mereix especial atenció l'obra de X. Gil, sobretot el seu estudi de la correspondència particular de J. de Monte Pichardo, deute del duc de Sessa, a 'A noticia de todos: las Cortes generales de la Corona de Aragón de 1585 a través de las fuentes externas', a *Congreso Internacional Felipe II y el Mediterráneo* (Madrid, 1999), vol. IV, pp. 213-230.

[11] Vegeu S. Fernández Conti, 'La corte itinerante (1580-1585): camino de una nueva forma de gobierno', a *Los Consejos de Estado y Guerra de la Monarquía hispana en tiempos de Felipe II, 1548-1598* (Valladolid, 1998), pp. 186-205, on es destaca la perspectiva de la Cort general des del punt de vista dels ministres reials.

[12] Pel que fa a observar una Cort general des de la perspectiva del monarca i els seus oficials i el paper d'aquests en la defensa de la causa reial vegeu Jon Arrieta, 'El Consejo de Aragón y las cortes catalanas', a *Les Corts a Catalunya*, pp. 145-255.

[13] Cal indicar que a la tasca de l'Academia de la Història de Madrid (RAHM) cal afegir-hi la de la CODOIN de l'Arxiu de la Corona d'Aragó (ACA) i el fet-que actualment J. M. Sans Travé, director de l'Arxiu Nacional de Catalunya i membre del Comitè de Textos Jurídics Catalans, està portant a terme la tasca d'edició de les Corts medievals catalanes que van quedar fora del projecte de la RAHM per raons de mancances arxivístiques. Aquestes eren de tal naturalesa que, en els anys de la tasca de l'Academia, aquesta va anar incorporant gradualment en els seus volums la documentació parlamentària que s'anava trobant, sovint al marge de la cronologia, i això fa que hi hagi documentació de les Corts medievals dispensa en el llarg dels diversos volums editats. Això, ha obligat a l'ACA a oferir un plec mecanografiat d'aquesta documentació editada dispersa indicant-ne la seva localitzció dins dels 27 volums de l'edició de l'Academia.

[14] *Cort General de Montsó (1585) Montsó-Binèfar. Procés Familiar del Braç Reial*, a cura de J. M. Bringué i Portella, P. Gifre i Ribas, G. Marí i Brull, M. Pérez Latre, J. Pons Alzina, coordinació i introducció per E. Serra i Puig (Textos Jurídics Catalans, 18. Lleis i Costums II/5, Barcelona, Generalitat de Catalunya, Departament de Justícia, 2001). *Cort General de Montsó (1585) Montsó-Binèfar. Procés Familiar del Braç Eclesiàstic*, a cura ibidem i coordinació ibidem. Introducció de J. M. Bringué i Portella (Textos Jurídics Catalans, 21. Lleis i Costums II/8. Barcelona, Generalitat de Catalunya, Departament de Justícia i Interior, 2003). *Cort general de Montsó (1585). Montsó-Binèfar. Procés del Protonotari*, a cura d'ibidem coordinació ibidem. Introducció de M. Pé-

rez Latre (Textos Jurídics Catalans, 19. Lleis i Costums II/6. Barcelona, Generalitat de Catalunya, Departament de Justícia, 2001). *Cort General de Montsó (1585). Montsó-Binèfar. Procés familiar del braç militar*, a cura d'ibidem, coordinació ibidem. Introducció de P. Gifre i Ribas (Textos Jurídics Catalans, 20. Lleis i Costums II/7. Barcelona, Generalitat de Catalunya, Departament de Justícia i interior, 2003).

[15] Això ja s'insinuava a E. Serra, 'Constitucions i redreç: Corts de Montsó-Barcelona (1563-1564) i Corts de Montsó 1585', dins *Felip II y el Mediterraneo* (Madrid, 1999), Vol. IV, pp. 159-189, on, per exemple ja es feia referència, entre d'altres coses, a la voluntat de les oligarquies urbanes de controlar les confraries laborals (p. 172), de la qual cosa n'ha parlat darrerament sobretot L. R. Corteguera.

[16] M. Pérez Latre, *Entre el rei i la terra. El poder polític a Catalunya al segle XVI* (Vic, 2004); L. R. Corteguera, *Per al bé comú. La política popular a Barcelona, 1580-1640* (Vic, 2005) [edició original anglesa: *For the common good. Popular politics in Barcelona, 1580-1640*, Cornell University Press, 2002]; i J. Buyreu, *Institucions i conflictes a la Catalunya moderna. Entre el greuge i la pragmàtica. 1542-1564* (Barcelona, 2005).

[17] La terminologia genuïna catalana és Cort General en singular. V. Ferro, *El dret públic català. Les institucions a Catalunya fins al decret de Nova Planta* (Vic, 1987), pp. 188-189.

[18] L. de Peguera, *Pràctica, forma y estil de celebrar Corts Generals en Cathalunya y matèrias incidents en aquellas* (Madrid, 1998) [edició facsímil de l'estampació de 1701], p. 2.

[19] De Peguera, *Pràctica*, pp. 93-96

[20] Conde (*et al.*), 'Fonts per a l'estudi de les Corts', pp. 25-61

[21] F. Sánchez Marcos, 'El Parlamento General de Cataluña de 1653', *Mayurqa*, núm. 6 (1976), pp. 115-136. Ibidem, *Cataluña y el gobierno central tras la Guerra de los Segadores. 1652-1679* (Barcelona, 1983), pp. 70-78. Ibidem, 'El Parlamento de Cataluña de 1653', dins *Les Corts a Catalunya*, pp. 182-189.

[22] La documentació que fa referència a aquest Parlament està recollida a *Levantamiento y guerra de Cataluña en tiempo de Juan II: documentos relativos a aquellos sucesos* (Barcelona, 1859), Colección de documentos inéditos del Archivo de la Corona de Aragón, vols. 14-19.

[23] L'actuació d'aquest Parlament General d'autoconvocatòria nacional sense rei està actualment sent objecte d'investigació per la historiadora Imma Muxella.

[24] *Les Corts Generals de Pau Claris. Dietari o Procés de Corts de la Junta General de Braços celebrada al Palau de la Generalitat de Catalunya del 16 de setembre del 1640 a mitjan març del 1641*. Edició del text, introducció i notes pel P. B. de Rubí. Pròleg del P. R. Vidal (Barcelona, 1976).

[25] Ibidem, p. 61 nota 23.

[26] B. de Rubí dóna notícia de l'existència de diversos manuscrits de l'època d'aquest protocol o procés de braços a més d'un manuscrit d'inicis del segle XX. Pensa, fins i tot, que en pogueren existir tres, un per cada braç. Un dels manuscrits de l'època, dipositat a l'Arxiu municipal de Barcelona, va quedar extraviat fins el 1994, quan fou retrobat i adquirit pel Departament de Cultura de la Generalitat de Catalunya i destinat a l'Arxiu Nacional de Catalunya. L'autoria del text segueix sent discutida. Sobre aquest procés vegeu: *Les Corts Generals,* pp. 61-76. R. Vidal i Pinell, 'La Junta de 1640' dins *Les Corts a Catalunya*, pp. 173-181. R. Planes i Albets, 'Retrobament i adquisició d'un document cabdal extraviat: el dietari de les Corts Generals de Pau Claris de l'any 1640', *Arxius. Butlletí del Servei d'Arxius*, núm. 3 (setembre, 1994) pp. 5-6. Pel que fa als Dietaris de la Generalitat, vegeu *Dietaris de la Generalitat de Catalunya*, volum V anys 1623-1644 (Barcelona, 1999).

[27] E. Martí, *la Conferència dels Tres Comuns (1697-1714). Una Institució decisiva en la política catalana* (Barcelona-Lleida, 2008). Els tres comuns estaven formats per la representació de la Diputació del General, el Consell de Cent i el braç militar. Aquest darrer era un gremi interestamental de notables o patricis, reorganitzats en 1602 en un anomenat Braç Militar format per classes socials noves emergents i amb influència

política cada vegada més gran. Segons Eduard Martí el dinamisme d'aquest autoanomenat braç militar, amb fortes connexions amb el Consell de Cent de Barcelona, atorgà a la Conferència uns trets polítics d'una gran modernitat: igualtat entre comuns, tendència a la representació per escrutini, vot particular, capacitat d'unificació de decisions i autoritat. El nou consistori, legalitzat en la Cort general de l'arxiduc de 1705-1706, però d'existència reconeguda des de 1697, tingué un paper determinant en la política catalana durant la Guerra de Successió i decidia la convocatòria de la Junta General de Braços per tal d'implicar el màxim de voluntats en la defensa de les Constitucions de Catalunya en ple setge de Barcelona.

[28] *La Junta General de Braços de 1713. L'ambaixada Dalmases i altra documentació (1713-1714)* a cura de J. M. Bringué i Portella, P. Gifre i Ribas, M. Güell i Junkert, G. Marí i Brull, I. Muxella i Prat, M. Pérez Latre i J. Pons i Alzina. Coordinació E. Serra i Puig. Introducció de J. Pons i Alzina (Barcelona, 2008).

[29] E. Serra, *Les Corts catalanes, una bona font d'informació històrica. Discurs de recepció IEC 27-XI-2003* (Barcelona, 2003), p. 14 nota 32.

[30] Algunes observacions sobre la qualitat d'aquesta Cort general es poden trobar a E. Serra, ' El món urbà en l'espai històric català. Incidència territorial i legislativa' dins *Ciutats, viles i pobles a la xarxa urbana de la Catalunya moderna* (Barcelona, 2005), pp. 41-140.

[31] O. Oleart, 'Els notaris dels braços de la Cort General de Catalunya al segle XVI' dins *Estudis sobre història de la institució notarial a Catalunya en honor de Raimon Noguera* (Barcelona, 1988), pp. 185-209.

[32] Oleart, 'Els notaris' i E. Serra, 'Constitucions i Redreç: Corts de Montsó-Barcelona (1563-64) i Corts de Montsó (1585)' dins *Felip II y el Mediterráneo*, (Barcelona, 1999), vol. 4, pp. 159-190.

[32] Conde (et al.) 'Fonts per a l'estudi de les Corts', p. 27

[34] A. Hernández Calleja 'Tipologia de los procesos de Cortes', dins *Les Corts a Catalunya*, pp. 62-70

[35] Arxiu de la Corona d'Aragó (ACA). Processos de Cort. N. 39.

[36] Arxiu Històric de la Ciutat de Barcelona (AHCB). Consell de Cent. XVI-54.

[37] El procediment d'esborrany o minuta suggereixen, evidentment la praxis de la notaria. Agraïm a Jaume Riera, arxiver de l'Arxiu de la Corona d'Aragó, les seves reflexions sobre aquests aspectes.

[38] ACA. Generalitat. N-993. 2a numeració.

[39] ACA. Generalitat. N-993. 2a numeració, f. 65r.

[40] ACA. Generalitat. N-993. 2a numeració, f. 89r.

[41] ACA. Generalitat. N-993. 2a numeració, f. 62v.

[42] E. Serra, 'Introducció', dins *Procés familiar del braç reial*, pp. V-VIII.

[43] M. Pérez Latre, 'Introducció', dins *Procés del protonotari.*

[44] G. Van Slype, *Les langages d'indexation: conception, construction et utilisation dans les systèmes documentaires* (Paris, 1986), p. 277. Vegeu també R. Martín Suquía, 'Sistemas de recuperación de la información en los archivos: un anàlisis de situación y perspectivas', a *Lligall. Revista de l'Associació d'Arxivers de Catalunya*, 17 (2001), pp. 47-72.

María Rosa Muñoz Pomer, Óscar Perea Rodríguez,
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Valencian Parliamentary Documents on the Internet[1]

The purpose of this paper is to submit a project proposal regarding the publication of the Valencian Parliamentary papers in which we want to achieve three main goals: to digitize and transcribe the parliamentary sessions for later publication on the web, which will facilitate access to these texts for both the public and the scientific community; to integrate these documents into a virtual library of Parliamentary History in order to aid comparative research on the topic throughout Europe; and to foster the study of the activities of key political and economic interests, which fixed the power relations between the Aragonese monarchy and the estates of the Kingdom of Valencia (clergy, nobility, and cities).

1. *Our working group*

In 2007, professor Muñoz Pomer was invited to be the keynote speaker at the International Seminar entitled *Courts and Parliaments in the Crown of Aragon*, which was held in Zaragoza. During this talk she presented the results of her research regarding the medieval Valencian parliaments, and she also described all the unsuccessful attempts at the publication of their minutes and official records during the last two centuries. She also pointed out the need to re-implement the project, utilizing all of the possibilities offered by 21st century technology.[2] Muñoz Pomer was aware that overcoming this difficulty would require the collaboration of a team of specialists, primarily focused on the Middle Ages, but also with a strong knowledge of the project for publication of the various texts as well as of the archives in which they are conserved. An attempt was made to take up and redefine with these specialists the publication proposal that she first launched at the start of the 1990's at the First International Conference: *Historia a debate*,[3] within the framework of an interdepartamental project at the University of Valencia and subsidized by the Spanish Ministry of Education and Science.[4]

This newly designed project, which will include work accomplished in previous stages as well as the collaboration of many professors and graduate students at the University of Valencia, is being developed

by María Rosa Muñoz Pomer, Óscar Perea Rodríguez, María José Badenas Población, José Antonio Alabau Calle, and Raquel Madrid Souto, an expert group given the task of fixing and standardizing the guidelines.

Óscar Perea Rodríguez has been lately appointed as Assistant Professor at the University of Texas at Odessa campus. He is a specialist in the publication and edition of medieval texts. Notable among his works related to textual criticism is the publication of and research in both *Libro de los pensamientos variables* and *Crónica de Aragón*, by Marineo Sículo, as well as his current editing project of the *Cancionero del Conde Haro*. He is also assistant editor of the research project PHILOBIBLON-BETA *(Bibliografía Española de Textos Antiguos)*, directed by professor Charles B. Faulhaber at the University of California at Berkeley and funded by the National Endowment for Humanities of the United States.

María José Badenas Población obtained her appointment as an archivist from the Ministry of Culture's competitive examination. She graduated in Library Management and Documentation, and she is a specialist in Archival Science, Paleography, and Medieval Latin. She completed her education taking courses which dealt specifically with medieval political and legal institutions, as well as manuscripts from the same time period.

José Antonio Alabau Calle is a teacher of secondary education and the author of various works about Medieval Parliaments, including an important contribution to the 53rd Conference of the ICHRPI held in Barcelona, and his collaboration on the monographic number concerning the Parliaments carried out in 2004 by the *Anuario de estudios medievales*.[5]

Raquel Madrid Souto has focused her research work on the Valencian Parliaments and has also contributed to the aforementioned monographic on Parliaments published by the *Consejo Superior de Investigaciones Científicas* in 2004. Other noteworthy work connected to the Parliaments is her contribution to the special volume of the University of California-Santa Bárbara's online magazine, *eHumanista*.[6]

2. *Our point of departure*

In spite of the fact that no attempt at the publication of a project regarding the Valencian Parliamentary papers has been successful, the study of these texts has a long historiographic tradition that dates back to the 16th and 17th centuries, with contributions to the field made by P. Belluga, C. Crespí de Valldaura, and L. Matheu y Sanz.[7]

The loss of the *foral* (i.e., local law) legal tradition after the Bor-

bonic victory during the War of Spanish Succession, as well as the enactment of the *Nueva Planta* Decrees in 1707, created a gap in this type of research that would not be filled until the 19th century with the development of the Romantic-Liberal historiography. This particular mold is quite evident in the works of B. Ribelles, A. de Capmany, and F. X. Borrull, who examined the ancient Valencian local governments' legislative capabilities and the importance of their local laws *(fueros)*.[8] It was at the end of the 19th century, after initiating the publication of the Parliament records of the Kingdoms of Castile and León, when the *Real Academia de la Historia* undertook the publication of the Parliament records of the Crown of Aragon entitled *Cortes de los antiguos reinos de Aragón y de Valencia y Principado de Cataluña.*[9] The enormous task started by the Real Academia only partially bore fruit, as twenty seven volumes were published concerning only the Catalan Parliaments, with no reference to the Aragonese and Valencian records.

It was necessary to wait until the restoration of democracy in Spain and the re-emergence of the autonomous regions before there was a renewed interest in Parliamentary studies and texts. Thus, the origin of our working team, as previously mentioned, was formed during these very early years, a period in which professor Muñoz Pomer was directing a multi-disciplinary research project entitled *Las Cortes Valencianas*, whose objectives were to locate, catalogue and then copy to microfilm texts produced by the Valencian Parliaments during the *foral* era, and to create a research center to facilitate scholarly access to the original materials, which had been in several archives. Some of the proposed aims have already met with success, as a major part of the texts associated with the Valencian Parliaments dispersed to diverse archives (both local and national) and to libraries (Biblioteca Nacional, Biblioteca Histórica de la Universitat de València, and many others) have been put on microfilm, and the Research Center design has been completed.[10]

At the end of the 1990's, Remedios Ferrero, Professor of the History of Law, directed various projects associated with the Parliaments and funded by the *Generalitat Valenciana* and the Spanish Ministry of Science and Technology. These projects expanded the field of research, involving other institutions (*Generalitat* and Municipalities), as well as the study of the core issues at hand. These goals were adopted especially by new researchers whose focus was primarily on the Parliaments of the Modern Era (16th and 17th centuries).[11] During this second stage of development, previously established working relationships were continued with various research teams, and especially with the Sardinian team, who clearly influenced our project in its initial stages.[12] Their researchers, with the support of the Con-

siglio Regionale della Sardegna, had resolutely worked on the publication of the Sardinian minutes in the mid-1980's.[13] This collaboration was fomented by the organization of various scientific meetings which were attended by researchers from diverse fields: *Gli statuti del Regno di Valenza e del Regno di Sardegna in età medioevale e moderna* (held at Cagliari in 1999); *Autonomía Municipal en el Món Mediterrani: història i perspectiva* (Valencia, 2000);[14] and *El municipi al món mediterrani. Entitats locals i assemblees representatives* (Valencia, 2002).

Within the framework of these projects and of those that are being done in other areas, especially in Sardinia, Catalonia, Aragon, and the Basque Country, professor Muñoz Pomer reconsidered (towards the end of the 1990's) the need to take up again the publication of this project, opting for the use of all the tools afforded by the new technologies at our disposal, primarily CD-ROM.[15] This medium would offer not only the digitization of the original minutes but also of the transcriptions and all other materials related to them (e.g., maps and photographs). In addition, it will help to preserve the originals, reduce costs, and facilitate easy access to the materials.

Despite these successive proposals and reassessments, as well as the efforts of these distinct groups and their members, this publication has not materialized. The importance of the Parliamentary documents, the works already finished or in progress in other regions (England,[16] Scotland,[17] Sardinia,[18] Portugal,[19] Catalonia,[20] Aragon,[21] Basque Country[22]), the possibility of easily processing these texts due to new technologies, and the ability to communicate and exchange ideas through the Internet, will enable us to continue utilising all these methods in this new stage of our project while counting on the decisive support of the current Valencian Parliament, which is especially interested in this topic so intimately connected to its own history as an institution.[23]

3. *Our project plan*

Documents generated by Parliamentary Assemblies are diverse and plentiful but we can clasify them in three types. First, direct sources, which are the papers created by the Assemblies, called Minutes.[24] Within these documents, we frequently find a list of attendees and the agreements developed / reached in the meetings. Second, sources that belong to the Assembly but are usually kept separate, such as notification letters, legislation, offenses, donations, etc. Finally, indirect sources, which include all bureaucratic documentation created by the assembly (petitions to the king for convening Parliament, trustee appointments or *procuraciones*, negotiations between the different estates, expenses caused by meetings, wages, donation

distribution and payment, etc.). Likewise in other planned publications of Parliamentary sources (Portugal, Sardinia, Aragon, or Catalonia), we have decided to focus our aim on the publication of Parliamentary direct sources, leaving indirect documentation for the future, and use additional sources in those cases where the direct source, because of the fault of the scribes or the deterioration of paper, contains gaps.

Every Parliamentary meeting, at least from the beginning of the 15th century, has four minutes. One written by the Protonotary at the General Sessions, and three made by each scribe of each branch (called *brazos* in Spanish), where the particular notes of each estate (nobility, clergy, and citizens) attending the session were recorded. Originals or copies of these minutes are not always preserved and usually they are scattered among different archives (Crown of Aragon, Kingdom of Valencia, and Municipality of Valencia) and Spanish libraries (Biblioteca Nacional, Biblioteca de la Real Academia de la Historia). This documentation, as we have mentioned above, was found and microfilmed by the *Grup de Corts de la Universitat de Valencia*, as part of the project *Las Cortes Valencianas*. The chronology and minutes of the publication (sometimes only one per session has been preserved) were addressed in the paper that professor Muñoz Pomer presented at the previous conference of the aforementioned group, which was held in Edinburgh and published in the *Parliaments, Estates and Representations* series.[25]

Avoiding further perambulation, it is time now to explain briefly our plan. It covers the period between the foundation of the Kingdom of Valencia by King Jaime I in 1238 and the death of King Ferdinand the Catholic in 1516. During these three centuries, the Valencian estates took part in at least sixty one meetings (general Parliaments of the Crown, or kingdom Parliaments); and of these specific cases, we preserve minutes from only twenty-seven assemblies. As professor Muñoz Pomer pointed out at the Conference held on the 8th centenary of Jaime I's birth, the first Parliament was convened by this king in 1271,[26] but minutes are limited, even though during the Parliament of 1302 Jaime II ruled that estates must meet every three years. Still local law was not followed; minutes preceding 1348 were destroyed and others have been lost. For that reason, those papers that have been preserved are of special interest. Homogeneity of these papers and their existence starting in the middle of the 14th century allows us to follow the evolution of that institution and the society in which it was developing.

Our final date is established in 1528. The Parliament Assembly held in this date settled a stable donation of one hundred thousand pounds to the King, but disengaging it of the discussion about of-

fenses (*greuges*) or the law's passing, which essentially changed the institution by opening a new chapter in its future. All of the changes that occurred in the Modern Age are being researched by a team supervised by professor Ferrero. We are in constant collaboration with them and, hopefully with their help, we shall complete the publication of all minutes concerning the complete local law period (*período foral*).

4. *Web description*

At this point, we raise our principle concerns, mostly derived from our research as well as from the accomplishments of our colleagues in other areas, although there is no doubt that the exchange with other groups present (or not) at this Conference, and daily work with the technicians that will design the web environment will enrich our initial project.

We have improved the web environment so that it is more accessible and suitable not only for specialty researchers, but also for other levels of education, affiliations, and citizens, this is, for those that are interested or curious about this institution.

In addition to being able to access documentation – as we shall explain later – the website will provide a small introduction to the history of the institution as well as a basic bibliography related to the subject, both of which will be accessible in *pdf* files.

Both the digitized documentation and its transcription will remain on the web with hyperlinks facilitating movement from one document to the other. In case any doubt arises about the transcription, the user will be allowed to access a digitized version of the original image in a fast and sensible manner.

To facilitate the navigation of the web a two tabled-index will be made, one that gathers the search results of courts ordered by the monarchs who summoned the Parliament, and another that will organize them in chronological order. By clicking on either table, the program will display a menu that will allow us to view the following data:

- Headline of the search result: with the name of the summoning monarch and hyperlinks to the images of that particular period in which the Parliament was summoned.
- Chronology: which will connect to general data linked to the date, so that the average user can temporarily locate the summoned Parliament.
- Place of meeting: with links to images that refer to cities in which the Parliament was held (e.g., maps, illustrations).
- Motive of the summon: a brief explanation of the causes that led to the meeting of the Parliament.

• Head offices of the Assembley: identification and images of the places where the Parliament developed.

• Participants by estates: access to the entire list of participants for the three estates, accompanied by a brief biography of the most influential and well known figures, as well as noblemen coats of arms, list of towns and cities, royal officials, etc.

• Text of the matters reviewed by the Assembly: direct connection to the digitized documentation and its transcription. In the case that the four papers (prothonotary, royal, ecclesiastical, and military) survive, they will be edited and digitized in their entirety, though eliminating the repeated parts by means of an appropriate note or link.

• Index of Sessions: there will be a list of the different sessions of the meeting with a brief review of the issues addressed in each of them, and a hyperlink that permits direct access to items of interest.

• Current location and call number: it will indicate the archive in which one finds the documentation and localization of the manuscript or manuscripts.

We are also attempting to create a search engine so that a user interested in a particular person, position, or city can quickly locate the documents in which the topic may appear, thereby facilitating access to the requested documentation.

5. *A pan-european project?*

In order to finish our presentation, we must underscore that even though our project has been primarily designed for the editing of Valencian Parliamentary papers, it is wide open to the incorporation of similar documents coming from other European territories. It is true that our main target is the implementation of our group within the International Research Group called PICCA (*Parlaments i ciutats de la Corona de Aragó*), formed by scholars whose research focuses on Parliamentary subjects of the former territories of the Crown of Aragon (Sardinia, Sicily, Naples, Aragon, Catalonia…).[27] But this fact notwithstanding, our group and research plans are completely open to collaboration with other European territories in which similar institutions were created, such as France, England, Scotland, Portugal, and Spain.

We truly believe that this Parliamentary documentation presents some specific features, such as continuity during the times, institution development, different problems and opposing interests within its frame, and different participants in its assemblies that reflect quite well the social and economic troubles of the Middle Ages, as well as the political thought, the structures of royal and city power, and the struggles between estates. At the same time, these issues

provide us with a wonderful research platform that will overcome the Parliament political frame, reason why it should be more than desirable the project's connection with other topics, such as Demography, History of Taxation, Economy, or Business, and other disciplines, such as Philology, History of Medicine, or History of Law as well.

Therefore, on-line access to the Parliamentary minutes of different places will not only enhance studies on the origin, growth and development of the Parliament Assemblies, but will facilitate the exchange of methods and ideas among researchers from different countries, and in turn comparative works between the Parliaments and societies in which those institutions were created. If all of these were uploaded to different web sites, we would have a global and complete knowledge of the medieval Parliamentary institutions, although this last phrase could only be considered for the moment as a *desiderata*.

Notes

[1] This paper is included within the major project *Elites sociales y estructuras económicas comparadas en el Mediterráneo occidental (Corona de Aragón, Francia e Italia) en la Baja Edad Media*, directed by F. P. Iradiel Murugarren, professor of Medieval History at the University of Valencia. The project is being funded by the Spanish Ministry of Science and Innovation (HAR2008-06039/HIST). We would like to underscore our profound gratitude to Juan Cànoves, Lori Mesrobian, Paul Norberg, Rebecca Lane and Kristin Rock for their valuable comments and suggestions to the English version of this article.

[2] M. R. Muñoz Pomer, *Las cortes medievales valencianas: un balance y un proyecto para el siglo XXI*, Zaragoza: Universidad de Zaragoza (forthcoming).

[3] M. R. Muñoz Pomer, 'Las Cortes valencianas de la época foral: propuesta de edición', *Comunicación presentada al Congreso Internacional: A Historia a debate (Santiago de Compostela, 7-11 de julio de 1993).* Published partially 'Las cortes valencianas de la época foral: propuesta de edición'. *Medievalismo*, 3 (1993), pp. 189-199.

[4] The first results were published in GRUP DE CORTS DE LA UNIVERSITAT DE VALENCIA, 'Les corts valencianes: qüestions d'historiogràfia i propostes de treball'. In *Dels Furs a l'Estatut. Actes del I Congrés d'Administració Valenciana: de la Història a la Modernitat* (Valencia, 1992), pp. 255-271.

[5] J. A. Alabau Calle, 'Per tot be avenir de la nostra vila. El sistema representativo de las villas reales durante la Baja Edad Media. Alcoy en las Cortes de 1443-1446', in *Actes del 53è Congrés de la ICHRPI* (Barcelona, 2005), vol. I, pp. 537-553. 'Las Cortes de 1443-1446 y la hacienda de la villa de Alcoy', *Anuario de estudios medievales*, 34/2 (2004), pp. 815-830.

[6] R. Madrid Souto, 'Las Cortes de 1428 y su repercusión en la hacienda municipal de la ciudad de Valencia'. *Anuario de estudios medievales*, 34/2 (2004), pp. 791-814. 'Cortes y parlamentarismo en la Península Ibérica durante la Baja Edad Media', in A. Cortijo Ocaña and O. Perea Rodríguez (eds.), *Medieval Iberian Peninsula History. State of Scholarship, 1978-2008*, Special volume of *eHumanista. Journal of Iberian Studies*, 10 (2008), pp. 201-243. Electronic access:
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[21] Regarding the Aragonese publications, see http://www.unizar.es/cema

[22] Regarding the various projects for publication brought to fruition in the Basque Country see the work of A. Zabala Uriarte, 'La edición de las Actas de Juntas de Álava, Gipuzkoa y Bizkaia'. *Revista internacional de los estudios vascos*, 51.2 (2006), pp. 623-636.

[23] Currently forthcoming are the editions of the Parliaments held in Valencia by the King Martín I (1401-1407).

[24] About the making of Parliamentary papers, see M. J. Carbonell Boria, 'El libro "Procés de Corts". Documentos y acciones implicadas en su elaboración', *Boletín de la Sociedad Castellonense de Cultura*, t. 81 (2005), pp. 251-260.

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Fernando Venturini

BPR: A Bibliography of the Italian Parliament. The Evolution from the Book Form to a Digital Library (http://bpr.camera.it)

1. *What is the BPR?*

The BPR (the Bibliography of the Italian Parliament and Electoral Studies) is a database of bibliographical references and a digital library of the Parliament of Italy.

The BPR stores bibliographic references relating to:

- the Italian Houses of Parliament since the granting of the Albertine Statute in 1848;
- the post-1945 National Consultative Assembly and Constituent Assembly;
- documents relating to general elections held during the foregoing historical periods.

The BPR encompasses mainly juridical essays, but also research on political and organization science, on political sociology, as well as relevant historiographical literature. The BPR also catalogues documents that can be retrieved from many important juridical websites.

At present, the database encompasses around 18,000 bibliographic references relating to the years 1848 to 2009. Each reference is assigned one or more classification codes, which are taken from a directory of over 100 classifications that are organized into seven major fields, as follows:

A – General topics
B – Institutional relations
C – Sources of law and organizational aspects
D – The lawmaking function
E – Parliamentary oversight, policy-setting and information
F – Members of Parliament: their legal and social status
H – Elections

The BPR is also a digital library in the process of construction. The full texts of around 1,300 documents (monographs and articles) are available as 'attachments' to the bibliographical information. Most of the works are either in the public domain or under the copyright of the Chamber of Deputies. Where this is not the case, copyright agreements have been reached with publishers to make texts available on the Internet.

2. *Why set up a parliamentary bibliographical database? A brief history*

In the beginning was paper. In 2002, Chamber of Deputies published a book entitled *BPR: Bibliografia del Parlamento repubblicano 1948-2000.*[*]

The volume served several purposes:

At a practical level, it fulfilled the need for a reference source providing a ready response to bibliographical queries by persons seeking documents to do with constitutional law, parliamentary procedure and the history of Parliament.

At a research level, it was designed to give access to the wealth of bibliographical material produced on the parliamentary topics, which comprised not only documents connected with juridical aspects, but also publications in the fields of political science, history, anecdotes, etc.

More generally, the volume was an expression of the belief that a parliamentary library, in common with the largest government libraries, should be responsible for collecting all publications relating to Parliament, thus serving as its bibliographical archive.

In 2008, to mark the 60th anniversary of the Italian Constitution, an updated version of the BPR was produced, though its terms of reference remained limited to the period of the Italian Republic.

[*] *BPR: Bibliografia del Parlamento repubblicano 1948-2000* (Roma, 2002).

3. *The database*

In 2004, two years after the appearance of the print version of the Bibliography, the BPR database went online at http://bpr.camera.it . Like the book, the database at this stage was limited to the Republican period.

Later the database was developed and expanded in three directions:

a. The bibliographical references were expanded to cover the period before the founding of the Republic: to the very beginnings of parliamentary history of the nation state, which date to the concession of a constitutional statute by King Charles Albert I (the Albertine Statute of 1848).

b. A completely new section dedicated the electoral process was added. It is divided into three parts: general aspects, electoral systems, electoral behaviour.

c. The database was enriched with the addition of a series of full texts in PDF or HTML that are 'attached' to the bibliographic record. Some texts are available thanks to agreements with publishers, others are out of copyright or have been published by the Chamber of Deputies itself. The texts are stored on the Chamber of Deputies' servers or else on remote servers belonging to external publishers. The availability of full texts has transformed the database into a fully-fledged digital library of the history of parliamentarism, constitutional and legal essays, and electoral history. In addition to the hundreds of journal and review articles, the library contains the full texts of many monographs, including the most important commentaries on parliamentary rules of procedure, manuals on parliamentary law and procedure, as well as many classical works on Italian constitutional law.

With a view to accelerating the process of cataloguing new publications dealing with Parliament or elections, since May 2008 updates to the BPR have appeared in a bulletin that is issued every four months and distributed in both Houses of Parliament and to a group of scholars.

Number of BPR records (June 2009)

	Parliamentary research	Electoral research
Republic of Italy (1946-2009)	11,095	3,055
Kingdom of Italy (1848-1945)	2,446	1,413
Constituent Assembly (1946-1947)	372	194

4. *Different parliaments, one classification*

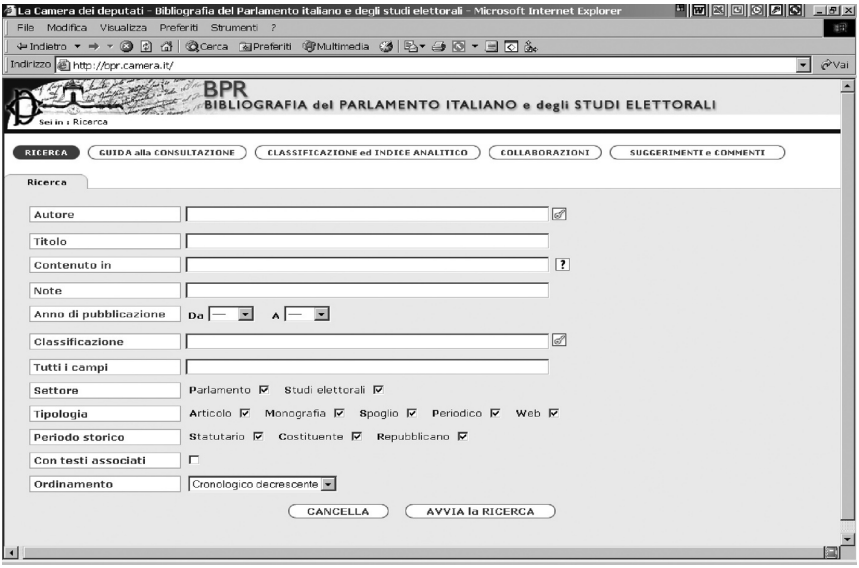
When the BPR database was expanded to include references to the Parliament of the Kingdom of Italy (1848-1945), a decision was taken to leave the system of bibliographical classification unchanged. Every aspect of the parliamentary system as it was in the time of the Liberal State (the monarchy) was mapped on to the system of classification already in place. In other words, it was not deemed necessary to create a discrete set of classifications for the Parliament of the Kingdom of Italy.

- For example, **class A12** refers to the bicameral structure of the Italian Parliament and the Senate. This classification is used also for the Senate under the monarchy (when its members were not elected but appointed by the King on the basis of 21 categories set forth in the Albertine Statute).

- To take another example, **class D30** includes delegated legislation enshrined in Article 76 of the current Italian Constitution, which prescribes the manner in which Parliament must set out the principles and purpose of delegated laws, and establishes that legislative powers may be delegated for a limited time only. Whereas the Albertine Statute included no such provisions for delegated legislation, under the monarchy many important laws were passed by Government acting with 'full powers' vested in it by the House (effectively, a general delegation of legislative powers). The use of this legislative delegation was a controversial issue, and at the time it generated considerable research, which is also catalogued under D30.

5. *How to use the BPR*

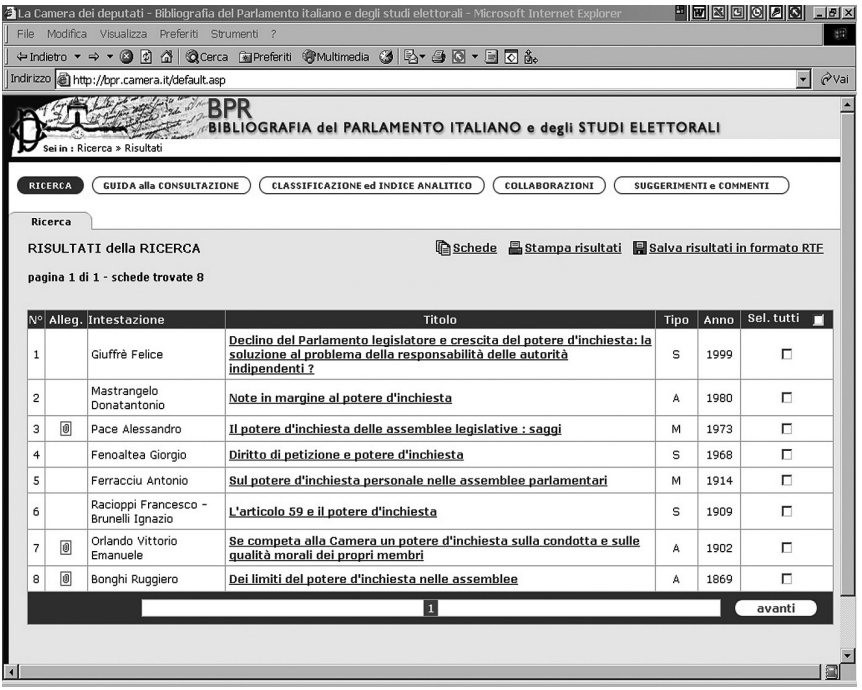
This is the BPR Home Page.

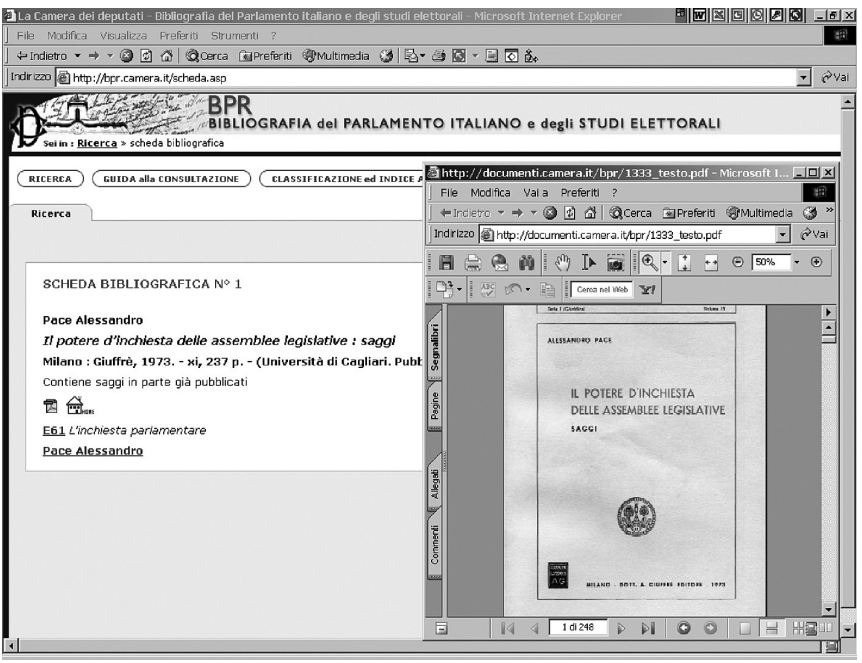


The fields which appear in red indicate search keys (author, title, year of publication, classification, etc..). The fields which appear in blue are for refining the search criteria using general parameters. For example, toggling the switches referring to 'Sector' (*Settore*) will limit the search to parliamentary and/or electoral studies. Similarly, toggling the switches for 'Historical Period' (*Periodo storico*) will filter the results to include or exclude bibliographic references covering three different historical periods (the Kingdom of Italy, the Constituent Assembly and the Republican period).

Each field, with the exception of the 'Publication Date' (*Anno di pubblicazione*) and 'Classification' (*Classificazione*), allows the use of the Boolean operators AND and OR (uppercase). To search for an exact phrase, simply enter the words separated by spaces, without quotation marks.

The system can display a list of authors and classification codes.





The search results are displayed in the form of a short list: the results may then be selected, printed or saved as rich text files (RTF) to produce bibliographical lists.

This icon indicates the presence of a link to the full or partial text of the referenced document. The BPR contains the full text of more than 1,300 documents.

6. *Why is the BPR important?*

• The BPR is designed as an institutional service that enhances the image of the Library. Parliamentary officials have become accustomed to using it as a means of keeping abreast of issues relevant to their work, and have come to rely on it as a means of disseminating the documents they produce.

• Thanks to its use by university students and scholars, the BPR gives Parliament a visible presence in the academic and research spheres.

• By updating its content every four months, the BPR encourages the acquisition of all publications relating to Parliament and elections. Since this system also discovers publications that would otherwise have escaped notice using the normal channels, the BPR effectively 'forces' the Library to make full use of all available national and international sources.

• The BPR is a resource to integrate the available documents on Parliament and elections. The BPR collects items coming from OPAC or from old catalogues and paper-based bibliographies. It also makes use of professional databanks and can include access to full texts documents vailable on the net (e.g. Google books). The BPR thereby bridges the gap between printed material and publications that are also (or only) available in digital form, as well as between old and new publications.

• The BPR effectively consists of a set of descriptive metadata and can become compatible with external applications that harvest data using standard methods.

7. *Future developments of the BPR*

On the basis of the current strengths and potential, we can expect the BPR to develop along three main strands, a process that has already begun:

• The first strand leads to the improvement of the functions of information retrieval and an enhancement of the practicality of the query template (in particular, a distinction may be made between simple Google-style searches and advanced data queries).

• The second strand leads to making the BPR more accessible by search engines and metadata harvesting applications. In particular, the BPR intends to become compatible with the standards (OAI - PMH: Open Archives Initiative Protocol for Metadata Harvesting) used in the 'Cultura Italia' web portal: http://www.culturaitalia.it/ .

• The third strand leads towards fostering dialogue with users, especially with researchers and students, by developing 'update alerts' (Newsletters, RSS), by encouraging the publication of pre-prints and dissertations on the BPR website, and by drawing attention to the most recent or important publications to appear in digitalized form by means of a sort of 'virtual showcase'.

2.

Parlamenti e culture politiche
dal Medioevo all'età contemporanea

Parliaments and Political Cultures
from the Middle Ages to the Present Day

Tomàs de Montagut

Antoni de Capmany y el derecho catalán[1]

1. *La persona*

Como nos indica Francisco José Fernández de la Cigoña,[2] el autor que ha aportado los datos más completos sobre la vida de nuestro personaje, Antoni Capmany Surís nació en Barcelona el 24 de noviembre de 1742 en el seno de una familia austriacista que, tras la guerra de sucesión y por haber tomado parte en ella a favor del emperador, tuvo que exiliarse en Italia durante unos cuantos años. Mientras tanto, los bienes de la familia Capmany en Cataluña fueron confiscados.

La familia era de Girona y su abuelo había encabezado la resistencia de la ciudad a Felipe IV (V), negándose a aceptar la capitulación ofrecida por el duque de Noailles.

De regreso a Cataluña, la familia Capmany se instaló en Barcelona donde Antoni pasó su infancia y adolescencia. Allí cursó sus estudios en el Seminario o Colegio Episcopal de Barcelona donde adquiriría las bases de su formación como filólogo que tan útiles le serían para sus futuros estudios históricos y económicos.

La familia Montpalau de la abuela paterna era de mayor prosapia que los Capmany, de manera que Antoni decidió alterar sus apellidos, prescindiendo del Surís materno y pasándose a denominar Antoni de Capmany i de Montpalau.

Su rigor filológico o su preocupación por autoafirmarse y fijar su apellido le lleva a pedir la corrección de un privilegio familiar que por error denominaba al linaje 'Campmany' y no 'Capmany', es decir, campo grande en lugar de cabeza grande que es el significado real de Capmany.

Ingresa en el Regimiento de Dragones de Mérida del ejército, donde le encontramos en 1762 (tiene 19 años) como oficial en la invasión de Portugal por las tropas españolas. Allí estuvo bajo el mando del conde de Aranda.

Es probable que la vida de guarnición le proporcionara mucho tiempo libre para las lecturas y el estudio. En todo caso, estando destinado en Andalucía, contrae matrimonio sin haber pedido la licencia preceptiva, lo cual permite conjeturar a Fernández de la Cigoña que el abandono del ejército por la concesión del retiro solicitado fue debida al inminente nacimiento de su primer hijo y a la necesidad matrimonial de poderse mostrar los esposos públicamente como cónyuges legítimos.

Capmany participa a continuación en la fundación de las Colonias

de Sierra Morena y de la Baja Andalucía, colaborando con Pablo de Olavide encargado de dirigir la empresa repobladora.[3]

En esta situación, Capmany fue nombrado director de Agricultura, encargado de la industrialización de los nuevos poblados y de traer colonos catalanes formados y capacitados para los oficios y artes industriales lo que llega a cumplir efectivamente.

Avisado por la inquisición de haber abandonado a su esposa y de vivir amancebado, huye a Madrid donde prepara su defensa.

Más adelante y ya en Madrid, Capmany consigue un oficio de la Contaduría de Correos que le permite una estabilidad profesional y mantener a su familia con dignidad.

Sigue su *cursus honorum* en la Administración dentro de la cual destacamos las comisiones de servicios de 1785 para el reconocimiento de los Reales Archivos de Barcelona y la de 1802 para la organización de los Archivos del Real Patrimonio de Cataluña que, en parte, también lo son de la Corona de Aragón (por ejemplo el Archivo del Maestro Racional) y que estaban ubicados en Barcelona.

Es elegido miembro de la Real Academia de la Historia en 1776 y de ella, desde 1790, será su secretario perpetuo hasta su jubilación en 1802. También será admitido como miembro supernumerario de la Real Academia de Buenas Letras de Barcelona en 1781.[4]

De carácter poco sociable y con pocos amigos conocidos, participa no obstante en la vida académica y cultural de Madrid. Su trabajo como funcionario le permite dedicarse al estudio.

En 1779 publica el primer volumen de las Memorias históricas sobre la marina, comercio y artes de la antigua ciudad de Barcelona.[5] En 1786, los Antiguos tratados de paces y alianzas entre los reyes de Aragón y príncipes infieles del África y Asia en los siglos XIII, XIV y XV.[6] En 1787, las ordenanzas navales de las armadas de la Corona de Aragón.[7] En 1791, el Código de las costumbres marítimas de Barcelona que contiene la edición crítica del 'Llibre del Consolat de Mar'.[8]

Su producción historiográfica y filológica es muy amplia y se caracteriza por el rigor en el tratamiento de las fuentes de conocimiento y por su agudo sentido crítico. De ella nos ofrece una relación muy completa la Bibliografía de autores españoles del siglo XVIII de Francisco Aguilar Piñal.[9] Con todo, Capmany dejará al morir textos manuscritos, alguno de los cuales se publicarán como es el caso de '*Practica y estilo de celebrar Cortes en el reino de Aragón, principado de Cataluña y reino de Valencia y una noticia de las de Castilla y Navarra*' (editado en Madrid en 1821)[10] y otros permanecen aún hoy en día inéditos como las *'Annotationes iuris'* de las que hablaremos más adelante.

Capmany tuvo que abandonar precipitadamente Madrid el cuatro de diciembre de 1808, según él mismo cuenta en una relación sucinta de su

biografía, ante la inminente ocupación de la capital por los franceses.

Dejando a su mujer y nuera enfermas, llevando lo puesto y a pie, llegó a Sevilla el 1 de enero de 1809, cuando ya había cumplido durante el camino los 66 años de edad.

Por recomendación de Jovellanos, amigo suyo de los tiempos sevillanos, pasa a ocuparse de la 'Gaceta del Gobierno' y, de aquí, a colaborar en la preparación de las próximas Cortes Generales y extraordinarias del Reino.

En las Cortes de Cádiz, Antoni de Capmany tuvo una actividad intensa y muy fecunda, tanto en lo que se refiere a sus intervenciones activas como diputado en los debates de la Cámara y en las Comisiones a las que perteneció,[11] como en las publicaciones surgidas al calor de los acontecimientos políticos y militares entre las que destacan sus escritos de propaganda bélica, género literario en el que era un Maestro.

Como nos indica Fernández de la Cigoña, Antoni de Capmany falleció 'con motivo de la epidemia de fiebre amarilla que se abatió sobre Cádiz y la Isla en la segunda mitad del año 1813'.[12]

El posicionamiento político de Capmany en las Cortes de Cádiz, las que fundaron el Estado constitucional español desde postulados liberales, ha sido estudiado ampliamente por la historiografía más solvente (Fernández de la Cigoña, Fontana, Álvarez Junco, Artola, Grau López, Antón Pelayo, etc.)[13] y sus interpretaciones no siempre son coincidentes.

Con mi exposición sólo pretendo investigar cómo se considera el derecho catalán en cuatro de las obras más jurídicas de Antoni de Capmany de contenido diverso, a saber: unas ordenanzas de la marina de guerra; unas costumbres de la marina comercial; unas costumbres y prácticas parlamentarias; y un repertorio jurisprudencial de temas de derecho civil y procesal.

Antes de adentrarnos en su análisis debemos trazar un perfil esquemático del derecho catalán.

2. *El derecho catalán en el siglo XVIII*

En 1700 Cataluña disponía de un ordenamiento jurídico completo y propio que participaba de la cultura jurídica del *ius commune* tardío, es decir, del derecho romano-canónico europeo caracterizado por el protagonismo de la jurisprudencia y por disponer de un sistema de fuentes abierto y plural. Abierto, por no estar encerrado el derecho herméticamente en un solo libro de leyes ni derivado de un solo foco o proceso de producción normativa. Plural, por estar integrado por usos, costumbres, leyes, doctrinas y jurisprudencia judicial, fuentes todas ellas de muy diversas procedencias (reales, municipales, señoriales, eclesiásticas, corporativas, gremiales, etc.) y con grados o niveles de jurisdicción también muy diversos.

La lógica del sistema jurisprudencial resolvía y coordinaba en cada caso la tensión existente entre las previsiones del *ius commune* europeo y las de los *iura propia* catalanes con la finalidad de encontrar la mejor y más equitativa solución a la cuestión concreta planteada.

En cuanto al derecho público, Cataluña continuaba perteneciendo a la Corona de Aragón, que era una Unión territorial de los reinos y tierras del rey de Aragón y conde de Barcelona; que tenía su origen en el siglo XII y que se había consolidado y había evolucionado con el tiempo mediante el juramento de la Unión, exigido al monarca para su coronación. Con la erección del Consejo Supremo de Aragón por Fernando el Católico se hizo presente institucionalmente a la Unión en la Corte, constituyendo una pieza más dentro del modelo polisinodial de la Monarquía Hispánica.[14]

Capmany analiza y examina de forma constante en sus estudios a la Corona de Aragón: tanto las Ordenanzas marítimas de guerra de 1354 como las ordenanzas de la Casa y Corte del rey de 1344[15] son de la Corona de Aragón. Por otra parte, los Consulados de mar aplican normas comunes del Mediterráneo y los Consulados de Ultramar obtienen una jurisdicción sobre todos los naturales de la Corona.

Con todo, cada uno de los territorios de la Corona de Aragón tiene su Ordenamiento jurídico propio y, por consiguiente, tanto Aragón como Cataluña, Valencia y Mallorca tienen su derecho propio.

En el caso catalán, el conde de Barcelona se había convertido en príncipe de Cataluña por la autoridad de los 'Usatges'de Barcelona, el primer código que reúne el derecho general de Cataluña y que empieza a formularse por escrito durante el siglo XII.[16]

En el siglo siguiente, las 'Commemoracions' de Pere Albert, con las cuales se completan y actualizan los 'Usatges', otorgan al conde de Barcelona la jurisdicción general sobre todo el principado de Cataluña.[17] Esta jurisdicción se verá pronto condicionada por el pactismo, la doctrina contractual según la cual algunos juristas logran establecer como necesaria la intervención de los estamentos sociales dirigentes de Cataluña en la labor de su gobierno supremo, en manos del príncipe.

Durante el proceso histórico que validó el pactismo surgieron y se formalizaron diversas instituciones políticas y administrativas, entre las cuales destacan las Cortes Generales de Cataluña y la Diputación del General de Cataluña.

Las Cortes Generales de Cataluña, de origen aún no del todo conocido, constituyen el marco institucional donde, por medio de un procedimiento parlamentario, se establecía el pacto entre los estamentos del General y el rey; brazos y cabeza, respectivamente, del Principado de Cataluña, configurado como corporación de corporaciones.

En efecto, los estamentos representados en las Cortes (barones y ca-

balleros; prelados y religiosos; ciudadanos y hombres de villas) conformaban la *Universitas Cathaloniae* o *General* de Cataluña, que pronto requirió la constitución de un órgano permanente que permitiera expresar de forma continuada su voluntad.

Este es el origen de la Diputación del General de Cataluña, el órgano de representación permanente del General o, si se quiere, de la Comunidad General Catalana, que pronto se conoció también con el nombre de *Generalitat*.[18]

Capmany estudia, recopila y ordena la práctica parlamentaria de las Cortes Catalanas, tal como funcionaban en la época moderna, en base a la obra de diversos juristas catalanes, entre los que destaca Lluis de Peguera que es su fuente principal de conocimiento de un modelo constitucional de monarquía limitada por el derecho. De hecho, y como veremos más adelante, su obra póstuma sobre este tema no deja des ser un conjunto de notas o resúmenes de la obra de Peguera dedicada al derecho parlamentario catalán.

Por otro lado, el derecho privado catalán en 1700 se basa en el derecho común europeo antes aludido que fue recibido en Cataluña muy tempranamente (a partir del siglo XII) y que fue modificado en aspectos concretos por el derecho propio catalán.

La protección de la familia y la del patrimonio familiar fue objeto de una atención prioritaria de la jurisprudencia doctrinal y judicial catalana y foránea que, resolviendo casos concretos, permite construir los principios de las diversas figuras jurídicas del derecho privado catalán que Antoni de Capmany resume y compila ordenadamente en sus *Annotationes iuris*.[19]

La imposición del absolutismo monárquico por Felipe V con el Decreto de Nueva Planta de 1716 conlleva la supresión del derecho público general de Cataluña que acabamos de examinar el cual es substituido por el gobierno del real acuerdo entre el capitán general y la Real Audiencia de Cataluña,[20] ahora reformada, reforma que afecta también al territorio y a los municipios con la introducción de los corregidores[21] y los ayuntamientos de regidores que se convierten en piezas esenciales de la cadena de mando de la monarquía absolutista borbónica.

La contrapartida es la pérdida del autogobierno en las diversa instancias locales, general y universal de la Corona de Aragón, dado que también se había decretado la extinción del Consejo de Aragón en 1707 y su incorporación al Consejo de Castilla.[22]

Sin embargo, el derecho privado, penal y procesal catalanes se mantienen conservándose de esta forma fragmentos esenciales del derecho histórico catalán. También se conserva el Consulado de Mar tal como venía practicándose en Barcelona.

Es en este ambiente de derrota y de ruptura política con el pasado,

pero de continuidad y permanencia de la vida civil tradicional catalana donde nace y crece Antoni de Capmany y de Montpalau.

Lejos de adoptar posturas nostálgicas y encerradas en el pasado, Capmany, que vive en Madrid la mayor parte de su vida, adopta una postura ilustrada y reformista que busca el camino para evitar la decadencia del Imperio hispánico y volver a situar al reino de las Españas a niveles homologables a los imperios británico y francés en la lucha por la hegemonía política europea y mundial.

No puede existir un imperio político fuerte si no existe en su base una sociedad civil fuerte y cimentada: en unas instituciones privadas bien reguladas, como la familia; y en unas corporaciones profesionales bien organizadas como lo gremios.

Lo peculiar de Capmany consiste en la forma de construir el modelo que proyecta para estas instituciones políticas y civiles dado que no lo hace derivar exclusivamente de la razón y de sus producciones abstractas y generales, sino que lo formula críticamente a partir de una rigurosa visión histórica y comparatista de las sociedades pretéritas y en especial recuperando la experiencia jurídico-política de la Corona de Aragón y la del derecho privado y comercial de Cataluña y de la ciudad de Barcelona.

Con ello abordamos la última parte de esta ponencia.

3. *El derecho y su historia en la obra de Antoni de Capmany*

Para Capmany la historia del derecho, la historia de las leyes y de las costumbres de los pueblos, tiene una utilidad primordial para instruir a los hombres y enseñarles el sentido histórico de las sociedades de las cuales forman parte. La misión del historiador y, en este caso, del historiador del derecho consiste en revelar críticamente los documentos jurídicos del pasado, es decir las fuentes de conocimiento que hoy en día están oscurecidas, desfiguradas o sepultadas en el olvido y con ellas organizar un cuerpo vivo y organizado de enseñanzas que ilustren sobre el sentido histórico de la constitución moral de cada nación o pueblo.[23] Naturalmente la historia propia de la nación española, que él identifica con el imperio hispánico de los Borbones en el que confluyen parte de los pueblos conquistadores y de los conquistados,[24] debe cotejarse o compararse con la historia común de la humanidad y, en especial, con la historia de los otros pueblos europeos que entraron en contacto con la nación española a lo largo de los siglos. De esta comparación nacerán unas fecundas lecciones de historia para el ciudadano, para el político y para el literato que orientará su actividad para mejorar y perfeccionar, con su trabajo productivo, a la nación española. Para construir este tipo de historia útil es imprescindible la utilización del espíritu de la Ilustración que todo lo ilustra (con la filosofía), que todo lo ordena y calcula (con la geometría) que todo lo pe-

sa (con la experimentación) que todo lo examina y juzga (con la crítica racional) que todo lo hermosea y selecciona (con el buen gusto) y que comunica todas las luces (con la Academia de la Historia).[25]

Partiendo de estas premisas podemos comprender mejor el significado de las cuatro obras jurídicas de Capmany que analizamos a continuación.

El manuscrito latino conservado en la Biblioteca de l'Ateneu Barcelonés titulado *Annotationes iuris* se atribuye a Capmany dado que en la portada de cada uno de sus dos tomos figura la inscripción: *Por A. de Capmany*.

Su datación provisional se fija en 1765 o en época posterior y habrá que confirmar si la letra pertenece al mismo Capmany o a alguno de sus colaboradores conocidos que le ayudaban, en Barcelona y bajo su dirección, a seleccionar y transcribir los textos completos o resumidos que necesitaba para confeccionar sus trabajos.[26]

En este caso se trata de una serie de figuras jurídicas vigentes en Cataluña que inciden de forma destacada en la configuración de la familia catalana y de su patrimonio familiar y en todos aquellos negocios jurídicos *inter vivos* o *mortis causa* que puedan proteger su conservación o producir un aumento o disminución de su valor económico.

Las voces se fundamentan en la doctrina de juristas catalanes como son: Fontanella, Cancer, Peguera, Ripoll, Tristany, etc. O de fuera de Cataluña como: Faber, Scaccia, Marsilio, Herinius, Farinacesus, Menochio, etc.

Los tema tratados afectan: i) a la familia (alimentos, dote, esponsalicio, maridos y esposas, viudas, tutores y curadores, menores de edad, etc.); ii) a la sucesión en los bienes familiares (legados, testamentos, albaceas, herederos, fideicomisos, legítima, bienes hereditarios, derechos sucesorios de la viuda, el inventario, etc.); iii) a los contratos que permiten generar o aumentar el patrimonio, la riqueza, el crédito y el débito (venta, donación, depósito, frutos, intereses, mandato, enfiteusis, mutuo, comodato, seguro, alquiler, hipoteca, etc.); iv) también se analizan figuras clave del procedimiento judicial (apelación, el oficio judicial, los testimonios, las excepciones, el juramento, la ejecución, las causas fiscales, etc.).

Son relevantes, por denotar la dimensión crítica y el interés filológico en determinar el significado preciso de las palabras, las voces *De dictionibus* y *De clausulis* donde se concreta el significado jurídico de algunas dicciones como *videlicet, suis, diu arbitrium, domus, civitatis* o el de algunas cláusulas como *si nullus decesserit sine liberis; sumarie, simpliciter, de plano sine strepitu et figura judicii…; qui tacet consentire videtur; etc.*

En mi opinión, se trata de una colección de materiales doctrinales y

normativos a partir de una selección intencionada de voces dirigida a preparar una publicación que pusiera en valor a la familia catalana como institución básica de sociabilidad y de cura y protección de sus miembros, a través de la formación y aumento del patrimonio familiar y con su contribución activa al crecimiento económica de la sociedad catalana en su conjunto.

En 1787 Capmany publica las Ordenanzas Navales de la Corona de Aragón, aprobadas por Pedro el Ceremonioso en 1354, acompañadas de varios edictos y reglamentos posteriores sobre la misma materia y por un suplemento que contiene las Ordenanzas de la Marina real de la gran Bretaña traducidas del inglés al castellano por dos de sus colaboradores.

La preocupación filológica de Capmany se muestra acompañando la versión original de los documentos (en latín o en catalán) a la traducción castellana que presenta.

Capmany no sólo coincide con los juristas humanistas en el tratamiento de los textos jurídicos con extremo rigor filológico, sino que también coincide con ellos en construir con el mismo rigor erudito una explicación histórica de las instituciones examinadas para encontrar su verdadero significado.

Las Ordenanzas Navales son 34 capítulos que tratan sobre las obligaciones del jefe naval y de los subalternos; de la conducta exigible en el combate y en la navegación y de las penas que se impondrán a los que falten a sus obligaciones en campaña. La intención de Capmany con esta edición se percibe claramente cuando dice que la Génova de ayer (la gran potencia mediterránea rival de la Corona de Aragón en la Edad Media) es la Gran Bretaña de hoy y que por esto hay que imitar '*la severidad y perfección de sus ordenanzas'* que, por otro lado, guardan un gran parecido con las antiguas de Aragón por *'el corto número de ordenanzas; por el laconismo de su expresión; y por la similitud de muchos de sus preceptos penales contra jefes y oficiales cobardes*'.[27]

Para que España sea una potencia respetada debe imitar a Gran Bretaña y a la Corona de Aragón. Pero, oigamos al mismo Capmany: *Que el dueño del mar será siempre dueño de la tierra, no fue sólo máxima de los Temístocles y de los Cromwells. Los invictos reyes de Aragón la conocieron y todavía hicieron mas, la practicaron con feliz suceso.*[28]

En 1791 Capmany publica en Madrid el *Código de las costumbres marítimas de Barcelona hasta aquí vulgarmente llamado Libro del Consulado nuevamente traducido al castellano con el texto lemosín restituido a su original integridad y pureza e ilustrado con varios apéndices glosarios y observaciones históricas.*

La publicación se realiza por disposición y a costas de la Real Jun-

ta y Consulado de Comercio de Barcelona y bajo la dirección de la General y Suprema del Reino.

La finalidad perseguida con esta publicación es la misma que la vista anteriormente en el caso de las Ordenanzas Navales aunque ahora se trata de ponderar y promocionar el comercio marítimo y la industria, actividades económicas simbolizadas en la regulación jurídica que contiene el Libro del Consulado de Mar.

Comercio e industria que permitieron a la Barcelona medieval y a sus familias la construcción de un imperio mercantil en el Mediterráneo con la colaboración y dirección de sus monarcas que extendieron sus beneficios a toda la Corona de Aragón.[29]

Comercio e industria que deben prevalecer sobre la agricultura como motores del crecimiento económico de España. Por esto, en su dedicatoria, Capmany señala que 'la nación española aclama a Carlos IV por los beneficios dispensados a la industria y al comercio extendido por la navegación al Imperio hispánico de ambos hemisferios'.

Es en esta edición del Libro del Consulado donde la acribia y la crítica filológica de Capmany alcanza un nivel de excelencia con la redacción de una serie de apéndices destinados a depurar el texto y a facilitar su mejor lectura, como son: el glosario castellano de los vocablos náuticos y mercantiles contenidos en la traducción; el vocabulario de las palabras catalanas mas difíciles de comprender del Libro del Consulado; la muestra de algunas voces y frases del libro del Consulado mal entendidas o impropiamente traducidas en las dos versiones castellanas ya impresas a las que califica de serviles y literales y de las que ofrece algunas muestras de su incorrecta ortografía y puntuación del texto.

Para finalizar esta apartado debemos examinar brevemente el último trabajo escrito por Capmany sobre el derecho parlamentario de los territorios de la Corona de Aragón con una noticia de los de Castilla donde la parte más extensamente tratada es la de Cataluña.

El texto fue escrito por encargo de la Junta Central, formulado en Sevilla en 1809 y no fue editado en Madrid hasta 1821, en pleno trienio liberal y con la alteración del apellido del autor que pasa a ser Capmani en lugar de Capmany.

El Capmany liberal de Cádiz conoce muy bien que el estado político y el derecho parlamentario de las Cortes de la Corona de Aragón no constituye un modelo perfecto de Constitución para alcanzar la felicidad de los pueblos de España ni la libertad política, civil y fiscal de la Nación Española.

No es un modelo perfecto, pero es un modelo que debe tomarse en consideración para limitar los poderes del rey en una monarquía española compuesta por una pluralidad de provincias unidas.

La figura de la Unión territorial y la sujeción del monarca al impe-

rio del derecho son dos principios fundamentales que deben recuperase para transformar la monarquía absoluta en monarquía moderada por la Constitución de las leyes fundamentales.

En consecuencia, la moderación de la monarquía no debe proceder exclusivamente de los principios racionales de los filósofos voluntaristas sino que deben también tenerse en cuenta el derecho surgido de la sociedad que se ha organizado en corporaciones e instituciones de derecho público a lo largo de su historia.

Para Capmany, la representación nacional de la Corona de Aragón que estaba dividida territorialmente y en estados o estamentos facilitaba la participación y el buen gobierno.[30] La coordinación o concierto de las jurisdicciones producía la unidad. Tampoco se debía temer a las fuerzas armadas como un poder fáctico que impusiera su voluntad arbitraria y autoritaria porque no existía un ejército permanente y, teniendo presente el caso del valido Godoy, acaba atacando el absolutismo monárquico al recordar que en la Corona de Aragón 'no *había que temer de las reinas, pues no tenían parte en el gobierno; y los favoritos y amantes nada podían fuera del palacio'*.[31]

En conclusión, Antoni de Capmany i de Montpalau es un sabio catalán del siglo XVIII que pone sus profundos y extensos conocimientos filosóficos, históricos y económicos al servicio de un proyecto político ideal dirigido a convertir de nuevo a España en una potencia imperial.

Para ello no dudó en reivindicar la historia jurídica y constitucional de la Corona de Aragón y, especialmente, de Cataluña como modelo fecundo para rectificar los errores políticos cometidos en España y transformar la monarquía absoluta en monarquía limitada y moderada por los principios fundamentales de la razón y por los derechos históricos de las sociedades y pueblos, reunidos por la monarquía en el Imperio Español de las Españas.

Notas

[1] Este trabajo se inserta dentro de las actividades de los proyectos de investigación: 'Els juristes i el dret a la Catalunya del segle XIX', finançat amb SGR, AGAUR, Generalitat de Catalunya de referència 2009SGR00766 ; 'Alegaciones en derecho en el régimen jurídico catalán (siglos XV-XVIII) financiado por el MCI con la referencia DER2008-05985-C06-04 ; y 'Los juristas catalanes y las formas del poder publico en Cataluña: Monarquías y Repúblicas (s.s. XIII-XX)' y financiado por el MEC y de referencia DER 2010-21986-C02-01.

[2] Vide F. J. Fernández De La Cigoña y E. Cantero Nuñez, *Antonio de Capmany (1742-1813). Pensamiento, obra histórica, política y jurídica* (Madrid, 1993). Fernández de la Cigoña es el autor de los capítulos sobre: 'El hombre y su época'; 'La Barcelona antigua'; 'Los gremios'; 'El patriota'; 'Capmany en las Cortes'; 'La polémica con Quintana' y 'La muerte de Capmany'.

[3] En sintonía con las ideas reformistas de Pablo de Olavide, Capmany publica en 1773, bajo el pseudónimo de Pedro Fernández , la obra *Comentario sobre el Doctor Festivo y Maestro de los Eruditos a la violeta, para desengaño de los Españoles* que será reciclada posteriormente por el autor para componer su oración gratulatoria de 1775 mencionada Infra n. 23 y su oración gratulatoria de presentación a la Academia de Buenas Letras de Barcelona en 1782, siquiera con algunas variaciones muy significativas (por ejemplo la sustitución de 'nación española' por 'nación catalana') que han sido examinadas y valoradas por Javier Antón Pelayo, 'El discurs de presentació d'Antoni de Capmany a l'Acadèmia de Bones Lletres de Barcelona (1782)' en *Manuscrits*, 19, 2001, pp.163-174. la edición del *Comentario* se encuentra en J. Marías, *La España posible en tiempo de Carlos III* (Madrid, 1963).

[4] Capmany fue dispensado de seguir el estricto procedimiento de admisión de académicos en atención a su fama y al honor que redundaba en pro de Cataluña y de su capital por razón de sus *Memorias históricas sobre la marina, comercio y artes de la antigua ciudad de Barcelona* . Sobre este punto vide: M. Campabadal i Bertran, *La Reial Acadèmia de Bones Lletres de Barcelona en el segle XVIII: l'interès per la història, la llengua i la literatura catalanes* (Barcelona, 2006), p.84.

[5] Cfr. http://www.cervantesvirtual.com/servlet/SirveObras/04701685499325017427857/01/thm0000.htm

A. de Capmany y De Monpalau, *Memorias historicas sobre la marina, comercio y artes de la antigua ciudad de Barcelona / publicadas por disposicion y a expensas de la Real Junta y Consulado de Comercio de la misma ciudad y dispuestas por Antonio de Capmany y de Monpalau* (Barcelona, 2001).

[6] Cfr. A. de Capmany y De Monpalau, *Antiguos tratados de paces y alianzas entre algunos Reyes de Aragón y diferentes principes infieles de Asia y Africa, desde el siglo XIII hasta el XV / Copiados por órden de S.M. de los originales registros del Real General Archivo de la Corona de Aragón... por D. Antonio de Capmany y de Montpalau... ; índices por José Hinojosa Montalvo* (Valencia, 1974).

[7] A. de Capmany y De Monpalau, *Ordenanzas de las armadas navales de la Corona de Aragón: aprobadas por el Rey D. Pedro IV año de MCCCLIV: van acompañadas de varios edictos y reglamentos promulgados por el mismo Rey sobre el apresto y alistamiento de armamentos reales y de particulares, sobre las facultades del Almirante, y otros puntos relativos a la navegación mercantil en tiempo de guerra; copiadas por D. Antonio de Capmany con orden de S. M. del archivo del Maestre Racional de Cataluña, y del Real y General de la Corona de Aragon; y vertidas literal y fielmente por el mismo del idioma latino y lemosino al castellano con inserción de los respectivos textos originales de cada instrumento* (Madrid, 1787).

[8] A. de Capmany y De Monpalau, *Codigo de las costumbres maritimas de Barcelona hasta aqui vulgarmente llamado Libro del consulado / nuevamente traducido al castellano con el texto lemosin restituido su original integridad y pureza ilustrado con varios apendices, glosarios y observaciones historicas por D. Antonio de Capmany y de Monpalau ...; publicase por disposicion y a expensas de la Real Junta y Consulado de Comercio de la misma ciudad ...* (Madrid, 1791). Para mayor información sobre el tema marítimo y portuario vide la reciente publicación de A. Jordà Fernández: *El derecho portuario en la Historia . De los orígenes a la Codificación* (Madrid-Tarragona, 2008).

[9] F. Aguilar Piñal, *Bibliografía de autores españoles del siglo XVIII* (Madrid, 1981-2001), v.2, pp.194-202.

[10] Cfr. A. de Capmani, *Practica y estilo de celebrar Cortes en el reino de Aragon, principado de Cataluña y reino de Valencia y una noticia de las de Castilla y Navarra* (Madrid, 1821, ed. Facsímile Barcelona, 2007).

[11] Ibidem, J. Fontana, *Antoni de Capmany i les Corts Catalanes,* p.53-54 'Voldria centrar-me aquí en la seva contribució a la formulació del constitucionalisme de Cadis a través de la visió que dóna, en els textos escrits per a la Comisión de Cortes, i en els seus discursos d'aquests anys, de les institucions polítiques catalanes i, en especial de les seves corts, en un plantejament que es pot interpretar com una versió tardana del

projecte polític de l'austriacisme, que Capmany va creure que podia reviure en les formulacions del constitucionalisme de Cadis. Un projecte, cal tenir-ho clar, que tenia en Capmany una vocació netament espanyolista, en el sentit que propugnava una "nació espanyola" nova, encara inexistent, on s'havien de poder realitzar les transformacions polítiques per les quals havien combatut en la guerra de Successió els catalans, que fins als darrers moments de la resistencia de Barcelona proclamaven que estaven lluitant per Espanya i per la llibertat de tots els espanyols'.

[12] Sobre la muerte de Capmany vide supra n.2 pp. 264-270.

[13] Sobre las interpretaciones de Capmany vide a modo de ejemplo supra n.11 y sobre las interpretaciones de las interpretaciones vide las de Estanislao Cantero supra n.2 pp.353-421.

[14] Cfr. T. de Montagut Estragués, 'Les monarquies cirsitianes medievals i l'imperi universal hispànic', en *Història del dret espanyo*, T. de Montagut coordinador (Barcelona, 1997), pp.77-94; y V. Ferro Poma, *El Dret Públic Català. Les Institucions a Catalunya fins al Decret de Nova Planta* (Vic, 1987).

[15] Cfr. *Ordenacions fetes per lo molt alt senyor en Pere terç darago sobre el regiment de tots los officials de la sua cort*, a Codoin Aca (Colección de Documentos Inéditos del Archivo de la Corona de Aragón), tomo 5, Barcelona, 1850, pp.7-266.

[16] Sobre los Usatges y su problemática general vide J. M. Font, 'Estudi Introductori' en Constitucions de Catalunya (1495): incunable de 1495 (Barcelona, 1988), p. LXXVI -LXXIX.

[17] Cfr. E. Ferran Planas, *El jurista Pere Albert i les Commemoracions* (Barcelona, 2005).

[18] Cfr. A. Estrada Rius, *Els Orígens de la Generalitat de Catalunya. (La Diputació del General de Catalunya: dels precedents a la reforma de 1413),* tesi doctoral inèdita defensada a la UPF (Barcelona, 2001); I. Sánchez De Movellán Torent, *La Diputació del General de Catalunya. 1413-1479* (Barcelona, 2005). Antoni de Capmany defendió este modelo constitucional como alternativa historicista liberal a la voluntarista filosófica de los liberales gaditanos de tradición castellana. Sobre este punto vide: R. Grau i Fernández, *Antoni de Capmany i la renovació de l'historicisme polític català* (Barcelona, 2006), pp.64-65.

[19] Vide A. De Capmany, *Annotationes iuris*, manuscrito n.2339 del Ateneo Barcelonés, Biblioteca, Arm. 4rt. Pis 853, Est. IV-6, 4º, 347 cap.

[20] Cfr. S. Solé i Cot, *El Gobierno del Principado de Cataluña por el Capitán General y la Real Audiencia –el Real Acuerdo- bajo el régimen de Nueva Planta. 1716-1808* (Barcelona, 2008).

[21] Cfr. J.. M. Torras i Ribés, *Los mecanismos del poder: los ayuntamientos catalanes durante el siglo XVIII* (Barcelona, 2003); y J. M. Gay Escoda, *El Corregidor a Catalunya* (Madrid, 1997).

[22] La supresión del Consejo de Aragón el 15 de julio de 1707 por Felipe V representa el punto final de la Unión territorial como forma de organización política coordinada de una pluralidad de territorios. Vide la disposición de extinción en *Novísma Recopilación de las Leyes de España* (Madrid, 1805), 4, 6, 9.

[23] Cfr. RAH (Real Academia de la Historia), Secretaría. Expediente Antonio de Capmany, leg. 94, carpeta 8, pieza 9 , 11/8234 donde se encuentra la oración gratulatoria que compone Capmany con ocasión de ser elegido miembro de la Real Academia de la Historia (1775): 'Si las ciencias y las artes, las leyes y las costumbres son las partes esenciales de la constitución moral de un Estado, la historia de estos quatro bienes, hijos de la necesidad de associarse los hombres ¿ quan útil, quan necesaria será para instruir a los mismos hombres, e ilustrar la Republica, reduciendo a un Cuerpo vivo y organizado esta serie dispersa y desatada de monumentos, los unos oscurecidos en la noche de los siglos, los otros desfigurados por los vaivenes de las revoluciones y públicas calamidades, y otros en fin sepultados en el polvo del olvido? . Esta oración gratulatoria ha sido editada por Hans Juretschke, 'La contestación de Capmany a Cadalso y su discurso de ingreso en la Academia de la Historia', en *Revista de la Universidad de Madrid*, 68, pp. 203-221.

[24] Ibidem: 'La navegación, el comercio, las conquistas, las sucesiones y mil incidentes políticos han confundido la historia de diversos Pueblos con la nuestra, que devemos mirar como partes de este coloso que está trabaxando la Academia. Tyro, Sidon, Cartago y Roma en la antigüedad se mezclaron con nosotros sucesivamente para empobrecernos los unos, y los otros para civilizarnos. Leyes, usos, orgullo y dinastías nos dieron los bárbaros septentrionales; y desde la tostada Arabia el furor del Alcoran nos comunicó las ciencias y artes de aquel tiempo.

Los catalanes dan leyes al Mediterráneo en lo más culto de la media edad y los castellanos al Océano en el de las expediciones atlánticas. Las conquistas de los primeros en las Dos Sicilias y sus excursiones en la Grecia y la Natalia; el descubrimiento de un nuevo Mundo por los segundos y sus guerras y proezas en la elada Batavia; las incorporaciones de las Casas de Castilla y Aragón, de Borgoña y España, de Austeras y Borbón; los descubrimientos en África, América, Asia y Europa; las alianzas, sucesiones y derechos en todas: toda esta serie de hechos y transformaciones forjan una cadena política que eslabona el primer cónsul romano con el último emperador byzantino, el primer califa con el último bey de Argel, Faramundo con Luis XVI y Atalulfo con Motezuma y Carlos reynante' (Carlos III)

[25] Ibidem: 'Es otra la dignidad de la historia, de esta muestra de la vida humana: esta pierna nunca puede sostener sus derechos mejor que hoy en que la Filosofía con la Crítica y la Geometría, han hecho una revolución en las ideas, y por consiguiente en el modo de expresarlas. Estas tres nuevas gracias, cuyos hilos son el juicio, la precisión y la verdad no fueron conocidas de nuestros abuelos. Nunca mejor que ahora señores podemos hacer fructuoso el estudio de nuestra historia nacional.' Como ha señalado Josep Fontana esta historia que construye Capmany basa su excelencia en la utilización del método crítico. Sobre ello vide: J. Fontana, 'Estudi preliminar', en A. de Capmany, Cuestiones críticas sobre varios puntos de historia económica, política y militar *(*Barcelona, 1988), p. [15] 'Voldria assenyalar, per altra banda, que els historiadors trobaran en aqueste pàgines una lliçó de mètode crític, de l'art de raonar sobre les afirmacions dels textos i els documents, senzillament admirable'.

[26] En las cartas que envía Capmany en 1802 desde Barcelona a su amigo y procurador en Madrid José Cornide (Real Academia de la Historia, Secretaría. Expediente Antonio de Capmany) da fe de la actividad y bullicio provocado por la incipiente revolución industrial en la ciudad que aturdía a la Corte de los reyes, de visita en Barcelona (*aturdidos con el estrépito mercantil y industrial de este pueblo inmenso y vocinglero…)* de manera que Capmnay, acostumbrado a los ritmos económicos tradicionales y más estáticos de Madrid, no se podía concentrar en sus tareas intelectuales (*este es pueblo en donde no se puede pensar ni escribir, sino vegetar plausiblemente*…) [Carta de 18.09.1802]. Su visión crítica de esta explosión económica y demográfica le hace decir *parece que esta ciudad ha perdido de gusto e invención todo lo que ha adquirido de población y riqueza* [Carta de 6.10.1802] Además, su mujer se encontraba triste *en un lugar de fabricantes , traficantes, carreteros afamados, u hurones púnicos hambrientos de dinero y de guardarlo para adquirir mas* [Carta de 28.11,1802]. Con todo, en su última carta Capmany ya se ha adaptado al ritmo diario que impone la actividad de producción económica de Barcelona y reconoce que *estoy reconociendo papeles antiguos, de cuyo registro espero sacar algo útil para nuestra Academia*[Carta de 28.11,1802]. Agradezco a Joaquim Albareda que me haya suministrado fotocopias de estos y otros documentos de la RAH.

[27] Vide supra n.7 p.VII.

[28] Ibidem.

[29] Sobre los orígenes medievales del patriciado barcelonés vide S. P. Bensch, *Barcelona i els seus dirigents. 1096-1291* (Barcelona, 2000).

[30] En su introducción (p. VI) nos dice Capmany: 'Los reyes de Aragón eran respetados dentro y fuera de España. El erario era patrimonial y escaso; pero la nación era rica por lo que les daba, y el modo como se lo daba. Ella se imponía los tributos, y se administraba; siempre para su bien, y nunca para su daño. Daba dinero, y daba hombres;

jamás los reyes carecieron de recursos para resistir ú ofender á los enemigos. La historia lo testifica al orbe entero. En fin, era el país que tenia una Constitución, la cual, por los nudos con que estaba ligada, era por sí misma indisoluble: y asi perseveró invulnerable hasta que las armas de Felipe II en Aragón, y las de Felipe IV en Cataluña, intentaron darle algunos asaltos; y últimamente, las de Felipe V la derribaron con mayor poder, por aquel derecho de conquista que se atribuyó con la guerra de sucesión.' De forma implícita se determina la naturaleza compuesta de la nación en la Corona de Aragón dado que eran los *Generales* de cada reino o territorio quienes otorgaban el donativo en las Cortes respectivas.

[31] Ibidem, p. VII.

Montserrat Bajet Royo

La constitució de Montsó de 1585: à propos des poids et mesures et leur processus législatif [1]

1. *Les iura propia.*

La Principauté de Catalogne, comme beaucoup d'autres royaumes européens depuis le XIIIimè siècle jusqu'à la fin du XVIIIimè siècle, était un territoire avec *iura propria.* Ce qui signifie que ces territoires ont eu la capacité de créer un ordre issu d'institutions propres, ou autrement dit, que les institutions politiques à partir de leur propre autonomie ont créé un cadre légal pour régler la vie de la communauté. Calasso et Grossi, qui ont étudié le monde juridique médiéval, expliquent que l'idée d'autonomie est proportionnelle à la capacité de produire un ensemble de lois propre et efficace.[2]

Les *iura propria* étaient constituées par*: a*) des textes normatifs de droit général: *usatges*, *constitucions de Catalunya i capítols de cort*; *b*) des textes normatifs de droit spécial: *cartes de població*, coutumes et privilèges municipaux, ordonnances municipales, ordonnances corporatives; *c*) de la jurisprudence judiciaire; *d*) de la jurisprudence doctrinale. Dans la communication qui se présente on va faire référence uniquement aux textes normatifs de droit géneral et aux textes normatifs de droit spécial.

A. Textes normatifs de droit général: *usatges*, *constitucions i capítols de cort*. Dans la Principauté, à partir du XIIimè siècle, sous l'influence du droit romain, on a reconnu au prince ou au monarque le pouvoir public, à savoir la *iurisdictio.* La *iurisdictio* permettait au souverain de légiférer, régir et administrer la justice.[3]

La *iurisdictio* avait des degrés, et elle pouvait être cédée. Effectivement les municipalités, les barons, les corporations et d'autres sociétés obtinrent pendant le moyen âge le titre (le droit) de la *iurisdictio*.

Quant à la production de lois dans la Principauté, la juridiction du prince était conditionnée par le *pactismo*. Le *pactismo* juridique était une doctrine médiévale qui a situé la création législative au sein des *Corts*, par conséquent dans la réunion du monarque avec les trois ordres ou états: ecclésiastique, noblesse et le troisième état. De cette manière, en établissant l'intervention des états nous pouvons dire que la création législative se situe à travers une procédure parlementaire.[4] En Catalogne depuis le XIIIième siècle jusqu'au XVIIIième siècle les *Corts* ont eu lieu avec régularité.[5] Et la masse législative approuvée unie aux *usatges* constituaient le droit général de la Principauté.

Voyons, de manière générale, comment fonctionnait la procédure parlementaire au moment d'élaborer une loi.

L'élaboration d'un projet de constitution était commencée avec la création d'un groupe de travail dans lequel collaboraient experts et représentants des états. La proposition élaborée par ce groupe constituait la base de la négociation. Pendant la formalisation, la proposition était examinée au sein des états jusqu'à l'obtention d' une majorité.

Quant à la procédure d'approbation, elle passait des états au roi, qui restituait la *decretació* aux états, lesquels, finalement la restituaient au monarque pour la *decretació* définitive. Quant à la publication du texte législatif , le roi livrait les lois approuvées dans chacune des *Corts* à la *Generalitat* pour sa publication. La *Generalitat* qui était une institution qui représentait les états publiait la législation approuvée. Pour cela il publiait les textes législatifs dans les intitulés *Quaderns d'estampacions*, dans des éditions individualisées à la fin de chacune des *Corts*. Les textes législatifs étaient transcrits intégralement, et non pas résumés. Dans *les Quaderns d'estampacions* chaque texte législatif était précédé d'un bref *regesto* et, aussi bien les *constitucions* que les *capítols de cort* conservaient la numérotation originale d'approbation dans les *Corts*.[6]

Quant à la pratique politique et concrètement à l'observance des lois générées dans les *Corts*, le cadre légal créé était une limite pour tous les agents sociaux. En conséquence le monarque n'était pas supérieur à la loi mais était aussi soumis à l'observer comme le reste de la population. L'institution monarchique continuait à avoir les pouvoirs publics généraux mais elle était subordonné au droit généré dans les *Corts*.[7] Moyennant le serment du roi les sujets obtenaient les garanties constitutionnelles qu'on préserverait leurs droits et leurs lois devant l'absolutisme monarchique croissant.[8] Le roi jurait par deux fois de respecter les lois. D'abord en accédant au trône et ensuite au cours de la cérémonie de clôture de chacune des *Corts*. Le serment royal signifiait la sujétion du monarque à l'ordre juridique et le compromis de respecter les lois et les libertés.[9] La pratique politique en Catalogne depuis le XIIIième siècle jusqu'au XVIIIième siècle répond au modèle de l'*iuscentrismo* politique, c'est-à-dire, une organisation politico-sociale où le principe du droit régissait.

Les lois apparues des *Corts* étaient appelées *constitucions et capítols de cort* et quant à la matière nous nous trouvons avec une grande richesse de lois, puisqu'on approuvait aussi bien des normes destinées à régler des institutions de droit public que de droit privé. Nous trouvons des lois relatives aux institutions réelles, aux institutions de la terre, à l'ordre public, aux activités économiques, au droit civil, à l'administration de justice etc.

Quant au caractère de cette modalité législative née de l'activité parlementaire catalane il convient de dire d'abord que la loi ne pouvait pas être révoquée unilatéralement par les parties, et ensuite que les monarques mêmes s'étaient forçés à plusieurs reprises de ne pas accorder de privilèges ni d'autres dispositions contre des *constitucions*[10] telles que *pragmatiques*, concordias etc. apparues de l'action directe du souverain. Cette primauté des *constitucions de Catalunya* serait consacrée par un ordre de nomenclature cité dans une *constitució* de 1409[11] et formalisé définitivement par l'ordre de préférence de sources applicables dans les tribunaux de la Principauté établie dans une *constitució* approuvée en 1599.[12]

A.1 Les compilations des textes normatifs de droit général de Catalogne : *Usatges, constitucions* et *capítols de corts*.

Dans les *Corts* de 1413 on prescrivit d'ordonner toutes les *constitucions de Catalunya et capítols de corts* existants et d'y ajouter les *usatges* traduits. La tâche fut commandée à six juristes. La culture juridique médiévale de *l'ius commune* a permis d'organiser le matériel juridique venant de *Corts* diverses et de le transformer en un ensemble normatif rigoureux et clair. On a adopté la technique qui avait été déjà utilisée pour compiler le *codex* et ce qui est *digesto* de Justiniano (VIimè siècle).[13] Le critère fut d'imposer un système d'ordre systématique, c'est-à-dire de distribuer le matériel législatif selon les matières, dans un système de livres et de titres et dans chaque titre l'ordre chronologique de promulgation de chacune des lois.

La première compilation manuscrite fut terminée en 1422. À la fin du XVième siècle en 1495 on a effectué concrètement une compilation imprimée en deux volumes, le premier contenant les normes compilées en 1422 plus celles produites dans les *Corts* postérieures, et le second volume contenant les normes d'origine royale.

En 1588/89 une nouvelle compilation fut effectuée. le premier volume contenait le même matériel juridique que celui de 1495 plus celui produit dans les *Corts* postérieures.[14] Le second volume contenait les normes d'origine royale organisées selon ce qui est systématique du *codex*. On a ajouté un troisième volume qui contenait les normes abrogées.[15] Dans 1704 on a effectué la dernière compilation et en suivant les règles précédentes, on ajouta au premier volume les lois approuvées dans des *Corts* postérieures à 1589.

B. Textes normatifs de droit spécial de Catalogne: *cartes de població*, coutumes et privilèges municipaux, normes municipales, normes corporatives.

Comme il a été mentionné antérieurement, dans la Principauté depuis le XIII ième siècle les monarques étaient les titulaires du pouvoir

public, c'est-à-dire, qu'on leur reconnaissait *iurisdictio*. L*'iurisdictio* pouvait être cédée. Dans la Principauté de Catalogne le monarque céda une partie de l'*iurisdictio* aux communes ce qui signifiait que ces deux derniers partageaient le titre (titularité) du pouvoir public et que cela leur permettait de déclarer le droit sur les membres de la communauté. L'*iurisdictio* a été cédée à travers des privilèges comme c'est le cas pour les privilèges cédés aux citoyens de Barcelone appelés *recognoverunt proceres*.[16]

Font Rius a établi que le droit municipal catalan pouvait s'adapter à trois modalités fondamentales.[17] La première représentée par les privilèges *ius singulare* ou lois particulièrs comme les *cartes de població* et les lettres de franchise, privilèges relatifs à des marchés et des foires, et l'établissement d'une forme de gouvernement municipal etc. La seconde modalité était formée par les rédactions de lois appelées « *costums* » et s'agissait de véritables statuts juridiques sur les relations de droit privé, pénal, de procédure, administratif etc., nous savons que la coutume a été dans ses origines *lex non scripta* qui servait de magasin ou de grands réservoirs où l'on cherchait systématiquement des solutions juridiques aux conflits. Le droit coutumier a été rédigé à partir du XIIIième siècle dans des collections de coutumes. Pour tout ceci le patrimoine coutumier a été consolidé dans une réalité complexe dans laquelle chaque noyau municipal jouissait de ses lois propres. Les collections appelées *: Costums de Lleida, 1228; Costums de Tàrrega, 1242; Costums de Perpinyà, 1250; Barcelone, Recognoverunt proceres, 1289; Costums Horta de Sant Joan, 1296; Costums de Miravet, 1319; Costums de de Giron, de 1439…* etc., reflètent la vie de communautés d'hommes libres.

La troisième modalité était constituée par les ordonnances municipales de villes et de villages. L'autonomie municipale n'était pas une fiction et une des manifestations de la personnalité de la commune consistait dans la faculté de promulguer des ordonnances.

Les ordonnances étaint le fruit de l'activité législative de la propre commune pour réglementer la vie quotidienne. Par exemple: la police urbaine, la salubrité et le contrôle des activités économiques.[18] En conséquence dans la ville on imposait des normes produites par l'autorité municipale et qui étaient obligatoires pour tous les citoyens : c'était le droit urbain. Cet ensemble de normes devait être coordonné avec le droit général de Catalogne dans le cadre de *l'ius commune* européen.

2. *Procédure législative: le cas de la Constitució Per levar ...*

2.1. Fruit de l'activité législative aux *Corts* de Montsó, de 1585, on a approuvé avec le numéro 89 une disposition juridique de nouvelle création: la *constitució: Per levar...*[19] Il s'agissait d'une norme surgie

des *Corts Generals* de 1585 ; c'était, par conséquent, une disposition pour tout le territoire. À la Principauté de Catalogne les normes qui affectaient tout le territoire étaient élaborées dans les *Corts*, qui étaient la réunion des états avec le roi.

En ce qui concerne le contenu de la norme, formellement il faut y distinguer trois parties : la motivation, l'objectif et les mesures, conditions et facteurs pour une application effective.

a) Motivation. En premier lieu, on déclarait la nécessité d'établir l'unité de poids et mesures pour finir avec les inconvénients des différences entre les villes, bourgs et lieux de la Principauté, et des comtés du Rosselló et de la Cerdanya. En deuxième lieu, en faveur du changement on arguait l'unité territoriale, étant donné que, selon les législateurs, tous formaient une même province et tou se gouvernaient selon les mêmes lois et une seule autorité: le *loctinent general*.

b) Objectif. Dans la deuxième partie de la *constitució*, comme nous verrons, on explicite l'objectif de la norme : qu´on ne puisse avoir, recevoir, ni utiliser d'autre poids et mesure que ceux qui sont utilisés et approuvés dans la ville de Barcelone. À travers la norme, il se propose de rationaliser en unifiant le système.[20]

c) Dans la troisième partie de la *constitució* on expose les lignes directrices nécessaires pour mener à bien l'objectif d'unification:

• Révoquer tous les privilèges, usages et habitudes contraires à l'unification,

• Nommer à chaque *veguerie* trois personnes habiles pour faire la réduction des poids et mesures. Elles pouvaient être nommées par les député de la *Generalitat* et par le *loctinent*.

• Établir que l'application de la norme commence deux mois après être faite et publiée et que la réduction mentionnée soit effective.

• Contrôler que la norme est appliquée dans toutes les terres de la Principauté et les comtés du Rosselló et la Cerdanya, aussi bien de juridiction royale que de barons.

• Maintenir la juridiction des officiers municipaux, royaux ou de barons, auxquels on ne pourrait pas nuire avec cette norme.

2.2. Comme on a déjà dit, dans ce cas, l'objet d'étude est la *constitució* numéro 89 *Per levar*... décrétée aux *Corts* de 1585[21]. A partir d'ici nous allons parcourir les livres des procès de *corts* qui nous permettent de connaître de près l'activité parlementaire du moment.[22]

La procédure législative de cette *constitució*[23] sera étudiée dans le cadre de l'activité législative que Montagut[24] propose et qui, en peu de mots, traite de la protocolisation du procédé de légiférer. La protocolisation du procédé pour faire les lois permettait d'augmenter la masse juridique à considérer, à accepter et à améliorer l'ensemble de

tâches des experts et des représentants des états, ce que nous dirions maintenant, les politiques.

Dans notre cas nous envisageons un exemple pratique et la réalité nous permet de parcourir de manière effective les variations dans cette typologie de procédés.

a) Initiative parlementaire. Le processus pour faire une loi sur des poids et mesures fut initié à la séance parlementaire du 8 août 1585. L'état de la noblesse décida après délibération que ce "*serait bien*" d'unifier le système de poids et mesures.[25]

b) En ce qui concerne le procédé, normalement une commission appelée par les états préparait, avec le matériel juridique nécessaire pour l'élaboration des lois, quelques mémoriaux qui constituaient le premier brouillon des futures *constitucions de Catalunya i capítols de corts*. Celui-ci était le procédé ordinaire. Dans notre cas l'état de la noblesse a argué que, comme il n'était pas possible de nommer des personnes pour faire des mémoriaux, à cause du fait que les *Corts* n'avait pas encore été habilitée, il préférait traiter le sujet directement dans *l'état*. Les députés commencèrent, donc, un procédé non habituel, mais non plus exceptionnel : il pourrait s'appeler extraordinaire ou d'urgence. L'urgence répondait autant à la nécessité de la loi,[26] qu'à la pression que ressentaient les états devant la quantité de normes proposées et surtout à cause de l'attitude du monarque qui voulait conclure *les Corts* avant décembre.[27]

c) Les premières communications. Situés dans ce procédé d'urgence, nous voyons que le premier pas a été fait par l'état de la noblesse, qui conseillait de communiquer immédiatement à l'état ecclésiastique et a le troisième ordre l'initiative de la loi et du procédé. Les promoteurs, délégués de chaque état pour une question concrète et qui recevaient de la *Generalitat* un salaire pour leur tâche effectuaient la communication.[28] Les promoteurs firent immédiatement les propositions aux bras ecclésiastique et le tiers état.

d) Propositions et accords entre les états. La réponse fut immédiate, le 8 août. L'état ecclésiastique félicita le tiers état pour l'initiative et la proposition qu'on devait traiter des patrons aptes et qu'on adopte ceux de Barcelone, avec l' argument que Barcelone était la tête et la mère de Catalogne,[29] que c'était la ville qui avait le plus de commerces et que leurs poids et mesures étaient les plus connus.[30].

Pour sa part, le promoteur du tiers état alléga que, s'agissant d'un sujet aussi importante on devait consulter les villes ou les bourgs respectifs[31] et qu'ensuite on en ferait part à l'état de noblesse. La réponse ne pouvait être aucune autre, parce que les délégués aux *Corts* des villes et des bourgs n'opéraient pas par initiative propre mais comme des portes-parole des autorités municipales de leur propre ville, ce qui maintenant serait appelé mandat impératif.[32]

e) On prépara le document pour consulter les villes. Par indication du président de l'état royal, l'état ecclésiastique rédigea la lettre pour consulter si cela était convenable "de mener à bien, l'initiative.[33]

f) Minute de la lettre écrite par les syndics aux municipalités. On fait savoir aux autorités municipales qu' aux *Corts*, les états ont traité les questions suivantes : en premier lieu, qu'il serait très utile et nécessaire d'unifier les unités de poids, mesure pour éviter les fraudes et faciliter le contrôle ; en deuxième lieu, on croyait très approprié d'imposer les unités barcelonaises. Finalement, on demandait l'autorisation municipale pour démarrer l'initiative législative.

g) Discussion et vote du texte de la *constitució* dans le sein des états. Le 16 novembre 1585 on a discuté et on a voté dans le sein de l´état de noblesse la *constitució*: *Per levar*..., provisoirement avec le numéro 208:. Les sources sont très minces et mentionnent seulement les désaccords au sein de l´état de noblesse et du tiers état.[34] Le 20 novembre on vote la proposition dans le tiers état et dans ce cas, les désaccords étaient au nombre de six : les syndics de Perpignan, de Lleida, de Cotlliure, Tuïr, Salses et Vilafranca du Confluent.[35]

h) Le texte définitif. En général, le procédé était le suivant : en premier lieu, on faisait des cahiers avec les textes définitifs des *constitucions de Catalunya i capítols de corts*.[36] En deuxième lieu, on les présentait au monarque.[37] Pour les *constitucions de Catalunya* discordantes, c'est-à-dire, celles qui n'avaient pas pu être convenues avec les états, on pouvait accorder les chapitres discordants suivant l'opinion de la majorité.[38]

i) Livraison du cahier avec les nouvelles *constitucions de Catalunya*. Dans la livraison des *constitucions* au monarque sont intervenues des personnes de l'état ecclésiastique et de l'état noble. En ce qui concerne l'état ecclésiastique, on a choisi les mêmes personnes qui avaient déjà participé à l'élaboration de la *constitució*: l'évêque d'Elna; l'abbé Plat; l'abbé de Gerri; le chanoine Reig, procureur de l'archevêque de Tarragona; l'*ardiaca* Coma, de Vic, et le chanoine Thomás, capitulaire de Gérone.[39] En ce qui concerne l'état noble sont intervenus: Joan de Cardona, Alexandre de Alentorn, Plegamans de Marimon, Joan Andreu Blan, Joan Cella i de Taffurer et Jaume Salbà. Joan Cella i de Taffurer et Miquel Joan Andreu, de l'état noble, se sont occupés[40] de la vérification et de la combinaison de l´écriture.

j) *Decretació* final du monarque. Le 26 novembre 1585 les trois états présentèrent au roi 188 décrets avec les *constitucions de Catalunya*. Le lendemain on fit les premiers décrets du monarque. La *constitució* relative au poids et mesures lui correspondit dans le cahier provisoire le numéro 168.[41] Cette *constitució* eut pour réponse: *Plau a sa majestat,*[42] c'est-à-dire, qu'aucun changement ni observation n'ent lieu, ce qui n'était pas une question banale car en cas de désaccord du roi, le

processus se compliquait, étant donné qu'il y avait la possibilité de faire réplique et de la réponse à la réplique.

En résumé, l'élaboration d'un projet de constitució commençait avec la création d'un groupe de travail dans lequel des experts et des représentants des états collaboraient. La proposition élaborée par ce groupe constituait la base de négociation. Dans le cours des démarches, la proposition était discutée dans les états jusqu'à l´obtention de la majorité. En ce qui concerne le procédé d'approbation, le projet de norme passait des états au roi, qui le rendait aux états, lesquels finalement le rendaient au roi pour la *decretació* définitive. Cette *constitució* comme les autres fut promulguée par Felip II et publiée par la *Diputacio del Général* dans le *Quaderns...* de 1586.[43]

3. *Conclusions*

L'étude effectuée a permis de s'approcher de la pratique d'une procédure juridique concrète: la constitutionalisation d'une norme.

Dans l'ordre juridique établi jusqu'au moment d'acceptation de la *constitució* nº 89 des *Corts* de 1585, le patron et le contrôle des poids et mesures étaient une responsabilité de niveau municipal: Il convient de rappeler en ce sens qu'une des manifestations de la personnalité de la commune consistait dans la faculté de promulguer des ordonnances pour résoudre les problèmes et les nécessités de ses habitants. En général, il s'agissait de textes normatifs de droit spécial, fruit des ordonnances municipales. Les ordonnances municipales étaient perçues comme fragmentaires, complexes et incertaines du point de vue des commerçants et de la monarchie dans le climat de transformation économique de fin du XVIième siècle.

À partir de son approbation dans les *Corts* de 1585 la norme a été transformé en un texte normatif de droit général. Une *constitució* qui reprend l'accord entre le roi et le royaume pour imposer l'unification de poids et mesures pour tout le territoire. L'effort pour vaincre le particularisme local peut être interprété comme un changement conçu par la nécessité d'imposer ordre et rationalité dans les transactions économiques. En tout cas c´est un changement propre autant d'une monarchie dont les intérêts répondent à un programme politique de contrôle économique que d'une société mercantile dynamique.

Notes

[1] Le travail s´inscrit dans le projet de référence Sej2006-15051-c03-01/ "El derecho Histórico en los pueblos de España: ámbitos público y privado (XII-XXI)". Entité financière: Dirección General de Investigación. Investigateur principal: Tomàs de Montagut i Estragués.

[2] F. Calasso, *Medioevo del diritto* (Milano, 1954); P. Grossi, *El orden jurídico medieval* (Madrid, 1996).

[3] T. de Montagut, 'Els juristes de Catalunya i la seva organització col·legial a l'època medieval', a *Ius Fugit*, 12, 2005, p. 269-301.

[4] *Constitucions y altres Drets de Catalunya. Compilats en virtut del capítol de Cort de 82. De las Corts per la S.C. y R. Majestat del Rey Don Fhilip IV nostre senyor celebradas en la ciutat de Barcelona any 1702.* Reedición Barcelona, 1995. À partir d´ici CYADC. Pedro II en las cortes de Barcelona año 1283. CYADC. I, 1,14.1. (p.37)

[5] XIIIième siècle: 22 assemblées; XIVs.: 23; XVs.: 21; XVIs.:15; XVIIs.: 2; XVIIIs.: 2.

[6] Ver M. Bajet Royo, 'Les estampacions de quaderns de Constitucions i altres actes de Cort' (notes per al seu estudi) a *Actes del 53è Congrés de la Comissió Internacional de les Institucions Representatives i Parlamentaries* (Barcelona, 2005), vol.I, pp. 554-567.

[7] CYADC., I,1,17. (p. 44).

[8] CYADC., I, 4,1. (p. 245 y 246).

[9] M. Bajet Royo, *El jurament i el seu significat jurídic al Principat segons el Dret General de Catalunya (segles XIII-XVIII). Edició de la "forma i pràctica de celebrar els juraments i les eleccions a la ciutat de Barcelona en el segle XV"* (Barcelona, 2009).

[10] CYADC., I,1,17,18. (p. 52).

[11] CYADC., I,1,38,2. (p. 95).

[12] CYADC., I,1,30,1. (p. 89).

[13] M. Bajet Royo, 'El concepto de compilación en el Derecho Común' a le *Droit Comune et l'Europe.,* pp. 35-43 (Madrid, 2000).

[14] M. Bajet Royo, 'La compilació de 1588/89 i la seva relació amb altres codis europeus del segle XVI' a *Pedralbes revista d'Historia Moderna*, 18 (1998), pp. 123-134.

[15] M. Bajet Royo, 'La compilació de 1588/89: notes sobre la seva sistemàtica' a *El territori i les seves institucions històriques* (Barcelona, 1999)*.,* pp. 657-685.

[16] CYADC., II, 1,13. (p. 39).

[17] J.M. Font I Rius, *Estudis sobre els drets i institucions locals en la Catalunya Medieval* (Barcelona, 1985).

[18] M. Bajet Royo, *El mostassaf de Barcelona i les seves funcions en el segle XVI. Edició del "Llibre de les Ordinations"* (Barcelona, 1994); M. Bajet Royo, *Aspectes del comerç a Catalunya en el segle XVI segons els llibres dels mostassàs* . Bibliothèque virtuelle "Miguel de Cervantes" (Alacant, 1999), p. 13-239. [http://www.cervantesvirtual.com]

[19] CYADC. vol. I, 4,24.1 (p. 298).

[20] À Paris, en 1558 et en 1575, on a essayé d´uniformiser le système de poids et mesures mais le résultat fut négatif. Voir E. F. Heckscher, *La Época Mercantilista* (Mèxic, 1983), p. 95-103.

[21] CYADC, vol. I, 4,24.1 (p. 298).

[22] *Cort General de Montsó (1585), Montsó-Binèfar, Procés Familiar del Braç Reial.* Coordination et introduction par Eva Serra (Barcelona, 2001), a partir d'ici *PFBR*; *Cort General de Montsó (1585), Montsó-Binèfar, Procés del Protonotari.* Coordoné par Eva Serra. Introduction Miquel Pérez Latre (Barcelona, 2001), à partir d´ici *PP*; *Cort General de Montsó (1585), Montsó-Binèfar, Procés Familiar del Braç Militar.* Coordoné par Eva Serra. Introduction Pere Gifre i Ribas (Barcelona, 2003), à partir d´ici *PFBM*; *Cort General de Montsó (1585), Montsó-Binèfar, Procés Familiar del Braç Eclesiàstic.* Introduction Josep M. Bringué (Barcelona, 2003), à partir d'ici *PFBE.*

[23] *Procés Familiar del Braç Reial (PFBR)*; *Procés Familiar del Braç Militar (PFBM); Procés Familiar del Braç Eclesiàstic (PFBE); Procés del Protonotari* (*PP).*

[24] T. de Montagut, *Practica, forma y estil de celebrar Corts Generals en Cathalunya, y materias incidents en aquellas*. Etude introductrice Tomàs de Montagut (Madrid, 1998), p. XL i XLI.

[25] *Procés Familiar del Braç Reial,* (*PFBR),* p.107-108; *Procés Familiar del Braç Militar, (PFBM),* p. 103-104; *Procés Familiar del Braç Eclesiàstic,* (*PFBE),* p. 100-101.

[26] *Procés Familiar del Braç Militar, (PFBM),* p.104.

[27] *Procés del Protonotari,* (*PP)*, p. 95-99.

[28] *Procés Familiar del Braç Reial,* (*PFBR),* p. 497-498.

[29] *Procés Familiar del Braç Militar. (PFBM),* p. 104.

[30] *Procés Familiar del Braç Eclesiàstic.* (*PFBE),* p. 101.

[31] *Procés Familiar del Braç Reial.* (*PFBR),* p. 107 i 108.

[32] *Procés Familiar del Braç Eclesiàstic.* (*PFBE),* p. 101.

[33] *Procés Familiar del Braç Reial.* (*PFBR),* p.109.

[34] *(PFBM),* p. 467.

[35] (*PFBR),* p. 377 i 378.

[36] (*PFBE),* p. 533.

[37] (*PFBE),* p. 546.

[38] (*PFBE),* p. 549.

[39] *(PFBM),* p. 526.

[40] *(PFBM),* p. 526.

[41] (*PFBE),* p. 704; *(PFBM),* p. 683; (*PFBR),* p. 574.

[42] (*PFBE),* p. 719; (*PFBR),* p. 591.

[43] Voir la série *Estampacions de quaderns...* le cahier: *Constitucions fetes...* Barcelona 1586, fol. 28v.

Alexander Cowan

Social Derogation and Political Irresponsibility in Early Modern Venice

The majority of men who belonged to representative assemblies in early modern Europe became members because they genuinely wished to participate in political activity, with all that represented in terms of duty, status, and the potential fulfilment of the ambition to better themselves. This article is concerned with the opposite phenomenon. Men who would normally have been expected to become members of representative assemblies took actions which they knew would either lead to their own exclusion from the political elite, or to the exclusion of their descendents, in other words, social derogation. This is best defined as a process by which men lose a high social status, commonly that of a nobleman, because they are unable to fulfil all the criteria by which it is defined.

The phenomenon of social derogation was not necessarily inextricably linked to membership of representative assemblies. In many parts of Western Europe between the sixteenth and eighteenth centuries, social derogation took place among those elite groups from which participants in representative assemblies were drawn, but tended not to affect those directly who took part in meetings.[1] In Venice, on the other hand, there was an inescapable link between membership of the elite, the hereditary *patriziato,* and participation in the organs of government. Since the end of the thirteenth century, when membership of the patriciate was determined by law for the first time, all legitimate male members of the ruling families over the age of 25 automatically became members of the Great Council, (the *Maggior Consiglio*). According to Venice's constitution, this council, whose membership rose to at least fifteen hundred men in the later sixteenth century, was the sovereign body of the Venetian Republic. Although smaller groupings took on much of the decision-making, the patrician members of the Maggior Consiglio participated in elections to the many rotating government offices, both as voters and as candidates. By the sixteenth century, it is not surprising that the twin statuses of Venetian patrician and member of the Maggior Consiglio were conflated. It was common for a patrician to be referred to as *un nobile del Maggior Consiglio*.[2] We are therefore justified in considering social derogation among Venetian patricians as a phenomenon which went to the heart of Venetian political identity. It is, however important to specify that while certain actions could remove a patrician from mem-

bership of the Maggior Consiglio, either temporarily, as in the case of banishment in punishment for a major crime, or permanently as a result of taking up holy orders, this article is concerned with those actions which deprived a patrician's sons from joining the Maggior Consiglio in their turn, breaking continuity. The term 'political irresponsibility' which is used in the title of this article, was first identified by Don Queller as the deliberate avoidance of high-status office by medieval patricians, a practice which was punished by heavy fines. It is used here more broadly to reflect contemporary disapproval of actions leading to a complete withdrawal from political activity.[3]

The issues surrounding Venetian social derogation also relate to two conflicting, but influential myths about government in the Venetian republic, the so-called 'myth of Venice' and the 'anti-myth'. These may be characterised as the answers to two questions: why was the government of the Venetian republic so consistently successful in maintaining political stability between the thirteenth and eighteenth centuries and why did the republic fall into political decline and eventually lose its independence during the eighteenth century? The 'positive' myth of Venice generally explained the Republic's success in relation to two related factors. The checks and balances in the Venetian constitution prevented any particular family or groups of families from gaining control of the state and kept factionalism down. This effective form of government was underpinned by a remarkable collective sense of service to the state among the patriciate which was transmitted from one generation to the next and was symbolised by the inclusion of all male patricians above the age of twenty five in the Maggior Consiglio. The anti-myth, on the other hand, sought to identify the breakdown of this behaviour during the eighteenth century as a major factor in the Republic's rapid descent to a minor European power. Collective responsibility was replaced by an individual search for self-aggrandisement which was characterised by a sharp decline in moral values and openness. Baroque Venice came to be represented by the individuals in the paintings of Pietro Longhi, hidden behind carnival masks and engaged in a constant search for entertainment.[4]

The evidence for social derogation could be seen to challenge the positive myth of Venice, as it relates to actions which broke the line of continuity in family membership and reflected a refusal to serve the state. Since the major factor in creating the conditions for this derogation was the choice by patricians of wives whose backgrounds prevented their sons from becoming members of the Maggior Consiglio, this might also seem to reinforce the 'black' myth. A refusal to recognise the collective importance of family over the individual could well fit into the sense of moral decline that many Venetians and others writing in the nineteenth century were seeking as an explanation

for the submission of the Republic to Napoleon in 1797. While bearing these two myths in mind as a context for this article, there is no intention here to make more of them than is absolutely necessary, rather to concentrate on a series of specific questions.

After setting out in more detail the circumstances under which Venetian patricians 'married out' and the reasons why this could lead to the exclusion of their sons from membership of the Maggior Consiglio, I would like to consider two factors in particular which may explain this behaviour, the possible correlation between the identity of those who married out and their place in the patrician hierarchy, and an association between marrying out and the practice of restricted marriage. To put this in a different way, could it be that the poorest patricians chose to give up patrician status for their descendents because they had little to lose? In the case of those families where a policy of restricted marriage was the norm, did the brothers of those selected to carry on the family line feel free to marry whom they chose? In the final part of the article, two main points come under consideration: firstly that there was a very fine dividing line in some cases between marriages with brides from outside the patriciate which were contracted in the expectation that any sons would be allowed to sit in the Maggior Consiglio in due course, and those where this expectation was frustrated by the Venetian authorities. The second point is that contrary to the positive myth of a patriciate dedicated to service to the state, the social consequences of exclusion from the patriciate did not necessarily have a deterrent effect on the choice of socially inappropriate non-patrician wives..

The rules governing membership of the Venetian Maggior Consiglio were tightened up at the two ends of the sixteenth century, setting a framework which defined the patriciate until the fall of the Republic in 1797. In 1506, a regulatory process was established according to which the births of all legitimate males born to patricians, whether in Venice or outside the city, had to be registered with the appropriate authorities in the *Libro d'Oro* (the Golden Book). No one whose name was not in the *Libro d'Oro* could present himself as a member of the Maggior Consiglio when he came of age.[5] Careful checks were made to ensure that there were witnesses to the births and that the names of both parents were recorded. Even at this stage, the social status of the mother could lead to a refusal to register the birth. Patricians had been marrying wives from outside the patriciate for a long time and legislation already existed which filtered out the legitimate sons of patrician fathers and women who were either servants or slaves.[6] By 1589, growing concern among patricians about the effects of out-marriage on the social purity of their caste led to the passage of a new law which required all marriages between patricians and outsiders to be

registered by the government. Only the sons of such marriages could then be recorded in the Libro d'Oro alongside those with two patrician parents. Definition of patrician status was now linked clearly to the social acceptability of both parents. The law of 1589 established that marriages with outsiders could only be registered if there had been a careful examination of the social status of the bride's family and of the moral reputation of the bride and her mother. This involved both written evidence and the oral examination of witnesses, and required a substantial vote in favour by the Collegio, a subsidiary organ of the Maggior Consiglio. It was by no means a foregone conclusion that all applications to have such marriages registered would be successful. The magistrates entrusted with the examinations took their task very seriously, and several applications were either withdrawn before the examination had been completed, or were turned down because there were considerable doubts over whether the bride's father or grandfather were considered to be *civile*, or where they were closely linked to *arte meccanica*.[7] Paulina Aivoldi Marcellini, a widow of forty three, was turned down by the Avogadori di Comun in 1684 for several reasons, all concerned with *arte meccanica*. Her father, a wholesale merchant, had been observed touching goods while selling them to customers. Even worse, from, the perspective of social propriety, her paternal aunt had married a baker.[8] Sexual promiscuity by brides or their mothers was also taken to be grounds for non-registration. The investigation into an application for permission to marry a patrician by Zanetta Zonca in 1642 came to a sudden end as one witness after another revealed that not only had she and her sister been promiscuous, but their mother was referred to as *una donna del mondo.* [9]

Failure to gain approval for marriages with outsiders did not deter patricians from proceeding with their plans to get married, condemning any sons who might be born to a life outside the patriciate. The reasons for this will be considered later on in this article. Other patricians married outsider brides without engaging in the legal process of requesting official recognition. While those in the first group might have committed unintentional derogation in the sense that they had gambled on the registration of their marriages and had been unsuccessful, the others must have known the consequences of their actions. A minority bent the rules and applied to have their marriages approved of retrospectively, in some cases many years later. The success rate was varied and outcomes were difficult to predict.[10] Some of the other marriages were recorded in the secret registers of the Patriarch (Bishop) of Venice rather than in those of the bride's parish. This ensured the legitimacy of the marriage ceremony in the eyes of the Church but kept its existence secret from others, particularly the patrician's family.[11] Sons born of such secret marriages could not be

registered as patricians. Illegitimate sons born of concubinal relationships or passing liaisons were also automatically excluded from patrician status. Lack of space prevents me from discussing these illicit relationships in greater detail, but it can be suggested that the factors involved in this form of social derogation were closely linked to those in which derogation arose from marital choices.[12]

One explanation for patrician out-marriage has been put forward by the German historian, Volker Hunecke, in his magisterial study of the demography of the patriciate between 1646 and 1797.[13] Basing his arguments on data from the mid-eighteenth century, Hunecke suggests that poverty was a major factor in social derogation. This is a fair assumption to make. The statutory controls over patrician membership, first established in 1297, had ensured that all direct legitimate male descendants of the families in the Maggior Consiglio at that time had the right to succeed them as members while excluding all outsiders.[14] While membership of the Maggior Consiglio at the end of the thirteenth century lay in the hands of a group of powerful families whose wealth was linked to long-distance trade, the economic vicissitudes of the next two hundred and fifty years had created a situation in which political power was no longer necessarily matched by large patrimonies, and many families were too poor to support either a successful patrician lifestyle or the costs of taking up high offices such as ambassadors, provincial governors (*podestà*) or procurators of St Mark's. By the middle of the sixteenth century only a minority could afford to do so and the numbers of families at the foot of the wealth pyramid had grown to such an extent that special measures were introduced to create elective offices with stipends for which they competed.[15] It is debatable how poor they were in relation to the majority of the population, given the extent to which they exaggerated their circumstances when communicating with the government, but anecdotal evidence does suggest that some were reduced to indigence. In 1635, the fifty-nine year old Bernardo Navagero was defined by a notary as a *miserabile*, who needed to borrow a coat in order to be able to go out of his house.[16] A young member of the Grimani family, who was homeless on returning from naval service, was literally taken in off the streets by a lawyer who saw him as a potential son-in-law.[17]

There are two arguments for contesting the assumption that patrician poverty led to social derogation. The first is the presence of men who were clearly not poor among those whose marital choices blocked their sons' membership of the Maggior Consiglio. Piero Michiel, who married Appolonia Bianchi in 1643, lived comfortably in a house with servants. At various times, he held middle-ranking offices such as *Capitano* in Cadore and *Podestà* in Torcello.[18] Francesco Moro was *Provveditore Straordinario* in the Istrian town of Prevesa when he

married Antonia Broli, the daughter of a Venetian wool-merchant, in 1695.[19]

The second argument is that while it might have appeared that poor patricians were on the very edge of the patriciate in social and economic terms, and therefore had little to lose by cutting patrician links by marriage, there were strong incentives for them to avoid derogation. It was this very disjuncture between high social status and low income which made them prize tradition and continuity all the more. They were political realists. They knew that they had no hopes of ascending to the peak of the patriciate, both because they lacked the necessary political contacts and because great wealth was a prerequisite for political success. Cases like that of Francesco Grimani, whose rise from the poor patricians to become *Podestà* of Verona and of Vicenza and eventually Ducal Councillor was funded by his marriage to a member of the non-patrician Zanardi family, were noted by contemporaries only because they were so exceptional.[20] On the other hand, membership of the Maggior Consiglio permitted them to have access to official funds through election to offices designed to subsidize their incomes through stipends, and to unofficial funds through bribery from wealthier patricians seeking support in elections to office. The *broglio*, in which poor patricians clustered around the Ducal Palace in the hope of finding information and selling votes, was a notorious element in Venetian politics.[21]

Patrician status in wider Venetian society was still something which brought respect from their social inferiors. A patrician was referred to first and foremost as a *gentilhuomo*, a gentleman. When a mercer was questioned about the sexual morality of the two daughters of the lawyer Girolamo Zonca, for example, what impressed him most about Zanetta was the fact that she had a relationship with a *gentilhuomo*, whose name he could not recall. Similarly, when a young patrician couple had been caught *in flagrante delicto*, and were forced to marry, they subsequently lived in a poor area where children played in the street. One of these children, the daughter of a storekeeper, recalled much later that her mother had warned her not to play roughly with the Venier children because they were *zentilhomo*.[22] Men of patrician descent on the other hand, the losers through derogation, were specifically designated as non-patricians, even though their patrician connections still gave them some status. Rizzardo Marcello was the illegitimate son of the patrician, Zuan Girolamo. Although he was later legitimated by his parents' marriage, contemporaries still described him as *non va al Gran Conseglio*.[23]

A poor patrician whose actions deprived his descendents of patrician status would also have seen that men like Marcello enjoyed a certain social cachet, but this was partly also underwritten by their abil-

ity to fund a lifestyle at a level to which poor patricians could not aspire. Anzolo Contarini, the illegitimate son of the patrician, Cabriel Contarini, was named as his father's heir in the latter's will in 1597. As his uncle later recalled, Cabriel left Anzolo *della facoltà che poteva viver da gentlhuomo* (property in order to live like a gentleman).[24] Likewise, his contemporary, Marco Gradenigo, the grandson of a patrician, was said to live in *una casa nobilissima*.[25]

One of the contrasts noted by Hunecke between the poor patricians and those above them in the hierarchy lay in differing marriage patterns. While it was common for several brothers in a poor patrician family to take wives, a much more restrictive marriage strategy was practiced by families with patrimonies in need of protection.[26] These contrasting marriage patterns reflected the close relationship between relative wealth and the need for long-term economic protection. Poor patricians had very little patrimony to protect and consequently allowed their sons not only to go their own ways in marital terms, but also to do what they could to stabilise their own incomes through bringing in suitable dowries. Patricians with patrimonies to protect, on the other hand, not only limited the numbers of daughters who were allowed to marry, resulting in high levels of convent occupancy in the sixteenth and seventeenth centuries,[27] but also prevented more than one son from marrying in each generation. Restricted marriages among daughters permitted families to accumulate dowries of sufficient size in order to be able to operate in a highly competitive marriage market without suffering from the financial strain of having to provide for multiple dowries. In a society in which partible inheritance was still the norm, restricting male marriages to one per generation was intended to ensure that unmarried men would pool their inherited resources, acting as guardians for the family patrimony until it could be bequeathed to their nephews in the next generation.[28]

This is the context for an alternative explanation for marriages leading to derogation. It is clear that for the designated son, marrying well and marrying appropriately was intended to create the conditions for the transmission of power, status and resources from one generation to the next, ensuring continuity at both the individual family level and within the patriciate as a whole. What is the evidence that men making 'unwise' marriages did so because another brother had taken on the responsibility for ensuring family continuity, enabling others to marry as they chose? This question needs to be answered with some care as clearly the practice of restricted marriage was not intended to give permission to other sons to marry, but to prevent any other son from having heirs to whom he would pass his share of his father's inheritance instead of channelling it back to his nephews, the sons of the married brother.

We can consider a number of men who married secretly. Some, but not all, did so after living in concubinage for a considerable period of time.[29] Their marriages can be seen in context by referring to the so-called Barbaro genealogies, which were compiled until the early nineteenth century. Some patricians married secretly once they had fulfilled their duty to the lineage. Vicenzo da Canal married his long-term concubine, Lucietta Bottini, in 1669 when he was forty seven. He had married a patrician wife in 1650 and she gave birth to two legitimate sons, Gerolamo and Paolo Emilio, who carried on the Carmeni branch of the family.[30] Bernardin Lippomano, on the other hand, who also married his long-term concubine secretly in 1689, was one of four brothers, one of whom was married, but had no sons. In theory, Bernardin could have been asked to marry in order to produce a male heir, as was the case in some other families, but he did not do so.[31] Michiel Barbarigo, the great-great grandson of a Doge, was the youngest of three brothers, one of whom had already been married for fifteen years when Michiel married Elisabetta Cabrati in 1649.[32]

So far, the case has been made that social derogation was a by-product of a number of actions. In some ways it was accidental. Patricians who arranged marriages with outsider brides in the expectation that their marriages would be registered by the authorities were frustrated by false assumptions underlying the process by which approval was given. Once permission had not been granted, or they had chosen to pre-empt a negative decision by getting married before the registration process was completed, there was an uncertain future for the sons of such marriages. In cases where patricians had married wives whom they knew would not be socially acceptable as mothers of future patricians, a more deliberate choice was made. I have suggested that in some cases patricians had already fulfilled their dynastic duties before marrying for a second time, and that others felt free to marry because their brothers had taken on the responsibility of continuing the family line. Contracting a secret marriage was a reliable way of protecting the collective family patrimony as these men remained bachelors to the outside world and were expected to bequeath most of their property to their nephews. I want to leave aside the issue of whether these men married below them for affective reasons, something I have already discussed elsewhere,[33] but I would like to consider a related issue: the possibility that for the sons of moderately wealthy patricians, life outside the Maggior Consiglio was far less exclusionary that might have been thought.

Membership of the Maggior Consiglio was still valued. Legislation permitted patricians to register their marriages to outsider brides even if they had failed to gain prior approval. Often the timing of these applications was linked to the birth of one or more sons, which

suggests that patricians were initially willing to marry without official permission because they were more interested in short-term gains from a dowry, but that the birth of a son faced them with the reality of derogation. Such a case was that of the patrician, Gerolamo Tiepolo, who married the widow Chiara Bosello in Portobuffale in 1646 while he was serving there as Venetian *podestà*. He only applied to have this marriage registered retrospectively in 1651, following the birth of their first son, Francesco, in 1648.[34]

But not every patrician who married out took advantage of the legal loophole to request the retrospective registration of his marriage and the consequent insertion of his sons in the Golden Book. Others chose not to do so. While little or nothing is known about what motivated these choices, contemporary evaluations of their non-patrician male descendants suggest that even without membership of the Maggior Consiglio, these men were highly respected within Venetian society, accepted as relatives by their patrician kin, and often materially capable of financing a lifestyle which differed little or at all from the patricians themselves. Often, too, little distinction was drawn between men whose patrician forebears were legitimately married but without the approval of the authorities and those whose parents or grandparents had not married at all. One such case was the notary, Zuan Piero Priuli, whose daughter Isabella was considered as a potential patrician bride in 1614. It was widely known among witnesses of varying social status that he had been made his father's heir, which left him with a substantial income. He had married into the cittadino di Grandi family, who were ranked just outside the patriciate. His patrician relatives were emphatic in their recognition of him not only as kin, but socially acceptable kin. As his cousin Bartolomio Memmo stated in his testimony, Priuli 'always lived with great honour and if he had not done so, I would not have allowed him to visit me in my house, nor would I have allowed my family to visit him'. Two other cousins recalled how they had been brought up alongside the young Isabetta as a child.[35] Like Priuli, other patrician descendants followed the dress code of the long black gown which was shared by both patricians and cittadini (*vestiva a manega comedo*).[36]

What conclusions can be drawn from the behaviour of those Venetian patricians whose actions in marrying or taking concubines in the sixteenth and seventeenth centuries effectively deprived their sons and subsequent descendants from membership of the Maggior Consiglio and consequently were responsible for their social exclusion from the participation in the political process? One thing is clear: this was not the actions of poor men on the edges of the ruling elite who had nothing to lose. On the contrary, such men had much to gain by ensuring that their sons remained in the patriciate in order to have

access to an income from subsidized government office. The men who are at the centre of attention here were a much more diverse group, some of whom had considerable wealth. They may still have been socially marginal in another sense, however, given the preference for limiting the number of marriages among the sons of a patrician family to no more than one or two. If other brothers had already taken on this responsibility, the dynamics of the family patrimony and the need to limit the threats to its coherence in future generations by keeping the number of male heirs to a minimum should still have been a deterrent to social derogation through marriage. The fact that in certain cases, this was not so and that additional brothers did take wives, suggests that such a deterrent was not always effective.

Does this, then, lead us down the road of the anti-myth? Should such behaviour be seen as part of a wider malaise which was to worsen in the eighteenth century in which the older qualities of the Venetian patriciate were undermined by increasing moral laxity and an insistence on the needs of the individual over that of the family? The case is made here that for some patricians, perhaps, there was little to be gained by remaining within the elite group when the frontiers with the families just below them within Venetian society were becoming increasingly blurred and the benefits of a middle-ranking political career without prospects of rising further could be happily traded for a life of material comfort and respect from one's peers. In this sense, social derogation was less of a symptom of the collapse of moral virtues than a symptom of a political elite whose numbers had outgrown the governmental functions which they had been expected to carry out in the fourteenth and fifteenth centuries. The reality was that government could operate very well without them and that their absence not often felt.

Notes

[1] R. Mousnier, *The Institutions of France under the Absolute Monarchy, 1598-1798*, Vol. I, *Society and the State* (Chicago, 1979), pp. 131-5; G. K. Brunelle, 'Narrowing horizons: Commerce and derogation in Normandy', in M. K. Holt (ed.) *Society and Institutions in Early Modern France* (Athens, Georgia, 1991), pp. 63-79; G. K. Brunelle, 'Dangerous liaisons: mésalliance and early modern French noblewomen', *French Historical Studies* 19 (1995), 75-103; R Grassby, 'Social status and commercial enterprise under Louis XIV', *Economic History Review* 13 (1960), 19-38; D. Ringrose, *Madrid and the Spanish Economy* (Berkeley, 1983), p. 162, H. van Nierop, *The Nobility of Holland: from Knights to Regents, 1500-1650* (Cambridge, 1993), pp. 33-4.

[2] Archivio di Stato, Venezia (ASV), *Avogaria di Comun* (*AdC*) 289, case of Barbariga Barbarigo; *AdC* 356, case of Zuanne Vitturi; AdC 217/101, case of Zanetta Sarcinello.

[3] D. Queller, 'The civic irresponsibility of the Venetian Nobility', in D. Herlihy et al (eds), *Economy, Society and Government in medieval Italy: essays in Memory of Robert*

*L. Reynold*s (Kent, Ohio, 1969), pp. 223-36. It is used here more broadly to reflect contemporary disapproval of actions leading to a complete withdrawal from political activity.

[4] C. Povolo, 'The Creation of Venetian historiography', in J. Martin and D. Romano (eds), *Venice Reconsidered. The History and Civilisation of an Italian City-State, 1297-1797* (Baltimore, 2000), pp. 491-519; J. S. Grubb, 'When myths lose power: four decades of Venetian historiography', *Journal of Modern History* 58 (1986), 43-94; E. Crouzet-Pavan, *Venice Triumphant: the Horizons of a Myth* (Baltimore, 2005), pp.183-271.

[5] S. Chojnacki, 'Identity and ideology in Renaissance Venice: the Third Serrata', in Martin and Romano (eds), *Venice Reconsidered*, pp. 263-94.

[6] S. Chojnacki, 'Nobility, Women and the State: Marriage Registration in Venice, 1520-1535', in T. Dean and K. Lowe (eds), *Marriage in Italy, 1300-1650* (Cambridge, 1998), pp. 128-51.

[7] A. Cowan, *Marriage, Manners and Mobility in early modern Venice* (Aldershot, 2007), pp. 23-45.

[8] *AdC* 232/11.

[9] *AdC*, 207/88.

[10] Cowan, *Marriage*, p. 15.

[11] G. Martini, 'La donna veneziana del '600 tra sessualità legittima e illegittima: alcune riflessioni sul concubinato', *Atti dell'Istituto Veneto di Scienze Lettere ed Arti* 145 (1986-87), 301-39.

[12] See, however, A. Cowan, 'Patricians and partners in early modern Venice', in T. Madden and E Kittell (eds), *Medieval and Renaissance Venice* (Chicago, 1999), pp. 276-93.

[13] V. Hunecke, *Der venezianische Adel am Ende der Republik 1646-1797. Demographie, Familie, Haushalt* (Tübingen, 1995), p. 115.

[14] In exceptional cases, additional families were permitted to join in the late fourteenth century. The rule was then partly broken from 1646 when much-needed finance for the war against the Turks was raised by permitting a limited number of very wealthy outsiders to buy hereditary patrician status. R. Sabbadini, *L'acquisto della tradizione. Tradizione aristocratica e nuova nobiltà a Venezia* (Udine, 1995); D. Raines, *L'image du soi du patriciat vénitien aux XVI et XVIIe siècles,* Ecole des Hautes Etudes en Sciences Sociales, Paris Ph.D dissertation. 1998-99.

[15] L. Megna, 'Nobiltà e povertà. Il problema del patriziato povero nella Venezia del '700', *Atti dell'Istututo Veneto di Scienze, Lettere, ed Arti,* 140, 1981-82, pp. 319-40; L. Megna, 'Grandezza e miseria della nobiltà veneziana', in G. Benzoni & G. Cozzi, (eds), *Storia di Venezia* (Rome, 1997), VII, pp. 161-200,.

[16] G. Cozzi, *Giustizia 'contaminata'. Vicende giudiziarie di nobili ed ebrei nella Venezia del Seicento* (Venice, 1996), p. 53.

[17] *AdC* 304, Case of Leonora Cesana.

[18] *AdC* 231/94.

[19] *AdC* 241/61.

[20] P. Molmenti, *Curiosità di Storia Veneziana* (Bologna, 1919), p. 373.

[21] D. Raines, 'Office-seeking, Broglio and the pocket political guidebooks in Cinquecento and Seicento Venice', *Studi Veneziani*, 22 (1991), pp. 137-94.

[22] *AdC* 207/88; 109, 27.

[23] *AdC* 109/28.

[24] *AdC* 205/29.

[25] *AdC* 323, case of Fausta Gradenigo, 1618.

[26] Hunecke, *Der venezianische Adel,* pp. 130-34.

[27] See J. Sperling, *Convents and the Body Politic in late Renaissance Venice* (Chicago 1999); V. Hunecke, 'Kindbett oder Kloster. Lebenswege venezianischen Patrizierinnen im 17. und 18. Jahrhundert', in G. Bock (ed.) *Lebenswege von Frauen im Ancien Regime* (Göttingen, 1992), pp. 446-76.

[28] J. C. Davis, *The Decline of the Venetian Nobility as a Ruling Class* (Baltimore,

1962), p. 63; A. F. Cowan, *The Urban Patriciate: Lübeck and Venice, 1580-1700* (Cologne-Vienna, 1986), pp. 144-8.

[29] Cowan, 'Patricians and Partners', pp. 276-293.

[30] Archivio Patriarcale di Venezia (*APV*), *Matrimoni Segreti* I, 90.

[31] APV, *Matrimoni Segreti* III, 11.

[32] APV, Matrimoni Segreti III, 10.

[33] Cowan, 'Patricians and Partners'.

[34] AdC 216/61. The application was successful. For other cases of retrospective applications, which also comprised the recognition of sons as future patricians, see Zuan Andrea Zane, married 1615, applied 1634, 213/14 and Luca Falier, married 1661, applied in 1695 with three sons, 239/19.

[35] AdC 209/40.

[36] See the case of Paulo Marcello, grandson of a patrician. *AdC* 205/6. For the close relations between patricians and cittadini see A. Zannini, *Burocrazia e burocrati in Venezia in età moderna: i cittadini originari (sec. XVI-XVIII*), (Venice, 1993), pp. 81-2.

John R. Young

The 1689 Convention of Estates and the Parliament of 1689-90 in Scotland: securing the Williamite Regime in the Context of the War in Ireland

This paper is concerned with the period of the 'Glorious Revolution' in the British Isles, with particular reference to Scotland. It is related to recent developments in 'New British History' and how the three kingdoms of the British Isles interacted in terms of multiple kingdoms under the Stuart monarchy after the 1603 Union of the Crowns. According to the conceptual model developed by John Pocock, the period from 1637 to 1651 witnessed the First War of the Three Kingdoms, albeit from a Scottish perspective this has recently been redefined by Allan Macinnes as the Wars *for* the Three Kingdoms.[1] The second main component to the Pocockian model was to define the period from 1688 to 1691 as the Second War of the Three Kingdoms, from the outbreak of the Revolution of 1688 to the 1691 Treaty of Limerick that ended the Williamite war in Ireland.[2] From a Scottish perspective, however, the chronological basis of this model can also be challenged and it should be extended to include the 1692 Massacre of Glencoe in the Scottish Highlands, not only as part of the revolutionary bloodshed in Britain and Ireland, but also as a northern European zone of the Nine Years War (1688-97).[3]

Traditionally most attention in early modern British history has focused on the earlier period of the 1640s, but recently there has been a refreshing scholarly refocusing on the later period of the 'Glorious Revolution', especially in England which was at the heart of the Revolution in its British context.[4] This paper therefore looks at aspects of Scotland and the Second War of the Three Kingdoms. Key themes to be addressed here are regime change and the establishment of a pro-Williamite regime in Scotland and how that regime dealt with insurgency forces in the form of an internal Jacobite rising and strategic security linked to the Williamite war in Ireland. In institutional terms a key role was played by the 1689 Convention of Estates, the body that sanctioned regime change in Scotland with the constitutional removal of James VII as King of Scotland and his replacement by William of Orange. The 1689 Scottish Claim of Right forfeited James VII of his Scottish crown. Indeed, there is a comparison between the situations in Scotland and England. In England, James II was deemed to have abdicated from the English crown, whereas in Scotland he forfeited the Scottish crown. In this sense, the Scottish

settlement was more radical. The 1689 Convention of Estates was thereafter turned into a full parliament by William and that parliament thereafter sat over ten sessions between 1689 and 1702.[5]

In terms of the role and functions of conventions of estates, conventions can be described as 'mini-parliaments'. They usually met for taxation purposes, such as in 1617 to raise funds for James VI and I's return visit to Scotland or in 1665 and 1667 to help finance Charles II's wars against the Dutch. Conventions could also meet in times of extraordinary circumstances. The prime example of this is the 1643 Convention of Estates, when the Covenanting movement used a convention to secure military intervention in the English Civil War on the side of the English Parliament. The 1689 Convention of Estates falls into this second category and it can be argued that it was modelled on the 1643 precedent.[6] Robert Rait, the eminent Scottish constitutional historian, described the 1689 Convention as 'a revolutionary Convention'.[7] The Convention and thereafter the parliamentary sessions of 1689-90 played an important role in strategic security issues relating to the security of the new regime in Scotland. Successful management of these strategic security issues was critical to the survival of the Williamite regime in Scotland as it was establishing itself in 1689. There is an important chronological aspect too. The Convention met from 14 March to 24 May 1689. After being constitutionally transformed into a full parliament, but without new elections, three parliamentary sessions took place between 5 June and 10 September 1690. The meetings of the Convention and the parliamentary sessions also need to be viewed within the context of military developments and battles. Williamite forces were defeated by the Jacobites at the Battle of Killiecrankie in Perthshire on 27 July 1689, but the Jacobite leader, John Graham of Claverhouse, first Viscount of Dundee, was killed in action thereby depriving the Jacobites of an effective military commander and leader. Three weeks later Williamite forces defeated the Jacobites in a bloody battle at Dunkeld on 21 August. It was not until the Battle of Cromdale on 1 May 1690, however, that the Jacobites were finally defeated and the Bass Rock held out until 1694. Therefore there was an internal military threat to the regime for a significant period of 1689-90 and Williamite victory in Ireland was not secured until 1690. It is also important to recognise that institutional liaison took place between the other component parts of the Williamite regime, notably the Privy Council and the Church of Scotland.[8]

Fundamental strategic security decisions were taken at an early stage of the Williamite regime in Scotland. These were related to the actual theatre and zone of potential military conflict. Quite simply, a military clash between William of Orange and James VII and II was to be kept out of Scotland and restricted to Ireland, if possible. It was

necessary to avoid a repeat of the Montrose Rebellion of 1644-45 that had inflicted a series of defeats on the Covenanting regime of the 1640s. Such a strategy was articulated by Sir John Dalrymple of Stair, a former Lord Advocate under James VII, now an important figure in the Williamite regime. On 23 March 1689 he informed George Melville, fourth Lord Melville and first Earl of Melville, Secretary of State, that 10,000 men might be raised in Scotland and that this 'might be the neirest [nearest] way to relieve [relieve] our friends in Ireland, at least to save invasioun on Brittan [Britain], which will certainly be on Scotland, rather than on England'.[9] Four days later on 27 March, Dalrymple informed Melville from London that he had told William that 'the Scots would quicklie be ready and would cheerfully [cheerfully] goe to save their brethren in Ireland, and meet the Irish ther, rather than wait for them at home'. Furthermore, on 5 April Dalrymple stated that 'it is safer to deall with enemies in ther [their] owne country [country] then in ours, wher a concurs [concourse] may be to their assistance'.[10] Dalrymple was referring here to the potential destabilising effects of internal insurrection, prior to the Jacobite victory at Killiecrankie and the future clashes at Dunkeld and Cromdale. William of Orange was aware of the significance of this strategic issue. In correspondence with William Douglas, third Duke of Hamilton, the elected president of the 1689 Convention, William recognised that measures were necessary 'for preventing your country' from becoming 'the seat of war and thereby may become a field of blood'.[11]

Specific examples from the 1689 Convention relating to strategic security can be given. On 16 March a session committee for securing the peace was established two days after the convention opened. Its remit was to consider 'what is fitt [fit] to be proposed for securing of the peace'.[12] Convention commissioners from west and south-western Scotland, a key geographical strategic area in terms of a potential invasion from Ireland, were members of this committee. Membership included Sir James Montgomery of Skelmorlie, a shire commissioner representing Ayrshire, Sir Andrew Agnew of Lochnaw, a commissioner for Wigtownshire, and John Muir, the burgh commissioner for Ayr. Montgomery of Skelmorlie was the leader of a group known as 'the Club' that demanded constitutional reform and he was one of the three elected Scottish representatives who offered the Scottish crown to William and Mary in Whitehall in 1689. Agnew of Lochnaw owned land in Ireland and he was also appointed by the Convention as a commissioner to put an embargo on all Irish vessels in Galloway ports in south-west Scotland and to stop Scottish ships sailing to Ireland. The committee reported back on 18 March and the following day an act for putting the kingdom in a posture of defence was enacted. It stated that all Protestants between the ages of 16 and 60 were to be

ordered to be ready with their best horses and ammunition and await instructions from the Convention.[13]

Issues of strategic security and an invasion threat came to the fore with the exposure of the 'Knox letter' to the Convention on 18 March. The Duke of Hamilton produced a letter 'brought by one Mr Knox from Ireland'. The letter was read to the Convention. It pleaded for Christian and neighbourly assistance to preserve them from their adversaries who, according to the letter, were ready and able to destroy them. It further stated that civil and military power in Ireland was for the most part in 'papist' hands, along with garrisons, places of strength and stores and 'wherever the garisones are they prey upon the Brittish and Protestants round them'. The Convention was also informed that enemy forces in Ireland consisted of at least 50,000 men, that protestant families were in fear of their safety and that the 'protestant partie' was left destitute of weapons and ammunitions because they had been seized by opposing forces. The Knox letter further advised that Richard Talbot, first Earl of Tyrconnell, was pressing Alexander MacDonnell, third Earl of Antrim, 'to make use of his interest' in the Highlands of Scotland to send over 1,500 men to 'assist the popish pairty [party] there to reduce the north of Ireland. In light of this collective situation, the Knox letter therefore asked the Convention for weapons and ammunition to be sent over from Scotland to Ireland to aid their cause and that this would be interpreted as a charitable act of kindness 'done to your Protestant neighbours in great distress'.[14] It is clear that the Knox letter had an immediate impact on the Convention. It led to the formation of a session committee to consider the Highlands on 18 March. This committee was staffed by Highland nobles and shire and burgh commissioners from the Highlands and neighbouring Lowland areas. Shire commissioner membership included Duncan Forbes of Culloden (Inverness-shire) and Ludovic Grant (also Inverness-shire). Burgh commissioner membership included Sir James Smollett (Dumbarton), John Cuthbert (Inverness) and Hugh Brown (Inverary). Legislation putting the kingdom in a posture of defence mentioned above was passed on 19 March and on 20 March a Proclamation against Papists was issued. It stated that all Catholics were discharged from holding any civil or military office. They were also to surrender their weapons, although those deemed to be gentlemen were allowed to keep their ordinary wearing swords. Further legislation of March 1689 was enacted that dealt with a range of strategic security issues.[15]

On 21 and 22 March measures were taken by the Convention to get intelligence reports from Belfast and Derry. Two small frigates were allocated for producing such reports. Captain William Hamilton was instructed to sail out of the River Clyde in Glasgow and cruise the

west coast from the point of Cornwall in south-west England to the Isle of Skye. Major George Arnot, Lieutenant Governor of Dumbarton Castle, a strategic stronghold on the west coast of Scotland, was instructed to provide details to the Convention on the overall condition of Dumbarton Castle, plus details of stores and ammunition. The Convention also established a session committee to enquire into the state of the public arms. Western and south-western shire and burgh commissioners secured inclusion on this committee; William Blair of that ilk (Ayrshire) and Andrew Agnew of Lochnaw (Wigtown) for the shires, with John Muir (Ayr) as one of the burgess representatives. The Williamite regime was also faced with invasion and security scares. In April 1689, a Jacobite spy named Francis Brady was captured at Greenock a western port, on his way back from Dublin. Brady had letters from King James VII and his advisors addressed to leading Jacobites in Scotland. This correspondence indicated that Claverhouse was to call a rival Convention of Estates in Scotland, thereby threatening the de facto security of the Williamite Convention. Furthermore, the correspondence suggested that James VII had between 40,000 and 50,000 men in Ireland. The exposure of the Brady letters therefore heightened strategic security issues for the Scottish Williamite regime. Subsequent intelligence reports tended to focus on progress of the Williamite war in Ireland in general and the siege of Derry in particular. On 13 September 1689, John Muir (Ayr), submitted a claim to the Privy Council for expenses of £136 Scots that had been incurred in securing intelligence from Ireland.[16]

Specific measures were also taken to defend the west and south-west coast of Scotland, given their proximity to Ireland. An act was passed on 23 March for the distribution of arms among the western shires. Accordingly, arms were to be distributed for Glasgow, Paisley, Ayr, Kirkcudbright, Stranraer and Inverary (in the Highlands and the home clan Campbell). Ammunition was to be transferred from Stirling Castle, another strategic stronghold in central Scotland, to Glasgow for the defence of the city and the western shires. Fifteen hundred muskets, 30 chests of ball and 500 pikes were later delivered to John Muir for the defence of Ayrshire. Control of the movement of people was legislated for in the Act for suspected persons of 22 March. Guards were to be strengthened at ports, bridges, ferries and other places of passage. The western ports were ordered to stop and secure all persons going to Ireland without approved passes. On 13 April legislation was also passed concerning shipping from Belfast and Derry. These were primarily refugee ships that were docked at Ayr and Saltcoats and in the River Clyde. They had transported women and children escaping the war in Ireland, as well as goods to help support refugee families in Scotland. The Convention therefore allowed these

refugee ships to return to Derry to pick up more women and children. Three days later, on 16 April, the Convention imposed an embargo on shipping to Ireland, due to a fear that ships could be captured and used to transport enemy invasion forces to Scotland. This general embargo was later lifted by the Privy Council on 16 August 1689, although it was also lifted for specific cases at an individual level before this date. Related issues were dealt with by the Convention on 18 April 1689 in the Act in favour of the British Protestants from Ireland. This was based on a petition submitted by James Stewart, a Belfast merchant, on behalf of the British Protestants in the Kingdom of Ireland. Stewart's petition focused on the large numbers of Protestants gathered around the Derry area in Ireland, whose fate would be weakened by the shipping embargo between Scotland and Ireland. Stewart petitioned for ships to be allowed to sail for Derry or the most safe and convenient ports. Many of the ships in question were actually owned by petitioners, thereby reducing the burden on the new Williamite administration in Scotland, and it does appear that the petitioners wanted to return to Ireland to fight for their cause there. Stewart's petition was considered by the Committee for Securing the Peace of the Kingdom. The petition was granted and the embargo on the western ports of Scotland was lifted in terms of communication with Ireland. Furthermore, a Scottish convoy was ordered to escort the Irish vessels to and from Ireland.[17]

Just over six weeks later, on 3 June, the Privy Council considered a petition from William and John Knox, from the town of Ruffow near Derry. This was two days before the first session of the Williamite Parliament on 5 June. The petition stated that six weeks previously William and John Knox had brought their wives and families to Scotland. They now wanted to use a ship named 'The Elizabeth' of Coleraine, currently lying off Saltcoats, to return to Derry to bring back more refugees. 'The Elizabeth' was mastered by one John Boyd and it had 40 armed men to defend the ship. In light of this information, the embargo was lifted. Another example of the embargo being lifted can be traced to 26 July, the day before the Jacobite victory at the Battle of Killiecrankie. Again, this was considered by the Council as Parliament was not in session. The Council considered a petition from two Derry merchants, Alexander Leckie and Robert Lennox. They wanted to use a ship, 'The Prosperitie' of Glasgow, armed with four guns, to return to Derry with supplies for 'that distressed place' and their relatives there. The embargo was therefore lifted in order that provisions could be taken to Derry.[18]

The Williamite war in Ireland and strategic security concerns were also affected by refugees escaping from the Irish war zone. Tales of atrocities had an impact on the policy making process. Refugees

brought back tales of atrocities that reignited fears of the 1641 Ulster Rebellion where protestant settlers had been massacred. Refugees with accounts of inflicted atrocities were in Edinburgh when the Convention was sitting. Many of these refugees were Scots who had previously migrated to Ulster or who were of Scottish descent. They fall into two categories. The first category is that of the mercantile and social elites of key Ulster towns such as Belfast, Coleraine, Carrickfergus and Derry. Indeed, by the late seventeenth century close family and trading links had been established between Scotland and Ulster and these towns had substantial Scottish populations. A case study of Belfast indicates that there were powerful Scottish interests in Belfast and that the Belfast merchant community was dominated by Scots with 69 per cent of Belfast merchant families (22 out of 32) being of Scottish origin. In 1689 most of the Belfast burgesses were of Scottish origin. Many of them returned to Scotland and can be traced to Glasgow and the south-west of Scotland in places such as Ayr and Kirkcudbright. An example of this is one William Crawford. He was a presbyterian of Scottish origin, he came back to Glasgow in 1689, then later returned back to Ulster and he was subsequently the Member of Parliament for Belfast in the Irish Parliament between 1703 and 1713. Evidence cited above from the Convention and the Privy Council indicates that merchants from Belfast and Derry were proactive in petitioning both institutions for support.[19]

The second category of refugee is that of people lower down the social scale escaping from a war zone, such as war widows and ordinary people who were suffering hardship. On 5 May 1690, for example, the Council considered the case of one Barbara McDonald, whose husband a Belfast seaman, had been killed in action fighting for King William at Carrickfergus and had no means of feeding her children. The case of one Henry Carter from Coleraine was considered on 14 August 1690. He had escaped from the siege of Derry to Scotland with his family (his wife and two small children, one of whom was five weeks old), but he was sick and unable to work due to the debilitating effects of his experience at the siege. In terms of his wider family, his brother, sister and a young child had also perished. In terms of social policy relating to victims of warfare, the Convention established an administrative system, based on an earlier one of 1642 in the aftermath of the 1641 Ulster rebellion when there were refugees on Scottish soil, for the collection and distribution of humanitarian aid for refugees. This was legislated for on 29 April in the Act for Voluntary Contributions to the Irish and French Protestants. This was based on inter-institutional liaison and co-operation with the Privy Council and the Church of Scotland. Financial aid was to be raised by collections in parish churches and the system was to be administered

by the Privy Council. Aid was also to be raised for the French Huguenots who had suffered persecution under Louis XIV.[20] Indeed, the Scottish Privy Council would later declare war on France on 6 August 1689, thereby bringing Scotland into the Nine Years War, largely due to Louis XIV's persecution of the Huguenots and his support for an 'anti-christian partie' in Ireland.[21] The act of 29 April further instructed that a proclamation for voluntary contributions was to be read from all parish churches and that any minister who refused to read the proclamation would be deprived of his parish. Within the wider context of the religious settlement in Scotland that ultimately resulted in the re-establishment of a presbyterian church in 1690, ministers who refused to pray for William and Mary were also to be deprived. A related feature here is that vacant parishes of deprived ministers could be filled with presbyterian ministers from Ulster. Sanctioned by a Privy Council act of 12 July 1690, this largely took place in south-west Scotland where 'rabbling' had forcibly removed Episcopalian ministers in winter of 1688. Geographically, most of the deprivations of ministers took place in the north-east of Scotland, where episcopacy was at the core of Jacobite ideology.[22]

Returning directly to the operation of financial aid for refugees, on 7 June 1689 the Privy Council issued instructions for Ayrshire, Dumfries and Galloway in the south-west of the country. John Muir, the parliamentary commissioner for the burgh of Ayr, Alexander Cunningham, the parliamentary commissioner for the burgh of Irvine, with the ministers of the parishes of Ayr, Irvine and Maybole, were instructed to distribute money to poor Irish Protestant refugees. William Torborne, Provost of Stranraer, and Thomas Miller, the minister there, were instructed to ensure that protestant refugees in remote areas received aid. On 3 July the Council issued orders for the actual distribution of aid. This amounted to £840 Scots in total, consisting of £240 Scots each for Dumfries, Ayrshire, Stranraer and the surrounding area, and £120 Scots for Kirkcudbright.[23]

Finally, there was an important ideological element to regime change in Scotland and the Williamite war in Ireland. This is apparent in acts and proclamations of the different church and state structures. This related to state-sponsored celebrations concerning Williamite victories in Ireland, as well as fasting and public thanksgivings for King William's victories in Ireland and his safe return from that war zone. For example, when news reached Edinburgh of William's victory at the Battle of the Boyne in July 1690, the Scottish Parliament was informed of the victory and the Privy Council was instructed to appoint a solemn day of thanksgiving for the victory. A monthly fast was also to be held for continuation of the war in Ireland against William's enemies. As directed by the Privy Council, the guns

of the castles of Edinburgh, Stirling and Dumbarton were fired in celebration and Sir John Hall, Provost of and parliamentary commissioner for Edinburgh was instructed to ensure that celebratory bonfires were held in the capital and that the bells in the city were rung. On 26 July 1690 a proclamation of the Privy Council for a solemn fast and thanksgiving was ordered to be read out in all parish churches to celebrate the victory, the preservation of the protestant religion and the security of the King's person. The 1690 General Assembly of the Church of Scotland, the first General Assembly since 1653, issued an act anent a solemn national fast and humiliation, with the causes thereof, on 12 November 1690. In addition to emphasising the need for moral purification and the elimination of sin, the act referred to the fate of the French Protestants in the aftermath of the Revocation of the Edict of Nantes in 1685 and that there should be prayer for their spiritual welfare and the fate of Ireland was also a focal point of spiritual concern in terms of the fate of international protestantism.[24]

Conclusion

There was a close correlation between warfare and regime change in Scotland as part of a wider revolution in the British Isles in 1688-90, that involved an internal Jacobite rising in Scotland, the threat of an external invasion from Ireland and commitment to and participation in the Williamite war in Ireland, as well as formal entry into the Nine Years War in 1689. The 1689 Convention of Estates, in particular as the primary institutional forum for regime change in Scotland, played a crucial role, thereafter followed by its constitutional transition into a full Parliament in 1689. The Williamite Privy Council and the Church of Scotland were also important in terms of institutional collaboration and ideological opinion setting. It is clear that not only does the issue of regime change in Scotland and strategic security at the Revolution merit further research and investigation, but that there is also scope for a an extended full-scale study of Scotland and the Williamite Wars.

Notes

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[2] 'The Atlantic Archipelago and the War of the Three Kingdoms', pp. 176, 191.

[3] See P. Hopkins, *Glencoe and the End of the Highland War* (Edinburgh, 1998 edn);

J. R. Young, 'Invasions: Scotland and Ireland 1641-1691', in P. Lenihan (ed), *Conquest and Resistance. War in Seventeenth-Century Ireland* (Leiden, 2001), pp. 53-86; J.R. Young, 'The Scottish response to the siege of Londonderry, 1689-90', in W. Kelly (ed), *The Sieges of Derry* (Dublin, 2001), pp. 53-74.

[4] S. Pincus, *1688. The First Modern Revolution* (New Haven & London, 2009) constitutes a seminal re-evaluation of the Revolution as a solid research monograph. See also T. Harris, *Revolution. The Great Crisis of the British Monarchy 1685*-1720 (London, 2006) for a significant contribution that includes Scotland and Ireland. For a more general recent contribution, see E. Vallance, *The Glorious Revolution. 1688 – Britain's Fight for Liberty* (London, 2006).

[5] R.S. Rait, *The Parliaments of Scotland* (Glasgow, 1924), pp. 95-113.

[6] J. R. Young, 'The Scottish Parliament in the Seventeenth Century: European Perspectives ', in A.I. Macinnes, T. Riis & F.G. Pedersen (eds), *Ships, Guns and Bibles in the North Sea and the Baltic States, c.1350-c.1700* (East Linton, 2000), pp. 142-143.

[7] Rait, *The Parliaments of Scotland*, p. 158.

[8] Young, 'The Scottish response to the siege of Londonderry'; Hopkins, *Glencoe and the End of the Highland War*; B. Lenman, *The Jacobite Risings in Britain 1689-1746* (London, 1984 edn), pp. 28-50.

[9] *Leven and Melville Papers. Letters and state papers chiefly addressed to George, Earl of Melville, Secretary of State for Scotland, 1689-91* (Edinburgh, 1843), p. 4.

[10] Ibid, pp. 5, 7.

[11] Historical Manuscripts Commission, *Eleventh Report, appendix, part six. The Manuscripts of the Duke of Hamilton* (London, 1887), p. 176.

[12] T. Thomson (ed.), *The Acts of the Parliaments of Scotland* [hereafter *APS*], IX (1689-1695), p.10.

[13] Ibid, pp. 10-11; M. Young (ed.), *The Parliaments of Scotland. Burgh and Shire Commissioners*, two vols (Edinburgh, 1992-3), vol. I, p.7, vol. II, pp. 508, 514; J. Halliday, 'The Club and the Revolution in Scotland in 1689-90', *Scottish Historical Review*, 45, pp. 143-159.

[14] *APS*, IX, p. 12.

[15] Ibid.

[16] Ibid, pp. 12, 16, 17; Young, 'The Scottish response to the Siege of Londonderry', pp. 58-61; H. Paton (ed.), *The Register of the Privy Council of Scotland* [hereafter *RPCS*], third series, XIV, 1689, (Edinburgh, 1933), pp. 273-4.

[17] *APS*, IX, pp. 18, 19, 20-1, 44-6, 49; Young, 'The Scottish response to the Siege of Londonderry', 58, 61-4.

[18] H. Paton (ed.), *RPCS*, third series, XIII, 1686-1689, (Edinburgh, 1932), pp. 406, 416-7, 555.

[19] Young, 'The Scottish response to the Siege of Londonderry', pp. 61-69; J. Agnew, *Belfast Merchant Families in the Seventeenth Century* (Dublin, 1996), pp. 10, 26, 65, 219-20.

[20] E.W. Melville Balfour-Melville (ed), *RPCS*, third series, XV, 1690, (Edinburgh, 1967), pp. 227, 385. For the 1640s, see J.R. Young, Escaping massacre: refugees in Scotland in the aftermath of the 1641 Ulster rebellion', in D. Edwards, P. Lenihan & C. Tait (eds), *Age of Atrocity. Violence and Political Conflict in Early Modern Ireland* (Dublin, 2007), pp. 219-41; *APS*, IX, p. 78;.Young, 'The Scottish response to the Siege of Londonderry', p. 66.

[21] *RPCS,* third series, XIV, 1689, pp. 17-18.

[22] *APS*, IX, p. 78; *RPCS*, third series, XV, 1690, pp. 315-7; Harris, *Revolution*, pp. 412-21.

[23] Young (ed.), *The Parliaments of Scotland. Burgh and Shire Commissioners*, vol. I, pp. 163-4.

[24] Young, 'The Scottish Response to the Siege of Londonderry', pp. 69-73; *RPCS*, third series, XV, 1690, pp. 311, 334-335.

Alastair J. Mann

The Scottish Parliaments: the Role of Ritual and Procession in the pre-1707 Parliament and the New Parliament from 1999

Whether in modern parliaments – no taxation without representation – or in medieval and early modern equivalents – no representation without taxation – members, elected or appointed, were and are representatives: representatives of nation, of social class and of economic group. The pageantry deployed at parliaments, articulated with the symbolism of sovereignty and tradition, are necessary to underscore the legitimate role of these peoples' representatives and their relationship to sovereign power. This is seen most clearly in state openings of parliament as carried out within the available space and geography of ritual.[1]

On 1 July 1999 the new Scottish parliament met to carry out a formal state opening – this would be repeated in 2003 and 2007 after Scottish general elections in these years. These openings were nearly 300 years after the adjournment of the old parliament and the 1707 parliamentary union of Scotland and England and the ceremonies were carried out before the British Queen Elizabeth (I of Scotland and II of England). They were from the perspective of the monarchy seminal moments of royal participation in the representative process. The 1999 opening, in particular, was a huge Scottish news event and, inspired by the media furore, large crowds gathered in sunshine on Edinburgh's High Street to watch the procession from the royal palace of Holyrood to the temporary home of the parliament, the Assembly Hall of the Church of Scotland on The Mound. To quote one newspaper, *The Herald* of Glasgow: 'The excitement among the crowd [held back by barriers, police and soldiers] was almost tangible with the imminent approach of the Queen's carriage, flanked by the Household Cavalry. …And [when] the royal party arrived …onlookers … let out a roar and raised high their flags as overhead, people watched from windows'. It is hard to image the new parliament getting such a positive press in future years or indeed the old parliament in its own time.[2]

The outdoor procession that took place at the state opening of the old parliament was also a ceremony before a mass audience. In 1669, for example, the procession again departed from Holyrood but

then arrived at the old Parliament House near St. Giles Cathedral (see figure 1). A contemporary account of the ceremony tells us that 'the whole [high] street [was] lined with townsmen', held back by the squadrons of troops and the town militia. From the windows of the high buildings rugs and carpets were hung, and women and children watched from the upper floors. Order had to be maintained by the authorities and assembled soldiery. In 1703 the Scottish privy council outlawed the throwing of fireworks, shooting, and the beating of drums that might scare the horses, but that could hardly prevent shouts of protest as unpopular royal commissioners, such as the duke of Lauderdale (1678) or the duke of Albany and York (1681), made their way to parliament. Individuals could easily shout their protests and melt away into the many narrow lanes off the High Street. Even in 1999, with soldiers and police lining the route, four students protesting at the introduction of tuition fees vaulted the barriers and approached the royal party before being arrested.[3]

As that convened in 1999 the pre-1707 Scottish parliament was unicameral and, unlike the Westminster houses of commons and lords, was a meeting of estates. The three or four Scottish estates: the crown appointed clergy (finally removed after 1689); the nobles who attended by right; the elected shire members for the counties and elected burgh members for the towns, formed an assembly which, by the end of the seventeenth century had grown to over 200 strong. Therefore, any state opening had to accommodate the demands of expanding numbers of members, their respective status and the different estates they represented. Furthermore, ceremonial had to be reconciled to the greatest change in the practicalities of the parliament in its last century: the frequent absence of the king following James VI's accession to throne of England in 1603. For most sessions thereafter crown authority was represented by a royal commissioner who sat on the throne and, along with other officers of state, had the task of delivering the royal legislative agenda.[4]

The actual state opening of the old Scottish parliament, the procession from royal palace to parliamentary chamber, was called the 'riding of parliament', and dates back at least to the 1520s, although the first detailed mention in the parliamentary record occurred in 1587 when absentees from the ceremony were to be fined.[5] Wherever parliament met, mostly in Edinburgh or at venues such as Stirling, Linlithgow, St Andrews or Perth, a short journey was required from the royal palace or castle to the place of assembly. This journey impressed before all, the members and before the populace at large,

the movement from a royal and fortified environment to neutral territory where the estates could assemble without fear of coercion. The desire for a neutral venue was ultimately satisfied by a purpose-built Parliament House erected in Edinburgh in the 1630s (see figure 2). It is Europe's oldest surviving, purpose-built parliamentary chamber.[6]

Like the post 1999 parliament a 'riding' took place at the beginning of each parliament but not before every session. In the old parliament a 'riding' also occurred at a parliament's end or dissolution and this has not been copied for the new assembly. The last state opening ceremony for a meeting of the pre-1707 estates took place in 1703 in the reign of Queen Anne and after the general election which, customarily, was held at the accession of new monarch, although the government attempted to meet in 1702 without elections and this caused a political scandal and an eventual climb-down. Indeed, such was the heated atmosphere in 1707 surrounding the union negotiations of the previous twelve months that no concluding 'riding' was attempted.[7]

The ceremony began, in 1669 or 1703, with the assembly of members of parliament and officials before the palace and the conveying of the honours of Scotland from Edinburgh Castle to the palace. Thereafter, the order of subsequent procession from palace to Parliament House was most senior last. Precedence followed that in the parliamentary role used in seating in the chamber and in voting. Applying such rules was not easy and there were regular disputes which had to be resolved by the lord lyon king at arms, the judge of all matters of heraldry and hierarchy, and the clerk register, the government's senior clerk and an officer of state. Once the order was confirmed, the members rode up the High Street two by two: first trumpeters and pursuivants (officers of the lyon court); then the lord chancellor (president of the parliament), burgh members followed by the shires; then the lords; bishops; viscounts; earls; archbishops; more trumpeters, pursuivants and heralds; then the honours of Scotland; followed by the royal commissioner if required; the dukes and marquises, the monarch if present and lastly the royal guard (see figure 3). The numbers were swollen by fixed numbers of servants and retainers on foot and mayhem must have been associated with the departure of all these retainers and over 200 horses being ridden from the palace, with the same number dismounting at St. Giles.[8] There could be amusing side to this of course, beyond the grim task of cleaning the High Street after the equestrian procession. In 1669 John Gordon, Viscount Kenmuir failed to arrive at St. Giles his horse

having bolted and in 1999 one of the horse-guards riding with the royal coach fell from his horse which had been startled by a gun salute from Edinburgh Castle.[9]

From the late medieval period the intention of crown and parliament was to demonstrate the magnificence of the state opening occasion. Dress was a vital part of this strategy, with all members and participants dressing in finery but always according to station, and rules on dress and horse livery date back to 1455.[10] By 1703 the sartorial magnificence must have been striking: nobles in scarlet robes, with elaborate horse foot-mantles and extra servants carrying the train of their robes; foot-mantles also for all pursuivants, heralds and macers; velvet coats and livery for the servants of nobles and retainers; and officers of state carrying before them the symbols of office, the great seal in a velvet pouch before the chancellor and a silver mace before the treasurer.[11] In the modern age it is not so easy to carry out such ceremonial duties. Irresolution regarding the correct procedure in the new parliament is seen in the Labour Party's first minister Jack McConnell acting out the role of official purse bearer and awkwardly carrying a velvet pouch in 2003. This had been since 1603 a traditional role for the keeper of the great seal of Scotland, a position held by the first minister from 1999. But media stupefaction at the comical sight in 2002 during the Queen's jubilee tour, and in the 2003 state opening, were intensified when it was realised that the pouch is always empty, the great seal being too valuable to carry about. This was not a procedure repeated publicly in 2007 by McConnell's successor Alex Salmond of the Scottish National Party.[12]

In spite of the sartorial splendour, however, before 1707 the key elements of the ceremonial liturgy were the symbols of the state, the honours of Scotland. These consisted of the crown, the sword of state and the sceptre, all of which survive. The crown, the symbol of coronation investiture, of territorial integrity and of empire, was made of ancient stones dating back to the thirteenth century but re-modelled about 1540 in the reign of James V. The sword of state, symbolic of warrior strength, and of the protection of liberty of the land and of faith, was presented to James IV by Pope Julius II in 1507. The third honour the sceptre was, as described in the words of the Scottish coronation ceremony: 'the sign of royal power, the rod of the kingdom, the rod of virtue, [to] govern … aright … punish the wicked and protect the just'. This was the oldest of the honours and was presented by Pope Alexander VI to James IV in 1494 and in terms of the old parliament was the most important.[13]

The honours were fundamental and developed, since the Anglo-Scots Wars of Independence in the late thirteenth and fourteenth centuries, almost mythical significance as material embodiments of independence from England. This was unchanged by the religious and political revolutions of the sixteenth and seventeenth centuries. Although the sword was decorated with the emblems of the papacy, and the sceptre had at its head the three figures of St. James, St. Andrew and the Virgin Mary, the significance of the honours was not affected by Scotland's Protestant Reformation. No parliament was legitimate without the presence of the honours. Indeed, while the armies of Cromwell grabbed the jewels of English monarchy and melted down the gold, Scottish revolutionaries seized the honours and secured them in Edinburgh Castle. The honours therefore had pride of place during 'ridings' and were carried by senior nobles, the crown, by tradition, by the earl of Angus and his family. After 1603, when the king was absent, the honours were there to represent crown acceptance of the power of parliament. But there were other symbols in public view. As the members entered the door of the Parliament House they passed under two statues: on the right Mercy holding a crown wreathed with laurel leaves, and on the left Justice with a balance on one hand and a palm in the other. Underneath was the Latin motto: *stant his felicia regna*, kingdoms stand happy by these virtues.[14]

The rituals and processions since 1999 have varied in structure. There have been three main events: the 1999 state opening, the 2004 opening of new Holyrood Parliament Building and the 2007 state opening. The opening of the parliament after the 2003 election was a downplayed affair as the parliament was embarrassed at not having completed the new building in time and on budget. The first of these, the 1999 procession, was to date the grandest for the new parliament and was in many ways not unlike that of 1703, although 300 years of Westminster ritual and unionist sensitivities created contrasts with 1703 and with modern state openings in London. Moreover, the 1999 'riding' involved a similar axis of ritual (see figure 1).[15]

The 'journey' to the parliament's temporary home in 1999 (the new parliament building not opening until 2004) was in fact a three stage process. Firstly, the honours were transported from Edinburgh Castle to the chamber. Only the crown featured, and in echoes of 1703, the senior peer in Scotland, Angus Douglas-Hamilton, 15th duke of Hamilton, who as earl of Angus is hereditary bearer of the crown, escorted the crown to the parliament under armed guard. Meanwhile, the members of the Scottish parliament [MSPs], and other VIPs, came together in the old Parliament Hall near St. Giles, now a muse-

um-like lobby to the court of session, the highest civil court of Scotland, and after various speeches recalling the old parliament and its history, they made a brief informal walk to the chamber flanked by children representing the Scottish regions. The third stage was in effect the 'traditional' journey of monarch from palace to parliament. But in the manner of Westminster the Queen travelled in an open state coach guarded by a squadron of lifeguards. The ten minute royal journey began with trumpets and the British national anthem, the only time it was performed on the day. During the small procession of 30 horses and a single coach, a twenty-one gun salute provided by male and female soldiers was fired from the castle. Such canons were also employed in the old 'riding' to confirm the arrival of monarch and/or the honours.

When the state opening of 30 June 2007 occurred, after the election the previous May in which the Scottish National Party formed their first, though minority administration, the details of ceremonial were in the light of the special opening of the new parliamentary chamber at Holyrood in 2004. The 2004 event, on Saturday 9 October, introduced the new cramped spatial geography which must be contended with in future.[16] Proceedings began with the MSPs, judges, clergy, military officers and VIPs, along with members of the public chosen by a ballot from the regions of Scotland, gathering in the old Parliament Hall behind St Giles Cathedral at which speeches were made before the Queen. After this the Queen proceeded to a dais located outside the City Chambers just down the Royal Mile to watch a 'riding' procession move from St Giles down to the Holyrood Parliament building. As well as party leaders and presiding officers, this walking procession consisted of over 1,000 guests from every constituency of Scotland. The guests included 'local heroes' nominated by their respective MSPs on account of community and charitable work. Also dispersed in the 'riding', in echoes of the 1999 procession, were sixteen colourful banners from the eight regions of Scotland. When the procession reached the Parliament building all participants entered to either watch the internal formalities in the public gallery or on television screens located throughout the complex. Therefore, while this was (other than a few police horses) no equestrian event as in 1703 or 1999, as a processional journey before the populace and prior to the internal rituals of the house, it retained some of the qualities of the traditional 'riding'. Importantly, following 1999 and the precedents of the pre-union parliament, at the rear of the 'riding' the duke of Hamilton carried out his duties as bearer of the crown and, under military escort, accompanied it from Old Parliament Hall, to the new parliament chamber.[17]

In 1999 the degree of formality was influenced by a number of factors and this was taken on into 2004. Since the death in 1997 of Diana, princess of Wales, the royal family found itself facing criticism that it was too aloof - because of this the Queen and her advisors looked to embrace more informality. In 1999 the two processions of children, firstly with the elected members and then that which passed the Queen after the parliament was officially opened, confirm an acceptance of this. It was even suggested by palace officials that the crown be carried into the chamber by a child. This was, however, rejected in 1999 by members of the Opening Ceremony Working Group who planned the event. It was too informal and perhaps too out of step with Scottish parliamentary traditions. Also a fine line had to be drawn between excessive 'British'/or English symbolism and strong Scottish references with nationalist overtones. As we have seen, the eighteenth century British national anthem was played only once and not in the chamber. Even the costume worn by Queen Elizabeth was a sensitive issue, and she compromised with a thistle-coloured dress and coat, and not formal state attire. This middle way was applauded in the press in 1999, although after her coronation in London in 1953 she was much criticised for causal dress that dishonoured the crown of Scotland when she was presented with the Scottish honours in a special ceremony at St. Giles Cathedral.[18]

The old Parliament House built in the 1630s is a large chamber, measuring some 40 by 13 metres. Within this sat a chamber of estates, and members sat in the their various estates in a horse-shoe style facing the throne on which the king or his commissioner sat. Noble and clerical members sat left and right and burgh and shire members faced the throne. In the middle, were three tables: at the one nearest the throne the honours were placed. The less confrontational chamber layout and non-party seating arrangements must have helped reduce some heated moments but no convivial arrangement could stop heated debate in a lively political culture. Within the chamber, the sceptre, in particular, had a crucial role to play in procedure. Royal assent was conveyed by the monarch touching the sceptre to a copy of an act, a procedure of uncertain but ancient vintage carried out by the royal commissioner after 1603. In the new parliament the signature of the monarch indicates assent mirroring the Westminster model and so the sceptre is replaced by the crown as the most significant honour used in the opening ceremony, a reflection, no doubt, of tradition but also of the role of the crown even at the turn of the twenty-first century.[19]

Within the chamber the rituals of a pre-1707 'riding' day were relatively uncomplicated. After the reading of the king's letter to par-

liament, speeches were given by the commissioner and the president of parliament, usually the chancellor. The rolls were called in due order, prayers were said and a psalm sung by the whole assembled house. Compared to this the events within the chamber in 1999 and 2004 were very lively. While male members were merely well-dressed the tunics of pursuivants and the kilted dress of the duke of Hamilton as he brought in the crown added significant colour. The crown was placed on a table in the middle of the chamber exactly as with the old parliament (see figure 4). In 1999 the Queen entered in procession behind the crown to a fanfare into a chamber of horse-shoe shape, as is the new chamber at Holyrood opened in 2004. She then sat in the middle amongst the members (see figure 4), capturing the traditional nature of involvement by the monarch, when present, in the deliberations of the old parliament. However, notwithstanding the informalities, the internal musicality and cultural statements of 1999 were not to be retained long thereafter. In 2004, when the Queen participated in celebrations commemorating the opening of the new Holyrood building, the opening ceremony did indeed include a performance from the young Scottish violinist Nicola Benedetti, a reading of a poem read by the author Liz Lockhead, and a performance by the singer-songwriter Eddi Reader who led the chamber and monarch in the singing of Robert Burn's 'Auld Lang Syne'.[20] Nevertheless, in 2007 all internal musical and celebratory highlights ceased and the only musical inputs were the fanfares when the crown and queen entered and departed the chamber. Merely marking a new input of members of parliament in 2007 saw sobriety replace celebration, other than lightly amusing speeches by the Queen and the presiding officer.

The Queen's attendance at the state opening of the Scottish parliament, in 1999 or thereafter, has a single, main purpose: as queen of Scots to declare the parliament open. Yet in 1999 there was a secondary reason: to present a new symbol of the power and the relationship between parliament and crown, the mace. Although there is sometimes confusion over this, there was in fact no parliamentary mace before 1707, even though some officers of state had their own, such as the treasurer and chancellor. Therefore, the new 1999 mace, clearly following the style of the house of commons, is now present at all sittings of the new parliament. This can be seen to represent the tensions evident in the relationship with the Westminster model: a mace can, after all, be removed. The words 'Wisdom, Justice, Compassion and Integrity' are cut into the head of the mace. These may represent the aspirations of the Scottish people as inspired by devolutionists such as Donald Dewar but no more than did the stat-

ues of Mercy and Justice that adorned the door to the old Parliament House. Early modern society also had aspirations for good governance.[21]

After the Queen completed her opening speech in 1999 and 2004, the subsequent involvement of non-members is a departure from 1703. In 1999 a poem was read from the gallery, a song by Robert Burns sung, with the participation of the entire gathering, and, following on from the first minister's speech, a child's poem was read out to the assembly. Lastly, as in the old parliament, a psalm was sung before queen and crown left the stage. As we have seen similar musical and cultural elements occurred in 2004. Indeed, ingredients such as banners, trumpets, gun salutes, horse processions, symbols of authority and sovereignty are common to the pre-1707 'riding' and the state opening of 1999, but the contribution of music was on a different scale in 1999 and 2004. In the old 'ridings' we know that trumpeters blew fanfares as the king or commissioner arrived and departed, yet there was nothing to compare with the 1999 mix of fanfares, anthem, pipe bands, songs and even a steel band. Also, internationalism as well as multi-faithism characterised 1999 with banners carried by processing children fashioned as Buddhist prayer flags. Also, while the ecumenical 'kirking of parliament' takes place in a service in St. Giles the evening before, the new state opening is now markedly without religion, other than the singing of a single psalm which was abandoned in 2007. The religious context of the medieval and early modern is but a shadow as emphasis is placed on Scotland's place in the secular and multi-faith world.[22]

The opening ceremony of 1999 was a compromise but one that respected the traditions of the pre-1707 parliament. With the devolved sovereignty came a degree of devolved ritual, as royal assent is signed for and a mace provided to confirm the link between the Scottish parliament and British crown. Nonetheless, the essence of the 'riding' of parliament lived on that year: in the procession from palace to parliament, the use of the honours of Scotland and the relative informality of the relationship between chamber and monarch. In 2003 ritual was suspended out of political expediency. However, when in 2004 the parliament moved into its new home at Holyrood the external spatial geography of ritual altered. The proximity of palace and parliament now meant the riding had to be manufactured. In 2004 the Queen moved up and down the Royal Mile by car not coach, first to the Old Parliament house to hear speeches; then to sit at a raised platform to watch parliamentarians and community groups march down the

street to the new building, before being driven down herself. Only the crown of Scotland completed the traditional journey from the fortified castle to the free and 'neutral' chamber. No horses are used at all. However, at least a procession took place before the parliament sat down. Moreover, the riding, as exemplified by the 2007 state opening, is now more carnival than state procession and takes place after the internal ceremonial, and yet internally the chamber retains more of the solemnities of old. But there are many obvious changes in 1999 and 2007: the appearance of women as members, in procession, and in the security forces; the replacement of estates by political party with MSPs of equal status altering the 'architecture' of the chamber and procession, and lastly the involvement of children from communities groups representing a modern, universal electorate. Nevertheless, the denoting of parliamentary sovereignty was as essential in 2007 as before 1707: articulated before monarch, the honours and the elected representatives. As the late first minister Donald Dewar put it on the day itself in 1999, the opening of the new parliament was 'a modern ceremony in a traditional context' but since then the changing architectural geography of Scotland's capital has produced different versions of parliamentary ritualism, and no clear 'new' tradition has yet been established. No doubt the future will evolve in the light of the past.

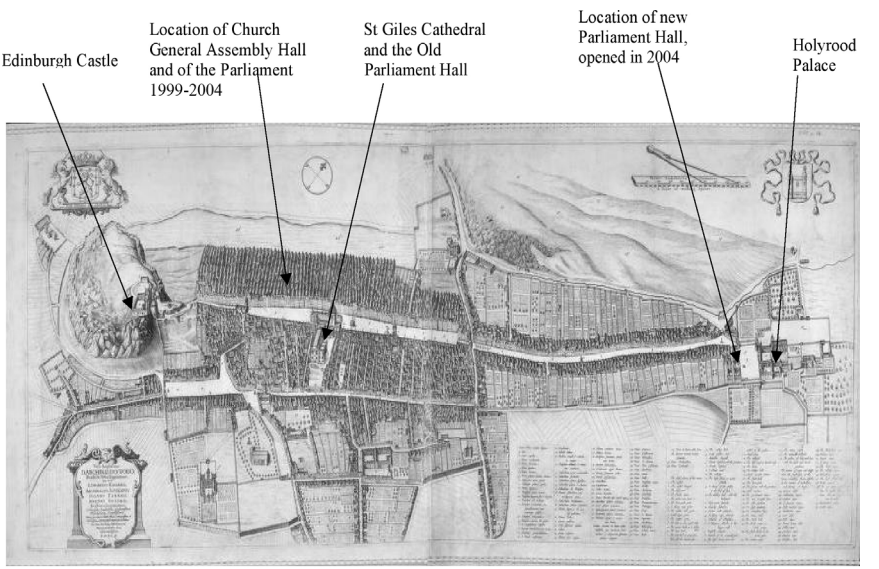

Figure 1: Seventeenth century plan of Edinburgh showing the ceremonial axis and locations of building of the seventeenth and twenty-first centuries. Adapted from John Gordon of Rothiemay's Edinburgh map of 1647.

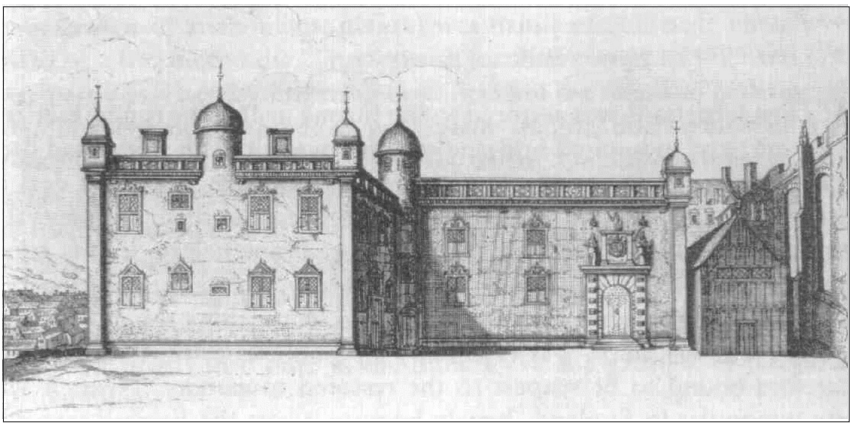

Figure 2: The Parliament House of Edinburgh c.1646, engraved after a drawing by James Gordon of Rothiemay. To the right (north-east corner) is the doorway with above it the statues of Mercy and Justice.

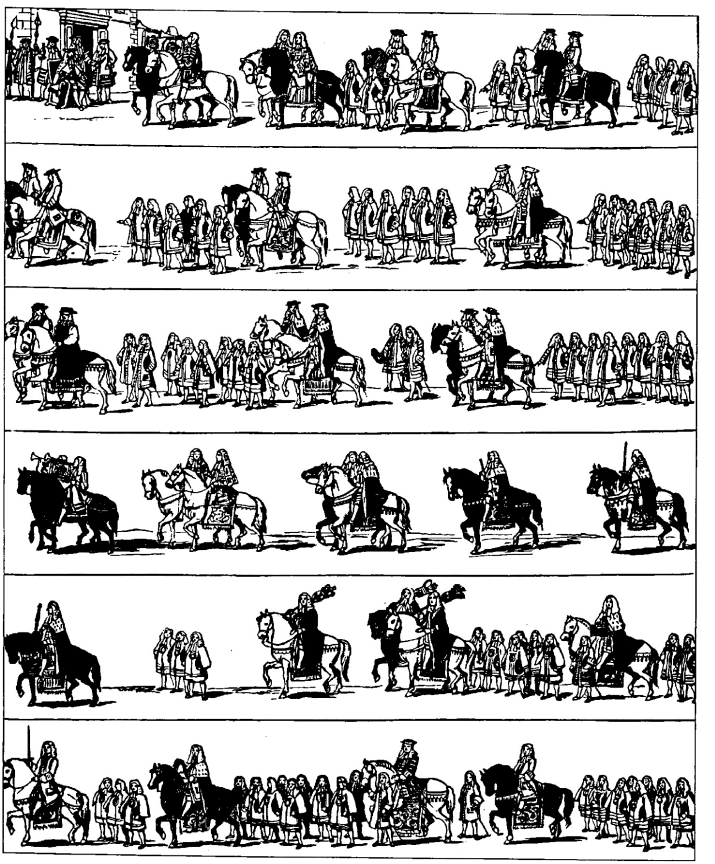

Figure 3: Drawing based on a painted series by Roderick Chalmers, herald painter of James VII, shows the 'riding' procession in the 1680s consisting of horsemen and retainers on foot. From James Grant, *Old and New Edinburgh: its history, its people and its places*, vol. 1, (Edinburgh, 1881), p. 61.

Figure4: Within the chamber at the 1999 state openin. The Queen sits in the centre of the chamber with the medieval crow of Scotland before her. (Picture copyright of the Scottis Parliament Corporate Body).

Notes

[1] For the full version of this paper see 'Continuity and change: the culture of ritual and procession in the parliaments of Scotland', in *Parliaments, Estates and Representation*, 29 (2009), pp.143-58. References to it are excluded. For summaries and contrasts with the 1999 Scottish Parliament only see idem, 'The Scottish Parliaments: the role of ritual and procession in the pre 1707 parliament and echoes in the new parliament of 1999', in E. Crewe and M.G. Muller (eds.), *Rituals in Parliament: Political, Anthropological and Historical Perspectives on Europe and the United States* (Frankfurt, 2006), pp.135-58.

[2] *The Herald*, (Glasgow) 2 July, 1999, 22; Mann, 'The Scottish Parliaments: the role of ritual', pp.137-8.

[3] National Archive of Scotland [NAS], duke of Buccleuch Papers, GD 224/605/1; NAS, Acta of Privy Council [APC], 29 April 1703; APC, 5 May, 1703; Mann, 'The Scottish Parliaments: the role of ritual', pp.138-9.

[4] For European comparisons and a general summary see K. M. Brown and A. J. Mann (eds.), *Parliament and Politics in Scotland, 1567-1707* (Edinburgh, 2005), pp.1-56 and J.R. Young, 'The Scottish Parliament in the Seventeenth Century: European Perspectives' in A.A. Macinnes, T. Riis and F.G. Pederson (eds), *Ships, Guns and Bibles in the North Sea and the Baltic States, c.1350-c.1700* (East Linton, 2000), pp.139-72.

[5] For the 'riding' see 'The method and manner of Ryding the Scottish Parliament' in *Maitland Club Miscellany*, iii, pt 1. (Edinburgh, 1842), pp.101-37, which lists Privy Council regulation; C. S. Terry, *The Scottish Parliament: its constitution and procedure, 1603-1707* (Glasgow, 1905), pp.94-102; and Rait, *Parliaments of Scotland*, pp.529-34. A brief if impressionistic mention is found in F. Grant, 'State Ceremonials in Edinburgh in the Olden Time', in *The Book of the Old Edinburgh Club*, 18 (Edinburgh, 1932), pp.11-32.

[6] Mann, 'The Scottish Parliaments: the role of ritual', pp.140-1.

[7] 'K.M. Brown, 'Party Politics and Parliament: Scotland's Last Election and its Aftermath, 1702-3'; in Brown and Mann (eds.), *Parliament and Politics in Scotland, 1567-1707*, pp.245-86.

[8] There are some variations in this order, but for that of 1681 see *Registers of the Privy of Scotland* [*RPC*], 3rd series, vii, pp.169-70 and *Maitland Club Miscellany*, pp.119-23 and for 1703 *Maitland Club Miscellany*, 131-35 and NAS. Clerk of Penicuik Papers, GD 18/6071. Mann, 'The Scottish Parliaments: the role of ritual', pp.142-4.

[9] NAS, Duke of Buccleuch Papers, GD 224/605/1. *The Herald*, 2 July 1999, p.21.

[10] For the various changes in dress code agreed by Parliament see K.M. Brown et al (eds), *The Records of the Parliaments of Scotland to 1707* [RPS] (St Andrews, 2009) at http://www.rps.ac.uk *RPS*, 1430/12-14; 1455/8/12; 1587/7/26 and 1661/1/316. For Privy Council regulation: *RPC*, 1st series VII, pp.57-8; 488-9 and 208-9; *RPC*, 1st series VIII, pp.233-4. For a summary see C. S. Terry, *The Scottish Parliament: its constitution and procedure, 1603-1707* (Glasgow, 1905), pp.97-100.

[11] *Maitland Club Miscellany*, pp.131-35.

[12] For an example of media mockery see Joyce McMillan in *The Scotsman*, 28 May, 2002.

[13] For quote (taken from 1633 coronation) see F. Grant, 'State Ceremonials in Edinburgh in the Olden Time' in *The Book of the Old Edinburgh Club*, 18 (Edinburgh, 1932), p.21. A description of the honours of Scotland can be found in Brain Barker, *The Symbols of Sovereignty* (Newton Abbot, 1979), pp.216-31.

[14] Mann, 'The Scottish Parliaments: the role of ritual', pp.147-9. For other details of Parliament House see Aonghus MacKechnie's 'The Crisis of Kingship: 1603-1707', in M. Glendinning (ed.) *The Architecture of Scottish Government: from kingship to parliamentary democracy* (Dundee, 2004), pp.82-134; *Royal Commission for the Ancient Monuments of Scotland: the City of Edinburgh* (HMSO, Edinburgh, 1951), pp.90-92 and R.K. Hannay's description in *The Book of the Old Edinburgh Club*, 13 (Edinburgh,

1924), pp.1-78. See figure 2 for the door to the parliament.

[15] Details for 1999 are taken from *The Herald*, 2 July, 1999, pp.19-22; *The Scotsman*, 2 July, 1999, special section pp.i-viii and BBC (Scotland) live television broadcast, 1 July, 1999, editor Atholl Duncan. For 2003 see BBC (Scotland) live television broadcast, 3 June, 2003 and Scottish Parliament News Release. Mann, 'The Scottish Parliaments: the role of ritual', pp.149-51.

[16] BBC (Scotland) live television broadcast, 9 October, 2004; Scottish Parliament Annual Report at http://www.scottish.parliament.uk/corporate/anrep-accts/spar/ar-05/ceremony.htm

[17] It had already been transported from Edinburgh Castle to the Old Parliament Hall earlier in the day.

[18] *The Herald*, 2 July, 1999; Barker, *Symbols of Sovereignty*, pp. 214-5; Mann, 'The Scottish Parliaments: the role of ritual', p.151.

[19] Mann, 'The Scottish Parliaments: the role of ritual', p.152-3.

[20] For 2004 details see BBC (Scotland) live television broadcast, 9 October, 2004 (no editor); Scottish Parliament Annual Report at http://www.scottish.parliament.uk/corporate/anrep-accts/spar/ar-05/ceremony.htm (1 May, 2009) and for 2007 see BBC (Scotland) live television broadcast, 30 June, 2007 and also at the Scottish Parliament website at http://www.holyrood.tv/library.asp?title=Session%203%20Event%20Archive&section=99 (accessed 20 April, 2009).

[21] Mann, 'The Scottish Parliaments: the role of ritual', p.155.

[22] BBC (Scotland) live television broadcast, 1 July, 1999; BBC (Scotland) live television broadcast, 9 October, 2004; BBC (Scotland) live television broadcast, 30 June, 2007.

Jaume Ribalta i Haro[1]

La reivindicación del sistema parlamentario catalán de Antiguo Régimen en época constitucional

1. *Introducción*

En 1835 se publicó en Barcelona un opúsculo anónimo titulado *Constitución catalana y Cortes de Cataluña.*[2] Se trataba de un texto articulado con el ceremonial de las Cortes catalanas de Antiguo Régimen. Su autor reivindicaba el carácter *liberal* de la Constitución histórica catalana y se afirmaba que dicho liberalismo *avant la lettre* sería útil e instructivo para el público y los representantes en Cortes.

2. *El autor*

Gracias a la publicidad del opúsculo en el *Diario de Barcelona,*[3] hemos podido identificar a su autor bajo el pseudónimo literario de [Gregorio] *Pérez de Miranda* que correspondía al escritor y periodista catalán Ramón López Soler (Manresa, 1799 – Madrid, 1836).[4]

3. *La Obra*

Para entenderla, conviene atender a tres factores y dos realidades documentales. En la obra convergieron tres ramas históricas entrelazadas, pero analíticamente diferenciables: a largo plazo, el opúsculo era un eslabón más en el proceso de difusión del constitucionalismo; a medio plazo, formaba parte de la corriente que, iniciada en el Trienio Liberal, se esforzaba en divulgar la historia catalana privativa; y, a corto plazo, se le puede considerar la aportación catalana a la elaboración del Estatuto Real.

Como ya se ha apuntado, el texto puede insertarse en la corriente que, desde el Trienio Liberal, intentaba difundir la historia catalana. Así, el *Periódico Universal de Ciencias, Literatura y Artes* se reveló abiertamente provincialista[5] y, en su corta vida, cumplió su proyecto fundacional de divulgar la historia catalana[6] mediante la publicación de un par de importantes documentos históricos (*Carta al barón de la Linde*, de Jaime Caresmar[7] y la edición bilingüe latinocastellana de las constituciones emanadas de las Cortes de Barcelona bajo Pedro II).[8] El diario profesaba un tono culto, pero también se dedicaba a la ilustración política de sus lectores mediante artículos de clara inspiración liberal.[9] Por su parte, el *Periódico Universal de Ciencias, Literatura y Artes* mantenía un tono claramente

erudito y sin entusiasmos reivindicativos.[10] Otro diario, el *Diario Constitucional, Político y Mercantil de Barcelona*, publicó un artículo de Ramón Muns Seriñá (1793-1856),[11] compañero de López Soler en la Sociedad Filosófica de Barcelona (y que llegó a ser durante aquel período secretario de la Diputación de Cataluña), en el que el repaso de la antigua Constitución histórica catalana le permitió reivindicar su carácter liberal. Este escrito y otros parecidos siguieron un hilo argumental que, basándose en una fuerte dosis de historicismo, conectaba las *antiguas libertades* que Felipe V había interrumpido un siglo atrás con las *nuevas libertades* que la Constitución de Cádiz instauraba o, mejor dicho, restauraba, ya que, en el fondo, se transmitía el mensaje de que, en Cataluña, la libertad era la tradición y, en cambio, el despotismo era una planta ajena, una innovación impuesta un siglo atrás por un Estado que, para más detalles, era absolutista y borbónico. Según este planteamiento, incluso era posible aspirar a que Cataluña y su antigua libertad pudieran servir de modelo a los liberales para construir el nuevo Estado nacional.[12]

En *El Europeo. Periódico de Ciencias, Artes y Literatura* y por el retorno de la Restauración, desapareció cualquier referencia abierta y directa a temas catalanes. La única manifestación fue un artículo de Aribau dedicado a presentar la entonces aún obra inédita de las *Rúbriques* de Bruniquer.[13] Era necesario ser seco y neutro para evitar una eventual represión. Sin embargo, la pluma atrevida de López Soler fue capaz de dar a luz un artículo dedicado a analizar los perjuicios que causaba en los pueblos la pérdida de sus costumbres.[14] La idea era clara y el referente no podía ser otro que Cataluña[15] donde, bajo el ilustrado absolutismo borbónico, el transcurso del s. XVIII había supuesto un claro proceso de pérdida de sus rasgos distintivos, entre los cuales, y en primer lugar, se encontraba la lengua. El desarrollo de la teoría política fue objeto de otro artículo en el que, igual que el anterior, y de nuevo a la vista de la amenza represora, López Soler adoptaba un tono exageradamente *filosófico*.[16] Pero, tras la muerte de Fernando VII y cuando el Estatuto Real ya llevaba vigente algunos meses, el nuevo diario *El Catalán* justificaba su propio título resaltando unos elementos diferenciadores que, en lo histórico, acogen el envoltorio idealizador ya visto.[17] En conjunto, la divulgación histórica había cumplido la función para la que fue convocada: fundamentar una identidad catalana.[18]

El fin del absolutismo desató las energías acumuladas y reprimidas. *El Vapor. Periódico Mercantil, Político y Literario de Cataluña* se convirtió en un vehículo adecuado para expresar ideas políticas,[19] exaltar el romanticismo[20] y elogiar los contados éxitos culturales catalanes del momento.[21] Tras la promulgación del Estatuto Real, se

produjo una verdadera floración de publicaciones dedicadas a divulgar la cultura catalana.[22] Todos ellos editaban, según la línea iniciada por el *Periódico Universal de Ciencias, Literatura y Artes*, documentos históricos catalanes precedidos de discursos reivindicativos, cuyo *leit-motiv* recuerda de cerca el hilo argumental empezado por Muns: en Cataluña, la libertad es antigua y el despotismo, moderno.

Nuestro escrito se situaría en este mismo contexto y planteamiento. Pero, a diferencia de los anteriores, tuvo una vida propia y complicada. El texto fue publicado íntegro y en entregas sucesivas en *El Vapor. Periódico Mercantil, Político y Literario de Cataluña*.[23] Extremo nada extraño ya que su autor era, en aquel momento, el director del diario: Ramón López Soler. Si bien el título que encabeza el documento es diferente (entonces se publicó como *Cortes de Cataluña* y luego lo fue como *Constitución catalana*), el escrito es exactamente igual: con bastante exactitud, López se había dedicado a extractar (a menudo simplemente a traducir al castellano) la obra clásica de la jurisprudencia catalana de Luis de Peguera sobre el funcionamiento de las Cortes catalanas.[24] Pero la pregunta clave es: ¿qué objetivo perseguía esta publicación? Según consta en el discurso preliminar, las Cortes catalanas necesitaban, a imagen y semejanza de las castellanas, su Martínez Marina.[25] Se quería cubrir esta laguna historiográfica dando a conocer la obra capital sobre el tema. Pero lo relevante es que el texto se publicó en pleno proceso de gestación del Estatuto Real y, por lo tanto, se le debe considerar como la propuesta o la contribución catalana a su elaboración. Esta propuesta queda meridianamente clara en un artículo que *El Vapor. Periódico Mercantil, Político y Literario de Cataluña* publicó inmediatamente después de nuestro texto.[26] Pero, ¿qué intereses representaba o defendía? En primer lugar, es claro que los destinatarios finales eran tanto el público como, sobre todo y esencialmente, los representantes catalanes en las Cortes reunidas en Madrid, a quienes, interesada y gratuitamente, se les daba una lección de historia y al mismo tiempo se les ofrecía munición política. En segundo lugar, y para responder a quien representaba, parece acertado pensar que no sólo expresaba la opinión personal del director del diario sino que, sobre todo, éste actuaba de correa de transmisión. Tras él había un grupo de personas que ejercieron un papel esencial, como Gaspar Remisa y Manuel Llauder. Remisa, como representante de los intereses de la burguesía catalana en Madrid, básicamente aspiraba a obtener un mecanismo de participación política en el aparato del nuevo Estado.[27] Llauder, entonces capitán general de Cataluña, había sido uno de los autores de aquello que Vicens calificó irónica y acertadamente como «pronunciament literari»,[28] ya

que remitió dos manifiestos a la reina regente (fechados el 25 de diciembre de 1833 y el 8 de enero de 1834), en los que pedía que se diera cumplimiento a la promesa que Fernando VII había hecho en 1814, que no era otra que admitir la participación política.[29] Pero estas peticiones hechas por los canales oficiales corrían el peligro de desembocar en una vía muerta, vista la composición anquilosada y retrógrada del Gobierno y, por lo tanto, eran necesarios argumentos de fuerza para que las peticiones tuvieran la acogida deseada. Que causaron el efecto deseado lo demuestra el hecho que el Gobierno buscara rápidamente la ayuda de Remisa para interceder ante Llauder, con el fin de sofocar los ánimos.[30] A nuestro parecer, Remisa estaba haciendo el doble juego porque, una vez superado felizmente el trance, se retiró de la escena política.[31] En efecto, Llauder había estado preparando el terreno unos meses antes: según un informe diplomático francés fechado el 24 de noviembre de 1833, se había interesado por la actitud francesa en el caso que él decidiera declarar momentáneamente la independencia de Cataluña.[32] La Revolución Francesa de julio de 1830 había aportado personal políticamente cercano, pero es lógico pensar que habría mecanismos oficiales o paraoficiales que harían llegar sus maniobras a oídos madrileños. Por eso podemos suponer que Llauder habría estado movilizando el espantajo tradicional que más miedo causaba en Madrid: la natural – según Madrid – tendencia catalana a la secesión o, dicho de otro modo, el separatismo. No es casual que *El Vapor. Periódico Mercantil, Político y Literario de Cataluña* hubiera publicado a principios de diciembre de 1833, en dos entregas, un artículo, atribuido a Aribau, dedicado al problema de la centralización;[33] y que, a finales de abril de 1834 y cuando ya se había conseguido el objetivo de la promulgación del Estatuto Real (10 de abril de 1834),[34] el mismo Llauder endosara la responsabilidad de una eventual secesión que él había abortado, a grupos de exaltados extranjeros (polacos e italianos).[35]

El pronunciamiento literario habría ido acompañado de una campaña de intoxicación periodística, ya que – no debemos olvidarlo – Llauder era el protector del diario acabado de citar. Y este teatro de política ficción acabó teniendo éxito ya que, poco tiempo después y con las limitaciones propias del llamado *liberalismo doctrinario*, *El Vapor. Periódico Mercantil, Político y Literario de Cataluña* se afanó a publicar y divulgar el recientemente promulgado Estatuto Real.[36] Este texto paraconstitucional (*charte octroyée* siguiendo el modelo de la carta francesa de 1830), había tenido en cuenta la tradición histórica para limitar las posibles reformas pero, en cambio y sospechosamente, reconocía algo que ahora nos resulta familiar: admitía la participación política de los ciudadanos económicamente

activos a través del Estamento de Procuradores del Reino que, como es sabido, se formaba con criterios censatarios que, como medida política largamente deseada, satisfacía las viejas aspiraciones de la burguesía catalana. A partir de entonces ésta se dedicó a la defensa de sus intereses: una vez perdido el mercado colonial a causa de las independencias suramericanas, era necesario adoptar o, mejor dicho, conseguir, que el Gobierno adoptara una política económica proteccionista, que convirtiera el mercado interior español en el *coto privado de caza* de la industria catalana. Pero ésta es ya otra historia que cae más allá de nuestro objeto.

Nuestro escrito tuvo una segunda vida documental. Fue la publicación, el año siguiente, tras la revuelta popular del verano de 1835, de la versión en opúsculo de la obra. La diferencia más importante, respecto de la anterior, no era el ya citado cambio de título sino la incorporación de una presentación del documento que, siguiendo los tópicos ya citados y conocidos de la antigua libertad catalana, se había confeccionado teniendo en cuenta los argumentos tradicionales para defender la Constitución histórica catalana, sacados de otro opúsculo publicado durante la conmoción de los Gorretes,[37] que se titulaba *Luz de la verdad*.[38] Se explicaban las raíces históricas y jurídicas de la Constitución histórica catalana, que demostraban una originaria y antigua libertad democrática catalana que el despotismo había destruido: otra vez y de forma bastante aseada, se revivía como argumento central la teoría del rey elegido, es decir, el pacto entre rey y reino. Sin embargo, la propaganda que de esta publicación se insertó en el *Diario de Barcelona* plantea un problema de crítica histórica: según se afirma en el texto, los argumentos se habían extraído de un opúsculo difícil de encontrar que explicaba como había sido 'Cataluña defendida de sus émulos'.[39] Una simple comparación muestra que esta última palabra no figura en el título del opúsculo *Luz de la verdad* y, en cambio, sí que consta en la reedición anotada que en 1842 publicó J. M. y C.[40] Evidentemente ¿cómo podía conocer el redactor del anuncio el título de una obra que se publicaría siete años después? La única explicación posible es que el anunciante conociera el original manuscrito antes de su publicación y, por lo tanto, las iniciales *J. M. y C.* son la clave. Estas iniciales corresponden exactamente a las del abogado José de Mora y de Casanova (1806-1848),[41] que, a causa del común y compartido interés hacia la lengua y cultura helénicas, era amigo de Bergnes.[42] Finalmente, como muestran los ejemplares consultados, esta reedición se publicó individualmente y a su vez formaba parte de una operación editorial de más largo alcance, cuyos datos reunimos en la siguiente tabla para agilizar la explicación.

TABLA. *Los ejemplares consultados de* Constitución catalana... *comparados con la publicación del* Eco del Comercio

BIBLIOTECA DE CATALUNYA (Sig. F 34-8º-638. Reg. 37119)	**UNIVERSITAT DE BARCELONA. FACULTAT DE DRET (Sig. Jd 1/25. Reg. 40)**	**INSTITUT MUNICIPAL D'HISTÒRIA DE BARCELONA (Sig. B. Varia-12º (24). Reg. 77310)**	***ECO DEL COMERCIO***
–	*Discurso preliminar...* (Barcelona, Gaspar, s.a.)	–	*Discurso preliminar...*
–	*Compendio ecsacto...* (Barcelona, s. ed., s.a.)	*Compendio ecsacto...* (Barcelona, s. ed., s. a.)	*Constitución de la Monarquía española...*, 1812
–	*Colección de las varias...* (Barcelona, Texero, 1835)	*Colección de las varias...* (Barcelona, Texero, 1835)	*Colección de Constituciones...* (Madrid, Eco del Comercio, 1836)
–	*Carta Constitucional francesa...* (Barcelona, Texero, 1835)	*Carta Constitucional francesa...* (Barcelona, Texero, 1835)	*Constitución francesa...*
Constitución catalana... (Barcelona, Texero, s. a.)	*Constitución catalana...* (Barcelona, Texero, s. a.)	*Constitución catalana...* (Barcelona, Texero, s. a.)	–
–	*Constitución de Bélgica...* (Barcelona, Texero, s. a.)	*Constitución de Bélgica...* (Barcelona, Texero, s. a.)	*Constitución belga...*
–	*Constitución de los Estados-Unidos...* (s. ll., s. ed., s. a.)	*Constitución de los Estados-Unidos...* (s. ll., s. ed., s. a.)	*Constitución angloamericana...*
–	*Constitución de Portugal...* (Barcelona, Garriga, 1836)	*Constitución de Portugal...* (Barcelona, Garriga, 1836)	*Constitución portuguesa...*
–	–	–	*Constitución brasileña...*
–	–	–	*Constitución de la Monarquía española...* (Madrid, Nacional, 1837)

Como muestra la tabla, la operación editorial en donde se insertaba nuestro opúsculo consistía en la publicación de una serie de constituciones de Europa y de América (Francia, Bélgica y Estados Unidos de América).[43] Resulta sospechoso que *El Vapor. Periódico Mercantil, Político y Literario de Cataluña* ya hubiera publicado meses atrás las constituciones de Bélgica,[44] Francia[45] y algunos artículo de la de los Estados Unidos de América,[46] ya que, precisamente, son las que después figuraron en la *Colección de las varias cartas constitucionales...* publicada por la Imprenta de Manuel Texero.[47] Que era un proyecto político liberal parece atestiguarlo el hecho que el año inmediatamente siguiente de 1836 la imprenta de *El Eco del Comercio* de Madrid publicó una segunda edición de otra *Colección de Constituciones...* que, además, de incorporar otras normas constitucionales, contenía las que había publicado en Barcelona Texero, excepto la catalana,[48] y el diario *El Eco del Comercio* ha sido considerado el portavoz

político de la burguesía española de entonces.[49] Todo lleva a sospechar que se empezaban a mover los hilos para modular o reformar un Estatuto Real que se había mostrado como un instrumento jurídico insuficiente para vehicular sus intereses, pero los movimientos populares posteriores llevaron a la política española hacia la Constitución de 1837.[50] Recuperando y modulando el no tan viejo antepasado de la Constitución de Cádiz, la nueva Constitución fue la base jurídica de ideología liberal doctrinaria que, poco tiempo después, desembocó en la instauración de una solución política bipartidista.

En este contexto, se entiende la afirmación que figura en el opúsculo: con el fin que la experiencia propia y ajena nos aleccione, el autor había considerado oportuno juntar todas las constituciones existentes en Europa y parte de América y también aquellas que el tiempo, los tiranos y las guerras habían derruido, es decir, nuestra *Constitución catalana y Cortes de Cataluña*.

Notas

[1] Profesor agregado de Historia del Derecho y de las Instituciones (Universitat de Lleida). Este trabajo se inscribe en los proyectos de investigación MEC SEJ 2006-15051-C03-02/JURI «Derechos históricos: la formación de un sistema de derecho privado en Cataluña», dirigido por el Dr. José María Pérez Collados y «Seminari interuniversitari d'Història del Dret català 'Josep Maria Font Rius'» (Generalitat de Catalunya. Grup de Recerca Consolidat. 2005-SGR-117 y 2009-SGR-766), dirigido por el Dr. Tomàs de Montagut Estragués.

[2] 'Constitucion catalana y Cortes de Cataluña. Resúmen de las antiguas Constituciones, prerrogativas, fueros y privilegios de que disfrutó el principado de Cataluña, en unos tiempos en que lo restante de Europa gemia aun bajo el peso de la odiosa esclavitud', en *Coleccion de las varias cartas constitucionales que rigen en Europa. Para instruccion de los españoles, y comparacion de unos códigos con otros* (Barcelona, 1835).

[3] *Diario de Barcelona*, 331 (28.11.1835), 2681.

[4] *Vid.* F. Blanco García, *La literatura española en el siglo XIX* (Madrid, 1891), I, p. 356. Para la biografía, actividad periodística, producción literaria de Ramón López Soler y edición crítica del opúsculo, *vid.* J. Ribalta i Haro, Constitución catalana y Cortes de Cataluña. Excerpta vuitcentista de Peguera, a càrrec de Ramon López Soler', *Revista de Dret Històric Català*, 2 (2002), p. 11-119, esp. pp. 18-45 y 69-119 (edición electrónica:
http://www.raco.cat/index.php/RevistaDretHistoric/article/view/27898/27732).

[5] *Periódico Universal de Ciencias, Literatura y Artes*, 21 (26.5.1821), pp. 339-340 (reproducido por F. Soldevila, *Història de Catalunya,* 2a ed. (Barcelona, 1963), p. 1313; F. Cucurull, *Panoràmica del nacionalisme català. II. Del 1814 al 1874* (París, 1975), p. 83.

[6] «Prospecto», *Periódico Universal de Ciencias, Literatura y Artes,* s. n. (6.1.1821), 4-5 (reproducido por Soldevila, *Història de Catalunya,* pp. 1311-1312).

[7] 'Carta del Dr. Don Jaime Caresmar, canónigo premostratense del monasterio de nuestra Señora de Bellpuig de las Avellanas, dirigida al muy ilustre Sr. D. Manuel de Terán, barón de la Linde, intendente general interino del egército y principado de Cataluña; en la cual se prueba ser Cataluña en lo antiguo más poblada, rica y abundante que hoy', *Periódico Universal de Ciencias, Literatura y Artes*, 1 (6.1.1821), pp. 9-16; 2 (13.1.1821), pp. 33-40; 3 (20.1.1821), pp. 57-64; 4 (27.1.1821), pp. 85-88; 6 (10.2.1821),

pp. 129-136; 7 (17.2.1821), pp. 161-164; 9 (3.3.1821), pp. 203-210; 10 (10.3.1821), pp. 237-238; 11 (17.3.1821), pp. 251-258; 12 (24.3.1821), pp. 269-272; 14 (7.4.1821), pp. 285-288; 16 (21.4.1821), pp. 301-304; 17 (28.4.1821), pp. 309-312; 18 (5.5.1821), pp. 315-322; 19 (12.5.1821), pp. 324-330; 20 (19.5.1821), pp. 333-338 y 21 (26.5.1821), pp. 342-344. *Vid.* también, uno de sus redactores, A. [= Buenaventura Carlos Aribau], 'Revista de Barcelona en estos últimos años', *El Europeo. Periódico de Ciencias, Artes y Literatura*, I,12 (1823), pp. 361-402 (reproducido por L. Guarner, *El Europeo, Barcelona, 1823-1824 (*Madrid, 1953), núm. 21, pp. 14-33, esp. 33).

[8] 'Cortes de Cataluña. celebradas en Barcelona el año de 1283', *Periódico Universal de Ciencias, Literatura y Artes*, 4 (27.1.1821), 80-84; 5 (3.2.1821), 105-112; 7 (17.2.1821), 149-152; 8 (24.2.1821), 189-190; 10 (10.3.1821), 233-236; 15 (14.4.1821), 293-296; 20 (19.5.1821), 331-332 y 21 (26.5.1821), 340-342 y, relacionado con esta publicación, 'Advertencia acerca de la edicion de las Cortes celebradas en Barcelona en el año de 1283', *Periódico Universal de Ciencias, Literatura y Artes*, 21 (26.5.1821), 344-346.

[9] *Periódico Universal de Ciencias, Literatura y Artes*, 1 (6.1.1821), 1-5; 4 (27.1.1821), pp. 73-76; 5 (3.2.1821), pp. 97-100 y 6 (10.2.1821), pp. 121-122; 6 (10.2.1821), pp. 122-124; 7 (17.2.1821), pp. 145-146; 8 (24.2.1821), pp. 169-170; 9 (3.3.1821), pp. 195-196; 9 (3.3.1821), p. 201; 10 (10.3.1821), p. 219; 10 (10.3.1821), p. 220; 11 (17.3.1821), pp. 243-242 [= 244]; 13 (31.3.1821), pp. 275-276; 14 (7.4.1821), p. 283; 14 (7.4.1821), pp. 283-284; 15 (14.4.1821), pp. 291-292; 15 (14.4.1821), pp. 297-298; 17 (28.4.1821), p. 314; 19 (12.5.1821), pp. 323-324.

[10] Con la excepción de la publicación de los comentarios al anuncio de un folleto en que Próspero de Bofarull (bajo el anagrama de Félix Fluralbo) denunciaba los daños que ocasionaría en Cataluña la propuesta gubernamental de trasladar sus archivos a Madrid ('Anuncio de una obra', *Periódico Universal de Ciencias, Literatura y Artes*, 9 (3.3.1821), p. 218). *Vid.* J. Casassas (coord.), *Els intel·lectuals i el poder a Catalunya. Materials per a un assaig d'història cultural del món català contemporani. 1808-1975 (*Barcelona, 1999), p. 42.

[11] Para la biografía de Ramón Muns, *vid.* J. R. Carreras y Bulbena, 'Estudis biogràfichs d'alguns benemèrits patricis qui ilustren aquesta Academia. Ramon Muns y Seriñà', *Boletín de la Real Academia de Buenas Letras de Barcelona*, 14 (1929), p. 183-186; M. de Montoliu, 'La Real Academia de Buenas Letras y el romanticismo', en *Historia y labor de la Real Academia de Buenas Letras de Barcelona desde su fundación en el siglo XVIII* (Barcelona, 1955), pp. 169-170.

[12] R. Muns y Seriñá, 'Observaciones sobre la antigua Constitución de Cataluña, leídas en una Sociedad literaria particular el día 11 de julio de 2820 [= 1820] por D...', *Diario Constitucional, Político y Mercantil de Barcelona,* 117 (17.7.1820), pp. 2-3 y 118 (18.7.1820), pp. 2-3.

[13] A. [= Buenaventura Carlos Aribau], 'Historia. Noticia de la obra inédita conocida por el nombre de Rúbrica de Bruniquer, custodiada en el archivo del ayuntamiento de Barcelona', *El Europeo. Periódico de Ciencias, Artes y Literatura*, I.5 (15.11.1823), pp. 152-157, esp. 152, 153 y 155 (referenciado por Guarner, *El Europeo*, 2*b*, núm. 9; reproducido parcialmente por Soldevila, *Història de Catalunya*, p. 1315).

[14] L. S. [= Ramón López Soler], 'Política. Perjuicios que acarrea el olvido de las costumbres nacionales', *El Europeo. Periódico de Ciencias, Artes y Literatura*, I.4 (31.1.1824), pp. 109-118, esp. 110, 111, 113 y 113-114 (reproducido por Guarner, *El Europeo*, núm. 106, 84*b*-89*a*, esp. 85*a*, 85*b*, 86*b* y 86*b*-87*a*).

[15] Con dudas a favor de España, *vid.* P. Anguera, *Els precedents del catalanisme*, *catalanitat i anticentralisme*, 1808-1868 (Barcelona, 2000), pp. 106-107 y n. 124-125.

[16] L. S. [= Ramón López Soler], 'Historia. Sobre los progresos de la ciencia del gobierno desde la invasion del imperio romano', *El Europeo. Periódico de Ciencias, Artes y Literatura*, II.6 (14.2.1824), pp. 175-190 (referenciado en Guarner, *El Europeo*, 89*a*, núm. 107).

[17] 'El Catalán', *El Catalán* (9-10.10.1834), reproducido por M. Jorba, 'Literatura, llengua i renaixença: la renovació romàntica', en P. Gabriel (dir.), *Història de la cultura catalana. IV. Romanticisme i Renaixença, 1800-1860 (*Barcelona, 1995), p. 109. Este apre-

cio hacia la Constitución histórica catalana llegó hasta las capas más populares del liberalismo catalán según un dietario anónimo redactado entonces, *vid. Successos de Barcelona (1822-1835)*, edició a cura de J. M. Ollé Romeu *(*Barcelona, 1981), pp. 118, 129-130 y 181.

[18] P. Anguera, 'Entre dues possibilitats: espanyols o catalans?', en J. Albareda (ed.), *Del patriotisme al catalanisme. Societat i política. segles XVI-XIX (*Vic, 2001), pp. 317-337, esp. 329-331.

[19] El director López Soler aprovechó la oportunidad para reciclar – el cambio más apreciable radica en los títulos – dos artículos publicados anteriormente en *El Europeo. Periódico de Ciencias, Artes y Literatura*: [Ramón López Soler], 'Rapida ojeada sobre los sistemas gubernativos en Europa desde la invasión de los bárbaros', *El Vapor*, 20 (20.1.1835), 1; 24 (24.1.1835), 1; 32 (1.2.1835), 1; 68 (9.3.1835), 1; 89 (30.3.1835), 1-2, que corresponde a L. S. [= Ramón López Soler], 'Historia. Sobre los progresos de la ciencia del gobierno desde la invasion del imperio romano', *El Europeo. Periódico de Ciencias, Artes y Literatura*, II.6 (14.2.1824), pp. 175-190 (referenciado por Guarner, *El Europeo*, 89*a*, núm. 107; *vid. supra* n. 16); [Ramón López Soler], 'Sobre la conservacion de las costumbres nacionales', *El Vapor*, 112 (22.4.1835), 1; 117 (27.4.1835), 1, que corresponde a L. S. [= Ramón López Soler], 'Política. Perjuicios que acarrea el olvido de las costumbres nacionales', *El Europeo. Periódico de Ciencias, Artes y Literatura*, I.4 (31.1.1824), pp. 109-118 (reproducido por Guarner, *El Europeo*, pp. 84*b*-89*a*, núm. 106; *vid. supra* n. 14).

[20] Es verosímil atribuir a López Soler un artículo exaltando el estilo literario de Walter Scott: 'Influencia de las obras de Walter Scott en la generación actual', *El Vapor*, 98 (2.11.1833), 1-2, y 101 (9.11.1833), 1-2 (reproducido por I. M. Zavala, *Ideología y política en la novela española del siglo XIX* (Salamanca, 1971), pp. 219-222 y 223-225). La duda surge del hecho que, dos meses antes, se había publicado otro artículo de temática relacionada que, por las iniciales con que se firmó, debe adjudicarse a Wenceslao Ayguals de Izco: W. A. de Y., 'El Romanticismo', *El Vapor*, 74 (7.9.1833), 1-2.

[21] En sus páginas, se elogió la edición de la *Crònica Universal...* de Gerónimo Pujades que, al cuidado de Félix Torres Amat, Alberto Pujol y Próspero de Bofarull, se había publicado entre los años 1829-1832 y, de paso, se felicitaba a Félix Torres Amat por la inminente publicación de sus *Memorias para ayudar...* (*El Vapor*, 120 (24.12.1833), 4). Para las obras citadas de Pujades, *vid*. G. Pujades, *Crónica Universal del Principado de Cataluña, escrita a principios del siglo XVII por...* (Barcelona, 1829-1832), I-VIII v.; F. Torres Amat, *Memorias para ayudar a formar un diccionario critico de los escritores catalanes; y dar alguna idea de la antigua y moderna literatura de la Calaluña* (Barcelona, 1836) [Reedición anastática: Barcelona, 1973].

[22] Para los detalles, *vid.* Ribalta i Haro, 'Constitución catalana*'*, pp. 55-57.

[23] *El Vapor*, 17 (8.2.1834), 1-2; 18 (11.2.1834), 1-2 y 19 (14.2.1834), 1-2.

[24] L. de Peguera, *Practica, forma, y estil, de celebrar Corts generals en Cathalunya, y materias incidents en aquellas* (Barcelona, 1701). [Reedición anastática, *Estudi introductori de Tomàs de Montagut Estragués* (Madrid, 1998)].

[25] *El Vapor*, 17 (8.2.1834), 1-2, esp. 1: 'A las Cortes de Cataluña falta un Marina'.

[26] *El Vapor*, 20 (15.2.1834), 1-2.

[27] Durante el siglo XVIII, ésta había sido la principal aspiración de la burguesía catalana. *Vid.* J. Fontana, 'La Guerra de Successió i les Constitucions de Catalunya: una proposta interpretativa', en J. Albareda (ed.), *Del patriotisme al catalanisme. Societat i política. segles XVI-XIX (*Vic, 2001), pp. 13-29, esp. 14-15. Una muestra excelsa de esta necesidad catalana es, sin duda, el llamado *Memorial de greuges de 1760*: a *Memorial de greuges de 1760. Projecte de constitució de l'estat català de 1883. Memorial de greuges de 1885. Missatge a la Reina Regent de 1888. Bases de Manresa de 1892. Estudi introductori del Dr. Josep A. Gonzàlez Casanova (*Barcelona, 1990), pp. 2-19.

[28] J. Vicens i Vives, 'Els catalans en el segle XIX', en J. Vicens i Vives *et* M. Llorens, *Industrials i polítics (segle XIX). Història de Catalunya. Biografies catalanes. XI* (Barcelona, 1980), 3a ed., p. 232.

[29] A. M. García, 'Liberalisme "no respectable" i poble menut urbà: bullangues i revolució liberal (1832-1835)', en *Recerques. Història, Economia, Cultura*, 22 (1989), pp. 45-62, esp. p. 47 y n. 6; A. M. Garcia Rovira, *La revolució liberal a Espanya i les classes populars. 1832-1835 (*Vic, 1989), pp. 44-45; J. Fontana, *Història de Catalunya. Dirigida per Pierre Vilar. V. La fi de l'Antic Règim i la industrialització. 1787-1868 (*Barcelona, 1998), pp. 251-252.

[30] J. Vicens Vives, 'Coyuntura económica y reformismo burgués', *Estudios de Historia Moderna*, 4 (1954), pp. 351-391 (en *Obra dispersa, (*Barcelona, 1967), II, pp. 36-55; en *Coyuntura económica y reformismo burgués y otros estudios de Historia de España. Nota preliminar y selección de textos de Josep Fontana* (Barcelona, 1974), 4a ed., pp. 17-58, esp. p. 51 y n. 58); M. Llorens, 'Gaspar de Remisa i Miarons (1784-1847)', en J. Vicens i Vives et M- Llorens, *Industrials i polítics (segle XIX). Història de Catalunya. Biografies catalanes. XI* (Barcelona, 1980), 3a ed., pp. 317-323, esp. p. 319-320; Garcia Rovira, *La revolució liberal.*, p. 45.

[31] Llorens, 'Gaspar de Remisa', p. 320.

[32] P. Anguera, 'Des de quan [els] catalans no volen ser espanyols?', *L'Avenç*, 200 (1996), p. 80-83, esp. 81; Anguera, *Els precedents del catalanisme*, pp. 141-143.

[33] 'Centralización', *El Vapor*, 112 (6.12.1833), 1-2 y 113 (7.12.1833), 1; *vid*. Anguera, *Els precedents del catalanisme*, pp. 143-144.

[34] Para el *Estatuto Real* de 1834, *vid*. 'C. Estatuto Real (10 de abril de 1834)', en J. de Esteban, *Las Constituciones de España* (Madrid, 2000), 2a ed., pp. 177-183.

[35] Aunque da crédito a la sinceridad de Llauder y trata de racionalizar la situación atribuyendo los hechos (para nosotros, posiblemente ficticios) a liberales exaltados, para los datos, *vid*. Anguera, 'Des de quan.', 82; Anguera, *Els precedents del catalanisme*, pp. 144-145.

[36] *El Vapor.*, 48 (22.4.1834), pp. 3-4; 49 (25.4.1834), p. 1 y 51 (29.4.1834), p. 1.

[37] Sobre esta coyuntura histórica, *vid*. J. Dantí, 'La revolta dels Gorretes a Catalunya (1687-1689)', *Estudis d'Història Agrària,* 3 (1979), pp. 79-99; H. Kamen, 'Una insurrecció oblidada del segle XVII: l'alçament dels camperols catalans de l'any 1688', *Recerques,* 9 (1979), pp. 11-28.

[38] *Luz de la verdad. Preguntas y respuestas en favor de Cataluña y sus hijos originadas de una disputa avida entre cinco soldados de a cavallo de las tropas de España dispuestas en la forma siguiente por uno de los mesmos propugnantes (*Barcelona, 1641?), (ejemplar: IMHB. A-12-186). Las referencias bibliográficas que, añadidas a mano, constan en este ejemplar se han extraído sin duda de A. Palau y Dulcet, *Manual del librero hispanoamericano. Bibliografía general española e hispanoamericana desde la invención de la imprenta hasta nuestros tiempos con el valor comercial de los impresos descritos* (Barcelona, 1951), VII, p. 735*b*, núm. 144294, en donde indica que «Algunos afirman que su autor es Fr. Bernardo de Ribera, hijo de Barcelona y de la Orden de Predicadores.». Pero la fecha debe corregirse para situarla hacia 1698: J. Albareda, 'Introducció' en J. Albareda (ed.), *Escrits polítics del segle XVIII*. 1. Despertator de Catalunya i altres textos, edició a cura de… (Vic, 1996), pp. 5-37, esp. 8. El folleto ha sido reeditado recientemente por Albareda ('Luz de la verdad', en Albareda (ed.), *Escrits polítics*, pp. 39-88). Pero, (*vid. supra* n. 25), Albareda ha reproducido el texto a partir de la reedición anotada (notas que ahora han sido sacrificadas) de 1842 titulada *Cataluña vindicada... Vid*, infra n. 40 y Albareda, 'Introducció', en Albareda (ed.), *Escrits polítics*, pp. 32-33, n. 12.

[39] *Diario de Barcelona*, 331 (28.11.1835), 2681 (*vid. supra* n. 3).

[40] J. M. y C., *Cataluña vindicada de la nota de rebelion con que sus émulos pretendieron denigrar sus glorias aumentada con algunas notas y citas autenticas ordenada en forma de diálogo y dada nuevamente á luz por*...(Barcelona, 1842), p. 99.

[41] Para la biografía de José de Mora y de Casanova, *vid*. J. R. Carreras y Bulbena, 'Estudis biogràfichs d'alguns benemèrits patricis qui ilustren aquesta Academia. Josep de Mora y de Casanova', *Boletín de la Real Academia de Buenas Letras de Barcelona,* 14 (1930), pp. 370-373.

[42] *Vid*. S. Olives Canals, *Bergnes de las Casas: helenista y editor, 1801-1879* (Barcelona, 1947), p. 78, n. 176. Para los discursos pronunciados por José de Mora en la sede de la Real Academia de Buenas Letras de Barcelona, *vid*. J. Miret y Sans, 'Dos siglos de vida académica', *Boletín de la Real Academia de Buenas Letras de Barcelona,* 9 (1921), p. 254 y s., esp. 274 y 280.

[43] Según la propaganda editorial insertada en el *Diario de Barcelona*, formaban parte de la colección las constituciones de Francia, de Bélgica y de los Estados Unidos de América que, como se puede comprobar, habían sido editadas por Manuel Texero como la *Constitución catalana*... Para este anuncio en el *Diario de Barcelona*, *vid*. *supra* n. 3 y 39.

[44] *El Vapor*, 230 (18.8.1835), pp. 1-3.

[45] *El Vapor*, 236 (24.8.1835), pp. 1-2.

[46] *El Vapor*, 129 (9.5.1835), p. 1.

[47] *Coleccion de las varias cartas constitucionales que rigen en Europa. Para instruccion de los españoles, y comparacion de unos códigos con otros* (Barcelona, 1835).

[48] *Colección de constituciones, en la que van puestas en castellano las de Francia, Bélgica, Portugal, Brasil, y Estados-Unidos angloamericanos, con la española de 1812 y su discurso preliminar* (Madrid, 1836), 2a ed., p. 256 (reedición anastática, Valencia, 1997).

[49] *Vid*. J.S. Pérez Garzón, '*El Eco del Comercio*, portavoz del programa revolucionario de la burguesía española, 1832-1835', en A. Gil Novales (ed.), *La prensa en la Revolución liberal: España, Portugal y América latina. Actas del Coloquio Internacional que sobre dicho tema tuvo lugar en la Facultad de Ciencias de la Información, Universidad Complutense, los días 1, 2 y 3 de abril de 1982. Edición y prólogo a cargo de... (*Madrid, 1983), pp. 509-524.

[50] Para la Constitución Española de 1837, *vid*. 'D. Constitución de la Monarquía española (18 de junio de 1837)', en Esteban, *Las Constituciones de España*, pp. 185-194.

Leonida Tedoldi

The Role of Parliament in the Development of a Federal Constitution Project during the First Spanish Republic (1873)[1]

In the first half of the nineteenth century two parliamentary models faced each other: the radical liberal constitutional system of Cadiz and the moderate liberal monarchy of Isabel II.[2] The establishing of the First Spanish Republic was a pivotal moment in the history of constitutionalism, balancing the political system constructed in the first half of the nineteenth century with the inspiration of parliamentary 'democracy'.[3]

Besides, the originality of the constitutional proposal drafted lies not only in republican federal reform, but also in the particular nature of the parliamentary system (especially of the *Senado*).

The crisis during the regime of Isabel II, the '*pronunciamento militar (coup d'etat)'* of 17th September 1868 and the alliance between the *progresistas* and the '*demócratas'*[4] gave way to a transitional phase lasting six years, which saw a provisional government, a regency and a monarchy following one another in rapid succession, with a new constitution and the achievement of universal male suffrage.

The First Spanish Republic represented the final act of this play, stemming from the triumph of the 'glorious revolution'.

During this period, the crisis within the monarchy rekindled divisions between on the one hand republican and democratic movements within a politically oligarchic liberal-conservative party, the *Partido Demócrata*, and on the other hand a radical party orientated towards progressive and socialist movements.[5] Democratic opinion had already laid down roots over the previous twenty years in certain sectors of the liberal tradition open to the revolutionary ideas emerging in 1848.[6]

During the 1850s two fundamental essays were published which help to understand subsequent political and parliamentary dynamics: *La reacción y la revolución* (1854) by Francisco Pi y Margall and *La república democrática federal y universal* (1855) by Fernando Garrido. In this first work Pi, who later had a pivotal political and institutional role, laid down the foundations for the Spanish federalist philosophy: political decentralisation and the creation of a treaty drawn up by all those concerned, while Garrido, closely aligned with the socialist viewpoint, set out the 'absoluteness' of individual rights – prior to and more important than other aspects, hence not negotiable or restricted by the state – the true nucleus of general federal and republican political theory.

'La República Democrática, Federal y Universal, wrote Garrido, *está llamada a reemplazar a las viejas monarquías, por ser el sistema más compatible, más identificado con las Libertades y derechos individuales, la descentralización, los derechos de los pueblos, la emancipación de las nacionalidades oprimidas, la federación de las naciones, la paz de Europa, la felicidad del género humano, la libertad y el progreso'.* The growth of the republican federalist political movement increased during the period of political crisis suffered by the monarchy beginning in the first half of the 1860s, with the disintegration of parliament and dynasty resulting partly from the actions of the *Partido progresista* founded in 1863.[7] During this decade the '*demócratas'* asserted their substantial democratic orientation during parliamentary debates. The emergence of the *Partido Demócrata Republicano Federal* in 1866, led by Juan María Orense, gave a political identity to the most progressive liberal groups and the *Cortes constituyentes* in the 1870s provided an important sounding-board, consolidating the consensus towards the republican[8] parliamentary representatives during the complex transitional phases between the regency of the '*gobierno provisional'* and the inauguration of King Amedeo of Savoy. The preparation and promulgation of the monarchical constitution began during this changeover in 1869.

The political influence exerted over republican leaders in 1873 by the constitution conditioned them to a considerable extent. The achievement of universal male suffrage, a sweeping declaration of rights, a drastic reduction in authoritarian excesses, judicial independence, the introduction of juries during trials and *Habeas corpus* of Anglo-Saxon origin (art. 3-4) and finally the achievement of institutional decentralisation, previously proposed by the Cadiz constitution, were the key elements in this constitutional proposal.[9] However, the introduction of constitutional legitimization for the suspension of freedoms when necessary in article 31, aimed at ensuring State security, established an unacceptable limit for the *demócratas* of the constitutional political culture of 1869, in some ways similarly to the Second French republic.

I believe the political debate during these years strongly conditioned State and government theory during the transition between the monarchic and republican[10] phases.

However, the 1869 constitution confirmed the recognition of certain individual qualities and consequently rights, although these rights, considered '*indeclinables'*, were declared and written down within constitutional legislation, but could not be granted.[11] At all events, historians have highlighted the constitutional continuity of federal republic with the '1869 experience', so the *Proyecto* introduced Title I (art. 1-31) of 1869 in full.

On 11th February 1873, after the abdication of King Amedeo of Savoy, the *Congreso* and the *Senado* jointly proclaimed the birth of the Republic,[12] 258 members of parliament voting in favour and 32 against.

The first republican government led by the Catalan lawyer Estanislao Figueras, President of the executive, according to the literature, quickly passed a few popular measures that the 'democratic' monarchy, established in 1869 had been unable to approve.[13]

Subsequently, the appointment of Pi y Margall, by then an important member of the republican federalists, as the new President inaugurated a brief period (11/6-18/7) of major political action in a number of delicate areas, such as reduction of public debt, the re-establishing of consumption tax, complete independence of the church from the State and the extension of compulsory and free education.[14]

On 23th June 1873 a *Comisión Constitucional* made up of 25 members was nominated. This commission had the task of drawing up a draft constitution, which saw the light of day one month later, on 17th July. It was made up of several well known jurists and politicians with a republican orientation: José María Orense, Francisco Díaz Quinterno, Emilio Castelar, Eduardo de Palanca Asensi, Santiago Soler y Pla, Eduardo Chao, Joaquín Gil Bergés, Eleuterio Maisonnave y Cutayar, and Manuel Pedregal y Cañedo. A significant number of committee members came from the ranks of the 1869 constituents.[15] In mid-July, representatives of the minority (eight committee members), led by Francisco Díaz Quintero and Ramon de Cala, left the committee of 25. This action led to paralysis of the work of the *Comisión Constitucional*.

On 18th July the minority quickly drew up a draft constitution entitled *Constitución Federal de la República democrática española*. This draft was more democratic and radical and was presented on 26th July. However Díaz Quintero, the first signatory of the proposed constitution, failed to participate in the parliamentary debate on the new draft constitution as a result of illness, but perhaps also due to his awareness that he was the only signatory of the draft[16], and on 9th August he withdrew the proposal for the text of the constitution.[17]

This was not the first federal project in the history of Spanish constitutionalism. We can recall the following examples: Ramón Xauradó of 1832, Valentí Almirall of 1868[18] (both Catalan), Salmerón and Chao (March 1872) and *Reformas sobre la constitución democrática federal de la República española, proposición de ley presentada al Congreso en 5 de octubre de 1872* by Juan M. Orense and others such as Miguel Ayllón y Altolaguirre, *Proyecto de Constitución democrático-federal de la República española*, (Madrid, 1873).

However, the committee of 25 did not adopt any of these draft con-

stitutions in full or any of the previously cited theoretical essays on the federal constitution, above all Chao-Salmeron's project, already rejected by the third assembly of the Federal Republican Party, because it was far too centralised.[19]

Unfortunately, the committee proceedings have not been thoroughly investigated because they are not to be found. This documentation would have been extremely helpful in understanding the debate on the federal constitution and the political interests at stake among the republican leadership in this period.

On the eve of the fall of Pi y Margall's government, in the period of a few hours Emilio Castelar completed a compromise constitutional text which was accepted by the *Comisión Constitucional*, with only two dissenting votes.

During the month of August, the Commission's (of 25) proposal was debated for three days (the Member of Cortes introduced about fifty amendaments)[20] and remained on the *Cortes* secretary's desk without arousing political interest, perhaps due to the serious problems experienced by the country.

What is certain is that the federalist positions followed different pathways. Pi's federalism was tied to a more 'popular and democratic' (*pactista de abajo arriba),* while Salmeron saw federal institutions as 'guarantors' of national unity, understood as 'organic unity'[21], open to recognising differences and some forms of decentralisation and autonomy.

1. *El Proyecto*

A constitutional text was issued by this commission, which proposed a federation made up of 17 states, including Cuba and Puerto Rico and excluding León: *componen la Nación española los Estados de Andalucía Alta, Andalucía Baja, Aragón, Asturias, Baleares, Canarias, Castilla la Nueva, Castilla la Vieja, Cataluña, Cuba, Extremadura, Galicia, Murcia, Navarra, Puerto Rico, Valencia, Regiones Vascongadas.*

The draft constitution was divided into 117 *preceptos* and 18 Titles, plus a prologue stating that: *Toda persona encuentra asegurados en la República, sin que ningún poder tenga facultades para prohibirlos, ni ley ninguna autoridad para mermarlos, todos los derechos naturales.*[22]

In the first few lines this text indeed reintroduced the declaration of fundamental rights already present in the 1869 constitution, although the constitutional pledges regarding the 'religious question' and freedom of assembly were extended and fundamental aspects of sovereignty[23] were declared for the first time in a Spanish constitution.

Within the context of the separation of powers a fourth element was added: the President of the Republic, known as the *racional,* had the power to appoint the government and did not answer directly to the

Chamber, which had executive power and in which the President of the Republic could not participate.

The duty of the latter was to maintain institutional equilibrium among the various states in the federation. At the root of these choices it is likely that there was also the continuation of the Cadiz model, which for the first time in the history of Spanish constitutionalism had highlighted important aspects related to decentralisation and the diversity of 'peoples' (nationalities). However, the *Proyecto* rejected some key elements of the Cadiz constitution and the '*demócratas* program' such as unicameralism and in particular parliamentary scrutiny of government.

Furthermore, some historians have highlighted similarities among the *Proyecto* and Belgian (1831) and American constitutional proposals for the constitutionalization of rights.[24]

This *Proyecto* saw an accentuation of rigidity in the division of powers.

The Executive was made up of the government and its President and had legislative power, in addition to the typical functions of a federal system. The government relied on the confidence of the President of the Republic and not of the Cortes.[25] Thus the *Proyecto* symbolised a step away from both the parliamentary and presidential republican constitutional systems. Indeed, the President of the Republic most certainly did not have the same executive power as the Prime Minister, who incidentally was nominated by the President of the Republic himself, while the latter, like his American counterpart, did not have the power to veto or suspend legislative proceedings. Hence the *Proyecto* constitution represented a new approach as compared to federal republican models of the time.

We are faced with a model of the original form of government that does not fall within the American presidential model; indeed, this form is based on the role of the President of the Republic as mediator and moderator between the powers of the state;[26] (the President of the Republic does not have the power to propose constitutional reform).

In order to elect the President of the Republic, each state elected a *junta* which was sent to the *Congreso* and the *Senado*. The *juntas* from all the states gathered in the capital and appointed the President and Vice President of the Republic by ballot. The voting papers were subsequently sent to the President of the *Congreso*, who had the task of counting them before the chambers. If a candidate achieved an absolute majority he was automatically elected, whereas if none of the candidates achieved the established quorum it was up to the *Cortes* to decide who to appoint as President, choosing from the two candidates with the most votes. It was a two-level indirect system which had some elements in common with the American system.

Judicial power had three fundamental elements: the introduction of

juries during trials, the absence of governmental influence in the appointment of judges and the creation of a Supreme Federal Court[27] with jurisdiction over state conflict and regulation of the constitutionality of 'Law' and acts. In this case it is hardly worth highlighting the obvious similarities with the North American 'judicial review model'. Furthermore, each town council was expected to nominate a court 'of the people' and judges were appointed through competitive examinations held in the *Audiencias* of each state.

Each of the 17 member States of the federation could draw up its own constitution and have its own legislative bodies, both executive and judicial, abiding by the federal constitution.

One might suggest that a shadow of the idea of the democratic consolidation process emerged from this project through the collapse of centralisation, which had been hoped for by the moderates in the republican ranks.

2. *Parliament*

Meanwhile, one of the new aspects in the role of parliament was based on the autonomous functions of the Chambers in dealing with the executive, thus emphasising the separation between the executive and legislative sides of government, clearly representing a more federal than republican type of parliament.

The *Cortes* were made up of two chambers with distinct powers. The *Congreso de los diputados* had a more important role in legislative matters as compared to the *Senado* (art. 60). (Art. 58: '*los cuerpos legisladores no pueden deliberar juntos, ni reunirse sino el caso o casos que taxativamente exprese esta constitución*').

The *Congreso*, elected through indirect universal male suffrage every two years, similarly to the American Congress, consisted of members elected for each settlement of 50,000 inhabitants.[28] The *Congreso* had a judicial function: it could prosecute the executive branch, before the final assessment was entrusted to the Senate.

However, the Senate was considered to be a place aiming to form the '*voluntad unitaria*'[29] of the federation. The Upper 'Chamber' (House), made up of four representatives for each State (the Senate was elected by the legislative assemblies of the federation's member States using the same criteria),[30] did not have legislative power, unlike the *Congreso*, the President of the Republic and the Prime Minister, whilst it was expressly authorised to issue a suspensory veto of the President's bills. According to article 70 of the federal *Proyecto*, the Senate had almost exclusive jurisdiction as regards the constitutionality of acts, assessing compliance with the Republic's conceptual framework, starting with the social rights of the individual, the true cultural nucleus of the entire constitutional system. To some extent the *Proyecto* antici-

pated the political guidelines introduced by the Weimar constitution some ten years later, as well as the Second Spanish Republic in 1931.

The *Proyecto* text conserved the wording of art. 22 of Title I of the 1869 constitution unaltered, prohibiting legislation 'preventing' the exercising of rights. For this reason the Senate was converted into a sort of regulatory body for the constitutionality of *Congreso* acts,[31] by means of a complex procedure comparable to the Court of Cassation which ruled revolutionary France.[32] To some extent, the duties - though certainly not the composition - of the Spanish republican Senate would seem to be more closely related to the constitutional model of the Second French Republic rather than to the American model.

Establishing the Senate as a chamber defending and maintaining constitutional principles makes it clear that the reference points for the Spanish federal republican legislator were paradoxically linked to the French Republican model used during the *Sénat-conservateur* of Constitution 'of the Year VIII'[33] – defending the liberal-census constitution from the threats of the radical-revolutionary wing and subsequently as a device to open up the way for the rise of Napoleon I – and the 1852 Senate of the Napoleon III's constitutional model, in which its supporting elements were experimented.[34] Although it was the *Tribunal Supremo* of the federation that intervened to suspend acts judged to be unconstitutional.

The constitutions of the federation member states and their legislation could not be at odds with the federal constitution, while the resolution of conflict between States fell within the jurisdiction of the *Tribunal*. Therefore a double level of constitutional control was introduced, which had not been included within the previous 1869 constitution.[35] Subsequently the constituents of 1873 once again rejected the call for full adoption of the constitutional form used by the American senate.[36]

Furthermore, the *Senado* assessed the justification for impeachment of the President or Ministers in the event of accusations instituted by the *Congreso*, before the judgment of the *Tribunal Supremo.*[37] In this case, the Senate played the role of mediator between the *Congreso* and the *Tribunal Supremo,* while the *Senado* did not have the full powers of the U.S. Senate.

As regards constitutional reform, only the *Cortes* could initiate the constitutional reform procedure with a 'declaration' to the President of the Republic. The President, closing the *Cortes*, convened a sort of Constitutional Assembly to deliberate on reform (art. 115-116).[38] The *Proyecto* literally reproduced the constitutional provisions of 1869, with the exception naturally of reference to the King's role in the initiative for constitutional reform and the dissolution of the *Cortes*, which was not replaced by the new role of the President of Republic.

The 1873 *Proyecto* established a review procedure, in which potential guarantees were closely linked to the democratic and federal nature of the text. Furthermore, constitutional proceedings were relatively rigid and did not require a qualified majority to approve constitutional reform, but rather a double vote of the *Cortes* on the provisions which were the subject of constitutional review. Dissolution of the *Cortes* then followed. In this procedure for constitutional review, the role given to each member in the Federation was almost cancelled but this was a gap in a federal system, still immature.

Notes

[1] This article is part of a larger research on the Project of Spanish Federal Constitution of 1873.

[2] See J.I. Marcuello, M.Pérez Ledesma, 'Parlamento y poder ejecutivo en la España contemporanea', Revista de Estudios Políticos 93, (1996), p. 18.

[3] See J.M. Pérez García, 'El parlamentarismo español en el sexenio democrático', *Hispania: Revista española de historia* 55 (1995), pp. 37-66; J.M. Cuenca Toribio, 'Parlamentarismo y antiparlamentarismo españoles: De las Cortes de Cádiz a la 'gloriosa' ', *Boletín de la Real Academia de la Historia*, pp. 121-62 and also A. Sánchez Andrés, *Castelar y el parlamentarismo decimonónico español: discursos políticos* (Madrid, 1999) and see J.M. Cuenca Toribio, *Parlamentarismo y antiparlamentarismo en España* (Madrid, 1995).

[4] On this topic see *Manifesto por la Democracia* (mars 1865) and *Pacto de Ostende* (August 1866).

[5] See M. A. Esteban Navarro, 'De la esperanza a la frustración, 1868-1873', in N. Townson (ed.), *El republicanismo en España 1830-1977* (Madrid, 1994), pp. 91-2.

[6] More specifically, on the 1868 revolutionaries, see G. de la Fuente Monge, *Los revolucionarios de 1868. Élites y poder en la España liberal* (Madrid, 2000).

[7] See J. Peña González, *Cultura política y Constitución. Las funciones de la Constitución* (Madrid, 2002), pp. 87-117 and J. Vilches García, 'Castelar y la república posible. El republicanismo del sexenio revolucionario. 1868-1874', *Revista de Estudios políticos (Nueva época)* 99, (1998), pp. 133-59.

[8] See J. M. Pérez García, 'El parlamentarismo español en el sexenio democrático', pp. 37-66, and also *Revista de derecho político* 55-56, (2002), and J. A. Piqueras y M. Chust (eds), *Republicanos y repúblicas en España* (Madrid, 1996).

[9] See M.C.Rovira Flórez de Quiñones, 'Los derechos humanos en la Constitución de 1869', in *Los derechos en el constitucionalismo histórico español* (Santiago de Compostela, 2002), pp. 111-34.

[10] See the parliamentary debate in A.M. Calero Amor, *Monarquía y Democracia en las Cortes de 1869* (Madrid, 1987), in principle Augusto Ulloa, pp. 62-79.

[11] On this topic see C. Serván, 'Como losa de plomo: el derecho a la libre emisión del pensamiento en el constitucionalismo de 1869', in J. M. Inurritegui, J. M. Portillo (eds): *Constitución en España: orígenes y destinos* (Madrid, 1998), p. 398.

[12] See the debate in ACD (Archivo del Congreso de los Diputados de Madrid), *Diario de sesiones de la Asamblea nacional, sesión del lunes 10 de febrero 1873*, pp. 13-47.

[13] See J.F. Badia, *Historia politico-parlamentaria de la republica de 187*3 (Madrid, 1973). The Constituent Cortes extended voting rights to all men aged over 21. Thus the electorate was expanded by 3.1 per cent, arriving at 4.551.436 voters, as compared to 4.030.792 in 1872.

[14] See C.A.M. Hennessy, The *Federal Republic in Spain. Pi y Margall and the Federal Republican Movement 1868-74* (Oxford, 1962).

[15] See ACD, *Diario de sesiones de las Cortes Constituyentes de la Republica española: Dieron principio el Domingo 1. de Junio de 1873, fueron disueltas por decreto del Gobierno fecha 8 Enero de 1874*. As regards parliamentary regulations, the *Congreso* and the *Senado* had the power to '*formar el respectivo reglamento para su gobierno interior*' (art. 56). During the First Republic the Cortes Constituyentes respected the *Reglamento del Congreso de los Diputados de 4 de mayo de 1847*, *Reglamento interino de 4 de junio de 1873*, *Reglamento interino de las Cortes Constituyentes de 5 de agosto de 1873*. See A. Gamoneda y García, *Constituciones y reglamentos* (Madrid, 1907).

[16] ACD, Serie general Expedientes, Legajo 177, n. 24.

[17] ACD, Serie general Expedientes, Legajo 177, n. 239.

[18] R. Xauradó y Fábregas**,** *Bases de una Constitución política o principios fundamentales de un sistema republicano* (Barcelona, 1832) and V. Almirall i Llorez**,** *Bases para la Constitución Federal de la Nación Española y para la del estado de Cataluña* (Barcelona 1868).

[19] On this topic see G. Trujillo, *Escritos sobre estructura territorial del estado* (Madrid, 2006), pp. 213-26.

[20] See ACD, Leg. 177, n. 24, n. 239; The amendments were submitted by a groups of deputies: Gilia de Avenzano, Cabello de la Vega, Cecho (14), Correa (9), Cavalejas (8), Guello (2), Alfaro (1), Garcia Alvarez (1), Gonzales Valledor (1), Yimenez (1), Mercader Plata (1), Sanromá (1), Faillerat (1).

[21] *La libertad y la República forman una sola Pátria y crean una sola institución y una sola constitución social*, Salmerón said on February 10 1873, during a session of *the Asamblea Nacional* which decided the fate of King Amadeus I of Savoy. See ACD, *Diario de sesiones de la Asamblea naciona, Sesione del lunes 10 febrero de 1873*, p. 36.

[22] *El derecho a la vida, y a la seguridad, y a la dignidad de la vida. El derecho al libre ejercicio de su pensamiento y a la libre expresión de su conciencia. El derecho a la difusión de sus ideas por medio de la enseñanza. El derecho de reunión y de asociación pacíficas. La libertad del trabajo, de la industria, del comercio interior, del crédito. El derecho de propiedad, sin facultad de vinculación ni amortización. La igualdad ante la ley. El derecho a ser jurado y a ser juzgado por los Jurados: el derecho a la defensa libérrima en juicio; el derecho, en caso de caer en culpa o delito, a la corrección y a la purificación por medio de la pena. Estos derechos son anteriores y superiores a toda legislación positiva*.

[23] See J. Ferrando, *La primera república española* (Madrid, 1973).

[24] See J. Tomás Villaroya, *Breve historia del constitucionalismo español* (Madrid, 1985), p. 85, and A. Pérez Ayala, 'La I República. Marco político y proyecto constitucional', *Revista de Estudios políticos*, 105, (1999), pp. 62-64.

[25] The *Reglamento interino de las Cortes Constituyentes de 5 de agosto de 1873* introduced the no confidence motion for the first time (art.128).

[26] See the configuration of the presidency in the current Italian constitutional system. On this topic see Pérez Ayala, 'La I Republica', p. 53.

[27] The tribunal was established by Queen Isabel II in 1834 with a royal decree and with the *Regolamento Provisional para la Administracion de Justicia* (September 1835) and subsequently with the *Ley provisional de organizacion de los Tribunales* on 15 September 1870.

[28] Parliamentarians could not be appointed to political or administrative posts, including that of minister.

[29] See S. A. Roura Gómez, 'Los procedimientos de reforma en las experiencias del constitucionalismo republicano español (1873 y 1931)', *Revista de Estudios políticos* 101, (1998), p. 278.

[30] The Senate in the 1869 Constitution was made up of 'notables' elected in provincial constituencies.

[31] Title VIII, Art. 70: '*Corresponde al Senado exclusivamente examinar si las leyes*

del Congreso desconocen los derechos de la personalidad humana, o los poderes de los organismos políticos o las facultades de la Federación, o el Código fundamental. Si el Senado, después de madura deliberación, declara que no, la ley se promulgará en toda la Nación. Cuando el Senado declare que hay lesión de algún derecho o de algún poder, o de algún artículo constitucional, se nombrará una Comisión mixta que someterá su parecer al Congreso. Si después de examinada de nuevo la ley, el Senado persiste en su acuerdo, se suspenderá la promulgación por aquel año. Si al año siguiente reproduce el Congreso la ley, se remitirá al Poder ejecutivo para su promulgación; pero si éste hiciera objeciones al Congreso se volverá la ley al Senado y si el Senado insiste nuevamente se suspenderá también la promulgación. Por último, si al tercer año se reproduce la ley, se promulgará en el acto por el Presidente y será ley en toda la Federación. Sin embargo, al Poder judicial, representado por el Tribunal Supremo de la Federación, le queda la facultad siempre de declarar en su aplicación si la ley es o no constitucional'.

[32] See M. Lorente Sariñena, 'Reflexiones sobre una casación en una época revolucionaria*',* in *Jornadas Sobre el Poder Judicial en el Bicentenario de la Revolución Francesa* (Madrid, 1990), pp. 205-16; and also Eadem, 'Del control de los hombres al control de las leyes: Parlamento y Constitución en España (1810-1831)', in G. Manca, L. Lacchè (eds), *Parlamento e Costituzione nei sistemi costituzionali europei ottocenteschi* (Bologna, 2003), p. 197, F.J. Enériz Olaechea, 'El proyecto de constitución federal de la I República española (1873)', *Revista Jurídica de Navarra*, 37, (2004), pp. 113-46.

[33] Napoleon's Constitution of 1799. See C. Debbash et J. M. Pontier, *Les Constitutions de la France* (Paris, 1989), pp. 100-109: art. 37, *'Tout décret du Corps législatif, le dixième jour après son émission, est promulgué par le Premier consul, à moins que, dans ce délai, il n'y ait eu recours au Sénat pour cause d'inconstitutionnalité. Ce recours n'a point lieu contre les lois promulguée'*. See also, on these topics, R. Martucci, *L'ossessione costituente. Forma di governo e costituzione nella Rivoluzione francese. 1789-1799* (Bologna, 2003).

[34] See art. 25-26, 1851 Constitution: Art. 25, '*Le Sénat est le gardien du pacte fondamental et des libertés publiques. Aucune loi ne peut être promulguée avant de lui avoir été soumise*'; art. 26, '*Le Sénat s'oppose à la promulgation, 1° Des lois qui seraient contraires ou qui porteraient atteinte à la Constitution, à la religion, à la morale, à la liberté des cultes, à la liberté individuelle, à l'égalité des citoyens devant la loi, à l'inviolabilité de la propriété et au principe de l'inamovibilité de la magistrature*; *2° De celles qui pourraient compromettre la défense du territoire'*. See C. Debbash, J. M. Pontier, *Les Constitutions de la France* pp. 165-75. On this topic, see also G.D. Romagnosi, *La scienza delle costituzioni* (Turin, 1850), pp. 82, 201.

[35] See A. Pérez Ayala, 'La I República', pp. 64-6.

[36] See J. Peña Gonzàlez, *Cultura política y Constitución de 1869* (Madrid, 2002), p. 222. Ever since 1869, influential republican members of parliament had attempted to influence the constitutional role of the Senate and, fearing that the 1845 constitutional model might be reproduced and consolidated, with an upper chamber made up of aristocrats entirely elected by the King, they did not approve the 'co-legislation role' of the 'Upper Chamber'.

[37] S.M. Corona González, 'El Senado como tribunal de justicia', in *Actas de IV symposium de historia de la administración* (Madrid, 1983), pp. 159-95.

[38] While the 1812, 1856, 1869 constitutions and the *Proyecto* are considered by historians as expressions of 'strong' constitutionalism animated by liberal progressive theory, the 1837, 1845 and 1874 constitutions are linked to a predominance of constitutionalism inspired by weak moderate liberalism (*doctrinario).* Only during the 'influential' period of constitutionalism, with liberal-radical and democratic overtones, there were debates about the impossibility of legislating against the constitution, although the Spanish constitutionalism of the 19th Century rarely worried about the danger of violating the constitutional text. See Lorente Seriñena, 'Del control de los hombres', pag. 198 and Roura Gómez, 'Los procedimientos de reforma', pp. 273-81.

Marcella Aglietti

The 'Leyenda negra' in the Political and Parliamentary Culture of Liberal Spain

The anti-Spanish *Leyenda negra* is probably one of the most interesting and enduring myths in the history of national collective representations,[1] a complex cultural phenomenon built on negative stereotypes and able for centuries to influence the perception that Spain has had of itself and the others have had of the country. In a few words, the origin of the *leyenda negra* – a term made famous by the work of Julián Juderías in 1914[2] – was inspired by the claim moved since the XVI century against the Spanish monarchy of wanting to assume a leading position over Europe and America using different levels of violence. Starting from here, further elements were added to this syndrome of hispanophobia very quickly. These were: the accusation of clerical fanaticism and brutal religious persecution promoted by the Holy Office; the charge with greediness and ferocious plundering in the conquests of Southern and Central America; and other several characteristics, such as an obtuse and passionate sense of honour, the rejection of work and of the most productive economical activities in favour of unproductive ones, the lack of interest in science and technology, venality and a weak moral integrity.[3] All these elements, would have found fertile ground for growth in the unavoidable political, cultural and demographic decline of the country,[4] while also being, at the same time, its cause. This is as far as the legend goes and it is already quite well known.[5]

Nevertheless, it has still to be fully investigated is how much this negative propaganda influenced the constitution of a new political and institutional organization Spain started to give itself during the XIX century. The introduction of the modern representative model, the changes due to the contribution of the *Cortes* to the State's dynamics of power, the ever more important role of the public opinion, which found its expression in the press and pamphlets of the time, all these elements suffered, to different extents, the influence of that inheritance and transferred its effects to the Spanish parliamentary system.

This study is part of wider ongoing research dedicated to the stereotypes and symbols introduced into the Spanish language and political imagery in the XIX century. Beside the relevance already recognised to the liberal and electoral press of the Restauración Era[6] and with the intention to carry out similar research on the parliamentary

speeches edited in the *Diario de sesiones del Congreso de los diputados* in the future, I have here rather focused on the results drawn from another fundamental source of the period: the pamphlet literature dedicated to the parliamentary institutions The constitution of a new institutional system where the *Cortes* – together with the Spanish Crown – were the central institutions, corresponded to the political structure which ruling class wanted for their country.[7] But what was not clear to them was the strategy they should adopt, in terms of power exercise and the principles of political representation, in order to pursue that objective. It is easy, then, to understand the increasing interest in the history of Parliament, as is shown in many leaflets, more or less voluminous, issued on this particular topic especially in the first half of the XIX century in parallel with the most important constituent activities.[8] Behind these publications there was much more than a mere attempt at popularization. In fact they all had a very explicit political intent with either celebrative or denigrating purposes. The authors of the most impudently encomiastic works were often the same members of the *Congreso* or people somehow involved in the parliamentary activities who made clear their propagandistic strategy, possibly encouraged by the same institutions that aimed at influencing national public opinion with the laudatory and patriotic image of the representative organization and of the constitutional history of the time.[9]

In this perspective, Spain, Spanish history, and the *Cortes*, have an equivalent weight in the constitution of a collective identity where the idea of nation ended up legitimizing the form of political organization already in force. So, the most ancient and original historical expression of Spanish nationality can indeed be found in the ancient *Cortes*. Thus these institutions paved the way for the legitimization of the new government's system and they contained in themselves the origin of the national identity. The problematic element in this process was the weight of symbols and negative representation of the Spanish past, which became, to different extents, part of the genealogical inheritance of the national identity. Moreover, in the attempt to dig out of the depth of history a national collective identity based on an assembly system, the liberal historiography also brought to light – if they had ever been buried – the cultural aspects built around the *Leyenda negra*, and proposed alternative representations of the country in the attempt to combine the idea Spain had of itself with the one she wished to have. This was a national narrative operation strictly bound up with the ongoing political processes and which was extremely susceptible to be influenced by the image of Spain one's had and conveyed to the rest of Europe.

It is appropriate to look again at the contribution of those Spanish

who reconsidered most or many of the topics of the *leyenda negra* in the context of a *nation building* political and cultural process. The interpretation of the Spanish representative institutions was controversial as they sometimes were considered as legitimate organizations which corresponded to the Iberian identity and sometimes were accused of being extraneous to it and therefore inappropriate. There is no point, in trying to determine how much there is of 'true' or 'false' in the 'historical' reconstructions dedicated to the *fueros* of Spain, to the *Cortes* of the ancient Castile and Aragon or of Cádiz, where the stereotypes inherited by the anti-Spanish *leyenda* were sometimes taken into account and at other times left out. Nevertheless, re-examining the facts allows us to evaluate the impact these images had on the perception of the past, present and futures (i.e. desired futures) of XIX century representative institutions. Those images sometimes lead to the commemoration of those assemblies as the maximum expression of national patriotism, but more often they delegitimized and ridiculed their role and their participants.

The Spanish élite, as it is presented in these pamphlets, took part in the institutional changes by placing themselves in a conflictual position towards the tradition, or what was considered to be the tradition, and also towards the objectives they should follow in order to build a modern political system and a new national identity. The attitude towards the cultural stereotypes diffused and imposed by the *leyenda negra* was expressed in this very interesting and complex context. It was not all about the clash between just two groups: on the one side the promoters of progress and the *ante litteram* Europeanists, who supported freedom and the constitutional conquests of the Illuminist inheritance and on the other side the hard defenders of tradition, conservative and anchored to a past of absolutist power and religious extremism. This dichotomous simplification does not give a proper account of reality.[10]

The many works dedicated to the *Cortes* of Cádiz, to their role in the history of the nation,[11] and pamphlets about the oldest Spanish representative assemblies, fully joined the debate about which should have been the most suitable parliamentary form for the 'most true' Spanish identity.

It is easy to presume that the perception of the current times was influenced by the study and the retrospective interpretation of the past. In fact, the liberal intellectuals, thanks to the glorification of the representative institutions of the Medieval Age, could pursue a double objective. First, the intentional retrieval of a glorious past in comparison with other nations, enhancing the anticipated value of these assemblies and an undeniable political primacy of Spain at a European level. Second, an assertive purpose of justification for the new represen-

tative system directed at internal opponents, who were more conservative and hostile to the establishment of a new political organization, as the new *Cortes* were appointed, in their view, as the ideal continuation of those ancient assemblies. The authors of these works emphasized those aspects – of both the *fueros* and the old representative assemblies – which supported the desired form of government.

The *Cortes* of Cádiz, which began to have a different meaning and value according to the political inclinations of the different authors,[12] became part of the myth together with the assemblies and the representative institutions of the past. The old assemblies were reinterpreted as the first example of a common national history where aspects of greatness and inexorable decadence coexisted.

Moreover, not all the supporters of the traditional Spanish representative assemblies looked at the Cádiz *Cortes* as the natural continuation of such a political body. In a document dated 1827, for example, the monarchy and the assembly institutions of feudal origin or 'por estamentos' were strongly supported. These were the representatives of the traditional States of the *ancien régime*, and they did not fulfil the electoral criteria of the Liberal Age.[13] Only a restoration of these ancient *Cortes* would have redeemed the country and, thanks to their wise operations aimed at the welfare and efficient functioning of public utilities, would have preserved the nation both from a possible and feared revolution and from the superpower of the king's ministers. Because the ministers, and above all Manuel Godoy, were, according to this author, guilty of the decline of Spain, of the corruption and the weakness of power and of the monarchy, as they had introduced abuses and corruption in the administration of the State.

In this regard, we can also mention the brief pamphlet written in 1850 by Marquis of Miraflores, still named Manuel Pando Fernández de Pinedo. This publication followed some more voluminous ones and was dedicated to the history of the Spanish parliamentary institutions.[14] The author was openly opposed to the better known and more doctrinarian *Teoria de las antiguas Cortes* written by Martínez Marina in 1813. *La Teoria,* a work in three volumes, was about the assembly meetings of the reigns of Castile and León, clearly edited under the influence both of the Cádiz Parliament and of the French Illuminist and constitutional culture.[15] The Marquis, on the contrary, described the last three centuries of Spanish institutional history outlining a political system with a 'carácter mixto de absoluto y representativo' where the original form of government elected by the Iberian populations since the remotest times, early expressions of the parliamentary institutions, founded their existence on the indissoluble collaboration with the monarchy and with religious principle.[16] Miraflores ascribed the realization of a perfect system, truly Spanish

and superior to the other European countries, to this combination of monarchy and religion, as it was able to guarantee stability and security against the possible social disturbances. Miraflores distinguished himself both from those who, openly conservative, who looked at the experience of the assembly as something not very important and basically adverse to tradition, and from those – such as Martínez Marina – who attributed to the *Cortes* a stronger power than that of the monarchy, considering the *Cortes* to be the true expression of the genuine national will.[17] The compromise found by Miraflores shows an important and open attitude towards the parliamentary institutions, although it remained within the boundaries of the most traditional interpretations, still anchored to loyalty to the Crown and to the Church. Moreover, the author mostly welcomed the inheritance of the *leyenda negra* which he ascribed to Charles V and Philip II and their inept successors for the political decadence which had lasted more than two centuries and which was characterized by the tyranny of an arrogant monarchical supremacy. According to the Marquis, the turbulent years of the first half of the 1800s were the consequence of the representative power's supremacy over the monarchy, a necessary phase in a long process characterized by a sequence of institutional attempts which would progressively lead to a new equilibrium.

His contemporary, the author Adolfo de Castro, developed a different theory. He was already well-known for his works about the persecutions of the religious minority in the Spain of the Modern Age, which he identified as the main cause of national decadence.[18] De Castro entirely centred his essay on the cause of the national decline blaming the subjection of the nobility, considered to be the defender of the people's autonomy and the freedom, to the brutal despotism of the King and to Inquisition. In this panorama, the birth of the Cádiz Constitution stood out like a secular miracle:

> Los españoles rigiéndose por sí, formaron una Constitución fundada en las doctrinas de libertad política. Así una revolución que empezó por las predicaciones de frailes y curas que se servían de la esclavitud e imbecilidad de los pueblos para perpetuar su dominio, acabó en proclamar los derechos del hombre y en abolir el tribunal de la Inquisición, incompatible con los triunfos de la razón humana.[19]

More than thirty years later, we can find the same tones in the work by Pedregal y Cañedo, as a demonstration of the influence of stereotypes and of a common instrumental use of history.[20] Pedregal centers his analysis on what he considers the most ancient and deep roots of the 'nacionalidad española'. These are the two most representative institutions of national history: 1) the ancient councils made up of the representatives of the clergy who embodied the local native traditions, as opposed to the Godos' principles which reached the country

later on; 2) the municipal *fueros* and the most ancient *Cortes,* both expressions of the most spontaneous and deeply-rooted decision-making bodies in the territory.[21]

Once again, though, decadence and downfall followed after a glorious past, leading the country to an inevitable decline, to demographic collapse and to economic and social crisis. Even though the *Reyes católicos* had already introduced disadvantageous measures, it was mostly their immediate successors who were responsible for this disastrous situation. The ghosts of the *leyenda* reappeared. The despotic and obscurantist union between throne and altar had caused the loss of hegemonic role in Europe and an advanced institutional representative reality 'bastardeando la augusta majestad de las Cortes' and which suppressed an innate municipal autonomy. In the name of a regenerated religious feeling, explicitly claimed as a fundamental factor of the nation, Pedregal interpreted the Spanish war of resistance against Napoleon and French troops as the cathartic moment thanks to which the Spaniards, fighting for freedom, understood their mistakes and tried to clear all the faults of the past, getting ready for a new form of State.[22]

Risen to historical icon status, positive or negative as the case might be, the image of the Cádiz *Cortes* joined the wide range of stereotypes of the political and Spanish national history, opening up to an even wider range of *clichés*, generally caricatural, regarding both the constitutional charters issued in the following years and the members who took part in the parliamentary assemblies.

The political aim of these works is evident and sometimes the propagandistic purpose of the compositions is clear, too, as in the pamphlet dedicated to the legislative assembly of 1846, with its initial address 'A los electores'.[23] The criticisms of the parliamentary system, at least in the form that took shape in Spain, became increasingly frequent. Towards the middle of the XIX century parliamentary practices were attacked for their progressive decadence in comparison with the time of the 'regeneración política' started with the legislative bodies of 1810 and with the Cádiz climax.

From the second half of the XVII century, the number of pamphlets released began to decrease gradually and this suggests that the publications dedicated to institutional history were undergoing stricter controls form the Government. The *Cortes* started to promote publications which commemorated the regime, at the same time the 'official' portraits of the deputies acquired a celebrative tone, sometimes also enlivened with patriotic myth.

The inexperienced deputies of the beginning of the century, became the professional masters of the dais, the histrionic actors firmly attached at the parliamentary seats legislature after legislature, years

after years. Irrespective of their political origin, they all unanimously recognized the signs of the unequivocal national decadence, accusing their own political antagonists of contributing to the general decline as representatives of a nation killed by its own past. The use of a disparaging and accusing rhetoric against opponents became, little by little, one of the features of a common political perception, characterized by a deeply-rooted lack of confidence in the regime and in the electoral body. Reality and representation ended up overlapping, and so did the mechanism of perception of the existing situation, causing harm to the political system in power.

When the political regime established in 1876 gradually consolidated itself, with a dualistic system where Crown and Parliament shared rather equally the supremacy,[24] the tones became more and more conservative, leading to the upsetting of the institutional values which had been looked at as models. The representation the parliamentary institution offered of itself did not contemplate anymore to the Cádiz period as the main reference point, but instead looked to the reassuring and more concrete method established by Cánovas del Castillo replacing the previous motto 'todo, todo es preferible a lo presente' (everything, everything is preferable to the present) with the new one 'todo, todo es preferible a lo pasado'(everything, everything is preferable to the past).[25]

The *decadencia* concept assumed new relevance in political speeches.[26] Cánovas emphasized a vision of Spanish history strongly tied to contemporary political events and the decline of the nation was the key to understanding the past, the present and also the future.[27] The 'party' journals, which took over the predominant role in the political debate, became more important than parliamentary reporting, which was replaced by the print media.[28] To some extent, journalism and electoral speeches became part of an innovative and progressive form of participation,[29] and all together they represented an added value for the new political system which in this way pursued the populist and paternalist attempt to rescue the country from a past which was accused of a poor political awareness. Once again the bond in politics between culture and activity was confirmed; by means of the vote, imposed and controlled by the well organized mechanisms of the liberal State according to the rules imposed by the *turno*, a new process of political acculturation had started leading to a change in the perception of State and institutions.[30]

When the last piece of the Spanish empire disappeared in 1898 as a result of the Cuban war, the so humiliating outcome for Spain became world wide well known by the evocative name of *desastre*. Clearly, new components joined and increased the evocative power of the *leyenda* and, again, there were someone who blamed the *Cortes* of

1812 for having started a process that was to cause such negative consequences.[31]

According to these interpretations, the weakening of the monarchy and of Spanish authority over the American colonies could be traced back to Cádiz because it was there, when the *Cortes* granted rights and autonomy to the Americans and admitted somehow the repressive character of the previous Spanish regime, that the supporters of the independence movement felt legitimated their claims and the separatist rebels strengthened their ascendance. As a result, the negative perception of the nation got worse and the political class was considered responsible for the disaster. Obviously, even the parliamentary system was involved in this general condemnation and definitely judged unable to rule and to modernize the country, also because of an other essential ingredient to consider, namely the accuse of widespread political corruption caused by the *caciquismo*.

The inheritance of the *leyenda negra* merged with novel symbols and found its expression in artistic and literary movements, such as *costumbrismo* and *casticism*. But, beside the absolutely predominant theme of decline,[32] it also nourished rudimentary claims of omnipotence evoking the national redemption relying on the antique and traditional experiences.

Many Liberals, politicians, intellectuals and cultured authors such as the *regeneracionistas* and the *noventayochistas*, full of romantic and irrational feelings, finally transformed a collective auto-destructive attitude in a powerful purifying energy. As an unkind trick of fate, the so long contested negative myth became an original force through which they pretended to regenerate Spain, claiming the last during decay as a tragic component though embedded in the most genuine Spanish identity but also the key to the desired resurrection.

Notes

[1] The *Leyenda negra* phenomenon is one of the few cases of 'longue durée' of a cultural and ideological archetype, as in the witty definition given in F. López, *Juan Pablo Forner (1756-1797) y la crisis de la conciencia española en el siglo XVIII* (Valladolid, 1999), translated from the previous French version of 1976.

[2] J. Juderías, *La Leyenda Negra* (Madrid, 2007), pp. 289-92 reprint of the original version published in 1914. The term was invented a little short before the Juderías' book by Vicente Blasco Ibañez during a conference held in Buenos Aires in 1909, see V. Blasco Ibañez, *Obras Completas* (Madrid, 1977), vol. IV, pp. 1183-86. About Juderías, see L. Español Bouché, *Leyendas negras. Vida y obra de Julián Juderías (1877-1918). La leyenda negra antiamericana* (Salamanca, 2007).

[3] J.N. Hillgarth, *The mirror of Spain, 1500-1700. The formation of a myth* (Michigan, 2000), pp. 528-544.

[4] J.H. Elliott, 'Self-perception and decline in early seventeenth century Spain', *Past and Present* 74 (1977), pp. 41-61.

[5] An excellent, brilliant analysis of the phenomenon is given in: R. García Cárcel, *La Leyenda Negra. Historia y opinión* (Madrid, 1998). Among the most recent and interesting works about the *leyenda negra*, beside the already mentioned book by Hillgarth, see also M. Molina Martínez, *La Leyenda Negra* (Madrid, 1991); J. A. Vaca de Osma, *El Imperio y la leyenda negra* (Madrid, 2004); P. W. Powell, *La Leyenda negra. Un invento contra España* (Barcelona, 2008); H. Kamen, *Imagining Spain. Historical myth & national identity* (New Haven-London, 2008) and J. Pérez, *La légende noir de l'Espagne* (Paris, 2009). Very helpful references also in J. Álvarez Junco, *Mater dolorosa. La idea de España en el siglo XIX* (Madrid, 2001) and S. Juliá, *Historia de las dos España* (Madrid, 2004). Dated, but still useful, are S. Arnoldson, *La leyenda negra. Estudios sobre sus origines* (Stockolm, 1960).

[6] M. Aglietti, 'Il discorso politico elettorale nella Spagna della *Restauración* (1876-1890)', *Quaderni storici* 3 (2004), pp. 725-745 and Idem, *'Pan y toros.* Rappresentazioni e percezione della politica nella retorica elettorale spagnola della *Restauración*', in P. Finelli - G.L. Fruci- V. Galimi (eds.), *Parole in azione. Strategie comunicative e ricezione del discorso politico fra Otto e Novecento* (Firenze, 2010), in print.

[7] About the building process of the idea of Spain, as a nation, and the role played by the different interpretations of the past, see J. Pablo Fusi, *España: la evolución de la identidad nacional* (Madrid, 2000); J.M. Portillo, *Revolución de nación: orígenes de la cultura constitutional en España, 1780-1812* (Madrid, 2000).

[8] 'El periódico es al folleto lo que la enfermedad a la muerte: el primero hiere, y el segundo mata. […]. Los folletos, como la trompeta del juicio final, solo expiden sus ecos cuando se empiezan a sentir los primeros síntomas de un cataclismo social', in R. de Campoamor, *Historia critica de las Cortes reformadoras* (Madrid, 1845), pp. 34-35.

[9] In this perspective, there was a relevant number of publications. Among them, see F. de Paula Madrazo, *Las Cortes españolas. Resumen histórico de las tres épocas parlamentarias de 1810 a 1823, y de 1834 a 1850* (Madrid, 1857); A. Borrego, *Historia de las Cortes de España durante el siglo XIX a partir de la convocatoria de las generales y extraordinarias por la Junta Central en 1810 hasta el advenimiento del Rey Alfonso XII, obra escrita por especial acuerdo del Congreso de 1883* (Madrid, 1885).

[10] S.Quesada Marco, *La leyenda antiespañola* (Madrid, 1967), pp.55-57. I mostly agree with the critic study against a dichotomous interpretation of the Spanish history by Jaime Cosgaya García, 'Desmontando un discurso secular. A propósito del último libro de Santos Juliá', *Hispania* 25 (2007), pp. 325-332, especially pp. 330-1.

[11] It is still on going a lively historiographic debate concerning the political and social meanings of the revolution of Cadiz. A good synthesis is developed in M. Pérez Ledesma, 'Las Cortes de Cádiz y la sociedad española', in M. Artola (ed.), *Las Cortes de Cadiz* (Madrid, 2003), pp. 167-205.

[12] See also H. Kamen, *Imagining Spain. Historical myth & national identity* (New Haven-London, 2008), pp. XI-XII.

[13] J. Presas, *Pintura de los males que ha causado a la España el gobierno absoluto de los dos últimos reynados y de la necesidad del restablecimientos de las antiguas Cortes o de una Carta constitucional dada por el Rey Fernando* (Burdeos, 1827).

[14] M. Pando Fernåndez de Pinedo, *Discurso histórico sobre las Cortes de España en los últimos tres siglos. Leído por el marqués de Miraflores en la Real Academia de la Historia en su sesión ordinaria del viernes 5 de julio de 1850* (Madrid, 1850).

[15] F. Martínez Marina, *Teoría de las Cortes o Grandes Juntas Nacionales de los Reinos de León y Castilla. Monumentos de su Constitución política y de la soberanía de su pueblo. Con algunas observaciones sobre la Ley Fundamental de la Monarquía española sancionada por las Cortes Generales y Extraordinarias, y promulgada en Cádiz a 19 de Marzo de 1812* (Madrid, 1813).

[16] Pando Fernåndez de Pinedo, *Discurso histórico sobre las Cortes de España,* p. 7.

[17] See Martínez Marina, *Teoría de las Cortes*, *Prologo,* vol. 1, pp. XXII-XXIII, XXV, XLI, XLVII-L, LVII-LVIII and, over all, pp. LX-LXII.

[18] A. de Castro, *Historia de los protestantes españoles y de su persecución por Felipe*

II (Cadiz, 1851); Idem, *The history of the Jews in Spain, from the time of their settlement in that Country till the commencement of the present century* (Cambridge, 1851) and Idem, *History of religious intolerance in Spain: or, an examination of some of the causes which led to that nation's decline* (London, 1853). This author is briefly outlined in Kamen, *Imagining Spain*, p. 181.

[19] A. de Castro, *Examen filosófico sobre las principales causas de la decadencia de España* (Cádiz, 1852), pp. 139-140.

[20] M. Pedregal y Cañedo, *Estudios sobre el engrandecimiento y la decadencia de España* (Madrid, 1878).

[21] Ibidem, p. 28.

[22] 'La intolerancia religiosa y el despotismo monárquico causaron la perdición de España. El sentimiento religioso y la noción de Estado sobreviven y se depuran y reclaman formas mas perfectas de manifestación y organización', Ibidem, pp. 318 and p. 314.

[23] J. Sanchez de Fuentes, *Fisonomía de las Cortes de 1846, de los gobiernos que han salido de su seno, y de la oposición conservadora, o Apuntes para escribir la historia del partido moderado español* (Madrid, 1850), p. 5.

[24] Quite interesting, about this topic, the article 'La Monarquía y la Constitución' published on the conservative newspaper *La Epoca* in the 4th of July 1881.

[25] Anonymous, *La Restauración y los partidos políticos, por un diputado a Cortes* (Madrid, 1878), pp. 24-25.

[26] Aglietti, 'Il discorso politico elettorale nella Spagna della *Restauración*', pp. 733, 738-742.

[27] About Cánovas in this perspective, see Juliá, *Historia de las dos España,* pp. 38-45 and Kamen, *Imagining Spain,* pp. 181-4.

[28] 'En la prensa se discute, en los parlamentos se disputa. Los publicistas son los apuntadores, los diputados son los cómicos; aquellos prestan la intelectualidad, estos añaden la mímica. A veces el diputado mas portentoso es un plajario del periodista más zarramplín. [...]. la prensa hace las leyes: las asambleas las votan', in de Campoamor, *Historia critica de las Cortes reformadoras,* p. 110.

[29] Following the same satiric literary style beginning with the deputies, leaflets was composed collecting ironical portraits of the most famous journalists: Anonymous, *Galería en miniatura de los más celebres periodistas, folletistas y articulistas de Madrid por dos bachilleres y un domine* (Madrid, 1822).

[30] J.P. Luis, 'Réflexions autour de la naissance de la politique moderne', in P. Fournier, J.-P. Martin (coords.), *Institutions et représentations du politique , Espagne, France, Italie, XVIIème-XXème siècles,* luogo, 2006, pp. 99-109 and in particular pp. 104-106.

[31] 'La tradición española va cada día perdiendo terreno, el veneno sembrado el año 12 va produciendo su efecto, la agonía de España ha comenzado', in A.J. Conte y Lacave, *La leyenda negra ne la primera mitad del siglo XIX. Discurso leido ante la Real Academia hispano-americana de Ciencias y Artes en el acto de su recepción pública por A.J.Conte y Lacave, doctor en derecho, el día 2 setiembre del 1923* (Cadiz, 1923), p. 62.

[32] J. Álvarez Junco, 'La nación en duda', in J. Pan-Montojo (coord.), *Más se perdió en Cuba. España, 1898 y la crisis de fin de siglo* (Madrid, 1998), pp. 405-475.

Jouke Turpijn

The Continuous Reinvention of Parliaments. A Case Study on Political Transformation in the Dutch Second Chamber (1848-1888)

This article argues that parliamentary history has much to gain, if the objects of study were studied as if they were no long time established institutions, but as political bodies which have to reinvent themselves continuously. The Dutch Tweede Kamer (Second Chamber; the Dutch House of Commons) in the second half of the nineteenth century will serve as a case study for this thesis. The MP's themselves are the main actors in this article and were studied in both personal documents and parliamentary proceedings. The article will focus on the origins of parliamentary customs. Classic parliamentary historiography has dealt primarily with the making of laws and has paid little attention to the origins of parliamentary customs, rules and rituals. Many political historians took the history of parliamentary traditions for granted and did not hold it up for discussion.[1]

Many MPs however, both in history and present time, take little for granted and bring parliamentary procedures and the meaning of political life as such up for discussion. Generally these heated discussions happen when the position of a political assembly in a nation or region is shifting. The Second Chamber for example has been struggling to deal with populist newcomers since the beginning of the 21st century. These populists explore the outer limits of parliamentary practices through anti-elitist rhetoric to find themselves a strong position and identity. The established political elite reacts to this tension through several ways, but – in this case most interestingly – studies itself in an official committee on 'parliamentary self-reflection' with thick reports, debates and expert meetings. The results are meagre, most importantly because 'shock'-MPs such as Geert Wilders simply refuse to participate in these procedures.[2]

The commission also has claimed that self-reflection is never finished and part of a long historical process.[3] This level of historicism makes it relevant to find out what newcomers and elites have done to deal with each other in parliament throughout history. Although the Netherlands will be the epicentre in this short study, the search for parliamentary forms should be a field of study in a transnational context, not in the last place because the tension of newcomers is felt throughout the whole of Europe, both in its nations and in its parliament of the Union.[4]

A history like this one on parliamentary origins is important because we seem to have forgotten these, even though parliaments are worldwide still the most important places for decision-making and discussion about who we are and what we consider to be important. All parliaments come from somewhere, and in order to understand current politics it is therefore advisable to study how parliaments gained their significance in the past.

This article attempts to find an answer to the question where the Dutch parliamentary customs and traditions come from and how they developed in the period between the constitutional reforms of 1848 and 1888, the period now considered to be the age of West-European constitutionalism.[5]

1. *1848, a new beginning?*

But where do origins begin? After the fear of revolution and the constitutional reforms of 1848, Dutch parliament was not an established political institution at all. Still, the Second Chamber had one of the longest histories of modern European parliaments. Although some historians and political scientists point at the earliest meetings of the Estates General, the rise of the modern nation state offers better grips for understanding the invention of parliaments.[6] After Stadtholder Willem V was expelled in 1795 the representatives formed a lively assembly, a constitutional text and a parliamentary context. This National Convention was directly elected and claimed to be omnipotent for the Batavian republic. The convention, despite a lack of recent historiography, was and is widely regarded as one of the most influential and democratic institutions of all time.[7]

But it would not last for long. After the French occupation parliament was virtually non-existent. And when William's son returned to become Willem I of the constitutional Kingdom of the Netherlands, an omnipotent parliament was the last thing the megalomaniac monarch wanted. Therefore MP's were known as 'jaknikkers' ('yesnodders'), who would always say yes to anything the king would say. In the meantime however, liberal public life would start to flourish little by little after the Belgian war of independence. This liberal sentiment and the weak and feeble position of Willem II made the reforms of 1848 a relatively easy affair.[8]

Despite the relatively mild regime change in 1848, the MPs of 1848 experienced their recent past as polluted. Under Willem I parliament had no power and during the Batavian republic parliament had too much power which was seen to be leading to unwanted quarrels and disputes. The older Estates-General might refer to a glorious past, but proved quite useless as an example because they represented the diversity in regions way too much.[9]

This lack of historical examples for good politics was actually a blessing in disguise. The typical 1848 MP was rich, male, in his early forties, had a law degree, a social standing in his district but preferred to talk on national affairs, and powerful friends through informal connections.[10] And on Tuesday the 13th of February 1849 he would enter the assembly hall for the first time in his life. These MP's hardly knew each other, let alone what a parliament was. During their long careers they would not only learn how to deal with politics, they would reshape it along the way as well. Parliament was the epicentre of their world, and they were looking for a way to order that world. It had to be invented by its members who wanted to establish and secure its authority through customs, rules and rituals.

Put into the context of 1848, the approach to look at MPs as creative actors instead of robotic lawmakers implies that Dutch parliamentary customs and culture were developed largely by groups of political friends. In 1848 these friends were all newcomers, who would try to mould the House to their interpretation of the spirit of the new constitution. The most important writer of the constitution, Johan Rudolf Thorbecke, enjoyed the greatest authority among them.[11] He and his friends are known today in the parliamentary history as doctrinal liberals or Thorbeckians. As a group, the Thorbeckians did not resemble a political party like we know them today. They were rather a club of like-minded individuals whose composition changed from moment to moment.

The men around Thorbecke in 1848 wanted to change the parliament because they had clear ideas about the future of the Netherlands. The country and its citizens could only develop further if its administrators erected fewer obstacles than had been the case under the rule of Willem I and II. To accomplish this, the Dutch would have to control their own administrators. As the House of Representatives controlled the most important administrators – the government – the centre of political power had to shift to the assembly hall in the Binnenhof.[12] The liberals' ideal House of Representatives was an assembly where the members could find 'the truth' through rational and civilised exchange of ideas without being encumbered by the obligation of constant consultation with the electors. This 'truth' would then result in the best laws for all of the Dutch. All members of parliament were to serve this general good.[13]

These ideals did not become reality in 1849. According to the liberals, the sitting ministers did not interpret the constitutional reform as a new begin, but as a continuation of the old order. The old House had had little say in government matters, but the new representatives would be able to change that by translating the new constitu-

tion's articles on ministerial responsibility, direct election for the House of Representatives and parliamentary authority into parliamentary custom.

This translation of ideals into practice was a mysterious process that does not occur on its own. In order to realise their ideals, the liberals attempted to gather and exercise power. The most authoritative interpretation of the rules determined who got their way in parliament, what was to be done and eventually how the customs and rules were to change. The mysterious aspect of this interpretation was how it could change from momentum to momentum. The members of parliament between 1848 and 1888 used a wide variety of argumentation, rhetoric and tactics to bring about change. This would often result in political behaviour which in hindsight seems pragmatic at best and madness at worst when compared to political ideals and philosophy. What is the relation between political ideals and pragmatic actions in parliament?[14]

Interpretation, re-interpretation and debates on re-interpretations were both fuel and goals as such in the development of parliamentary life. It would cover all forms of political content, ranging from tiny procedural debates on the official rules, to the interpretation of political responsibility for ministers and kings. These debates could be official, but would also have a place in daily parliamentary life and rituals. One striking example concerns the 1849 newcomer Daniël van Eck. His career as a liberal attorney from Zeeland seems to indicate nothing spectacular. But his appearance proves the opposite. Van Eck had grown a long beard. Beards were considered to be revolutionary symbols in The Netherlands, which were associated with international rioters such as Garibaldi, Marx and Bakunin. Van Eck, however, would use his beard as a political statement. As long as there was no liberal constitution he would grow his facial hair. In 1848 this constitution became reality. Still the stubborn Zeelander would continue to grow his beard, claiming that he would only shave himself if the constitution was be interpreted in the right liberal context. Following his line of rhetoric, the poor liberal would never live to see that day, since he would die with beard after a long (but in terms of lawmaking quite useless) life in parliament in 1895.[15]

2. *The coming of age, 1848-1888.*

The growth in development of both parliamentary practice and beard is a chronological process which would take lots of time. From their debut in 1848 onwards to 1853 the new liberals worked enthusiastically to create their new parliamentary world, introducing many now long-established rules for adopting amendments, interpellations and motions. They did so primarily to drive out the sitting ministers,

and when they achieved that goal in 1849, the liberals introduced other interpretations of these rules to secure their authority.

Unfortunately, changing parliament was more difficult than they had expected due to the fact that the liberal interpretations had no effect on influential individuals. The Thorbeckians lost their dominant position in 1853. King Willem III openly declared his support to the popular protestant protest on the reinstallation of the Catholic bishoprics.[16] Since Thorbecke could not defend this act he stepped down. He and his friend however gained something new in return. During the serious conflicts of the 1850s, the liberals invented organised forms of parliamentary opposition, which included tactics on obstruction and damaging individual politicians. Until 1862 opposition was not a foregone conclusion which would result in reinterpretations of the rules about the dignity of parliamentary debate, inquiries and private member's bills.

In the 1860s, the future of the Netherlands looked bright. The economy flourished and the liberals called the shots again. They tried again to realise their ideal parliament with an unprecedented self-confidence and conceit. This conceit in the open debates actually stood in the way of achieving their ideal House of Representatives. The liberals claimed the monopoly on interpretation of the constitution and bullied their opponents out of the House. Their plan to build a monumental parliamentary palace in 1863 symbolizes the liberals' hubris. The liberals, inspired by other European parliaments, wanted to create a monument for good politics and enlightened rationalism in a palace which would stand the test of times.[17] However the whole plan collapsed in an obscure fiasco full of personal intrigue that is difficult to reconcile with enlightened ideals.

During these years, the 1848-generation also had to deal with a different sort of newcomers to the parliament. A new generation of liberals was taking over the dominant position. These trained debaters and self-made men also worked to change parliamentary politics. They saw parliament as an arena of opinions, which could be about anything, but which would be at his best with discussions on abstract subjects, while in the backrooms traders and politicians would deal with making money for the nation. The older generation however was heavily traumatized by backroom deals. The following generation conflict sounded the death knell for liberal dominance. Strangely enough, both generations wanted to achieve more or less the same goals, the creation of an enlightened nation through parliamentary means, but they came into conflict over the forms how to reach their goals. Furthermore these conflicts prove that personal matters always dominate politics, both in content and in general on obtaining and losing power. Thorbecke for example could never deal with the

talented *nouveaux riche* Isaäc Fransen van der Putte.[18] Although they would never argue in the open, two liberal camps formed up behind closed doors which would sabotage each other's plans.

Not surprisingly, more conservative politicians would profit from the liberal division. They tried to keep political power to themselves and the king in an interesting period; Bismarck was in the middle of creating a great empire and fears rose that The Netherlands would be part of it. This power hunger resulted in two dissolvements of parliament. The historiography often describes this period as a 'crisis' that ends in a crucial victory for parliament and liberalism.[19] This approach needs revision. These conflicts were not more serious than those in the 1850s, and were actually more extensions of older parliamentary debates and controversies. Above all, all parties experienced this period not as a victory, but as a loss due to the damage caused to the parliament's reputation.

In the 1870s, yet another group of newcomers entered parliament. They derived their identity primarily from groups outside of parliament, and are considered the precursors to the political parties. The first modern political party (Abraham Kuypers ARP) was formed in 1879 and would soon be followed by social democrat, catholic and protestant minority parties. Much has been written about them, since parties would dominate the 20th century and many elements of older parties are still recognizable in modern politics.[20] But the reaction by the sitting liberals is a less-documented story. The men of 1848 grew into men with authority who were best able to explain and enforce parliamentary procedure. The liberals, and especially W.H. Dullert, for twelve years in a row the Chairman of the House, brought up the newcomers as good members of parliament. This meant that the opponents of the liberal ideals of parliamentary practice, mostly ultramontanic catholics, had little opportunity to openly express their opinions. In the name of efficiency a lot was done and discussion was limited. Catholics complained that the only weapon they had was discussion, since liberals continuously outnumbered them. Their point is fair, but politics and especially chairman politics, is not. Still the chairman would acquire a stunning level of authority, which was expressed in re-election voted of several tens of votes against one or two.

By the end of the 1870s, the men of authority had grown old and begun to idealise their own past. They presented the constitution and the House of Representatives as their place in history, while contrasting themselves to foreign parliaments. Other countries' parliaments had always since 1848 been sources of inspiration for the Dutch. But in the 1870s the liberals claimed that they had built the best parliament in the world. On one hand, this pride and rejection of

former sources of inspiration indicate that Dutch parliamentary culture had become rigid and unworkable, but on the other hand the liberals wanted to protect their culture against foreign influences and against confessional and socialist newcomers. The liberals succeeded in their goals and turned parliament into a national and mainly liberal heritage and point of reference. In its slipstream these liberals turned 1848 into a benchmark which has been known ever since. Actually, classic Dutch parliamentary historiography is a direct result of parliaments' self reflected glorification of the past. Liberals not only seem to have invented the tradition, but also traditionalized the invention of parliament.

As a result of their glorification of the past, the education of newcomers and their rejection of foreign influences, the House of Representatives matured into a national political institution that was able to withstand the arrival of political parties. One could even argue that modern political parties hardly changed parliamentary culture. It would be an interesting thesis to see if and how political parties changed political life between the constitutional reforms of 1888 and the introduction of universal suffrage in 1917.[21] This would take too far here. But a famous group picture, taken in 1914 by the liberal minister C. Lely, can be seen as an indicator that most politicians were still elder men who rather worked with than against each other.

Cornelis Lely, 1914, Group portrait of the Second Chamber.

3. *Conclusion*

If parliamentary practice and culture is studied from the perspective of politicians as creative actors, three conclusions can be made. First, it seems that the parliamentary practice did not develop with rapid fits and starts, but slowly and gradually. Events such as the constitutional reform of 1848 and the conflicts of 1866-68 are often portrayed in the traditional parliamentary history as moments when everything changed. The people at the time, however, did not experience the events that way, and their Second Chamber has never been, nor seen a scene of revolutions. It would be interesting to find out if and how other parliaments throughout the world change and deal with change in periods of several decades. The international focus has been too much on quick regime changes, while change can be more lasting, deeper and interesting to study in longer periods of less heated politics.[22]

Secondly, the famous concept of 'the invention of tradition' is a fruitful tool to study rituals in parliaments, but it never covers the whole history.[23] Parliamentary traditions were to gain the status of tradition only through constant practice. The rose-coloured and glorious remembrance of 1848 was an invented tradition, because the real event was very different: the Thorbeckians wrestled for decades to bring their ideas into practice. These kind of memories, however, are vitally important for parliaments. The traditions invented in the late 1870s formed a confirmation of liberal practice on the one hand, and on the other hand they were a reaction to the rapidly changing world around them. Parliaments cherish their memories and need to invent traditions in order to invent itself in their continuous search to exert influence. It is in elder elites best interests to traditionalize their own history and practice, and it works exactly the other way around for newcomers. Not only would it be interesting to study how other parliaments have invented themselves and their traditions, it would also help to analyze the relative freedom and new tensions many newcomers encounter and create nowadays in parliaments throughout Europe.

Finally, the mystery of the liberal ideal and the translation of that ideal into practice should be unravelled. As the ideal differed significantly from their practice, the Dutch politicians could be considered as opportunists. When the situation required it, the liberals accorded different emphasis to important concepts such as 'parliamentary', 'liberal', 'conservative', 'party', 'principle', 'constitutional' and 'trust'. Opportunists have a bad name in politics: a politician should be above all reliable. Still, it is not a good idea to reject opportunism too quickly. In parliaments, idealism and opportunism go hand-in-hand. In order to realise an ideal, members of parliament utilise all possible argu-

ments and tactics. Opportunism creates new politics; in interpreting affairs in different ways, the parliament creates space for innovation. Opportunism also deals with the division of powers. A group of members with more authority uses ever-changing arguments and tactics to force parliamentary newcomers and minorities to play by their rules and to determine who can have a say in affairs. Opportunism in parliaments is neither a bad thing, nor a necessary evil. It is rather a necessary thing.

Thorbecke, the most important Dutch liberal politician of all time, was the greatest opportunist. He interpreted the rules as necessary to take over the position as minister (1840-1844 and 1848-1849), to defend it (1849-1853, 1862-1866, 1871-1872), or to re-conquer it (1853-1862, 1866-1868). Thorbecke acted as if he knew exactly how everything should be done in the parliament. For instance, he taught his fellow members that parliamentary politics should never be taken personally. But that was partially only rhetoric to make members of the opposition seem more amateuristic. Thorbecke could be downright snappy if his own authority was questioned. His emotions and those of his friends and opponents show that parliamentary politics was always personal, even in a time and place where reason was valued above emotion.

Notes

[1] With classic parliamentary history in this context works of historians like L.B. Namier, *1848: The Revolution of the Intellectuals* (London, 1944), G. Elton, *Political History: Principles and Practice* (London, 1970) are meant. In The Netherlands this tradition has been followed by researchers like J.C. Boogman, *Rondom 1848. De politieke ontwikkeling van Nederland 1840-1858* (Bussum, 1978).

[2] *Vertrouwen en zelfvertrouwen. Analyse en aanbevelingen* [Trust and selfreliance. Analysis and suggestions], chamber text 31 845, nr. 3 (The Hague, 2009).

[3] *Vertrouwen en zelfvertrouwen*, pp. 77-79.

[4] J. De Beus, J. Mak, *De kwestie Europa. Hoe de EU tot de Nederlandse politiek doordringt* (Amsterdam, 2009) pp. 164-166. H. te Velde, 'Political Transfer, an introduction', *European Review of History* 12, (2005) pp. 205-221.

[5] J. Turpijn, *Mannen van gezag. De uitvinding van de Tweede Kamer 1848-1888* (Amsterdam, 2008) pp. 7-21. For an English general introduction on politics in 19th century Netherlands E.H. Kossmann, *The Low Countries. History of the Southern and Northern Netherlands* (Rekkem, 1987) is still unmatched.

[6] W. van Vree, *Nederland als vergaderland. Opkomst en verbreiding van een vergaderregime* (Groningen, 1994), pp. 187-204.

[7] W. Velema, *Republicans. Essays on eighteenth- century Dutch political thought* (Leiden, 2007), pp.179-200. J. van Zanten, *Schielijk, Winzucht, Zwaarhoofd en Bedaard. Politieke discussie en oppositievorming 1813-1840* (Amsterdam, 2004), pp. 12-16.

[8] R. Aerts, *Het aanzien van de politiek. Geschiedenis van een functionele fictie* (Amsterdam, 2009), pp. 19-26, 56-61.

[9] J. Kloek en W. Mijnhardt, *1800. Blauwdrukken voor een samenleving* (Den Haag, 2001), p. 219.

[10] J.Th.J. van den Berg, *De Toegang tot het Binnenhof. De maatschappelijke herkomst van de Tweede Kamerleden tussen 1849 en 1970* (Meppel, 1983), passim.

[11] Strangely enough there are no recent biographies on Thorbecke. The most recent monography, J. Drentje, *Thorbecke, een filosoof in de politiek* (Amsterdam, 2003) is mainly focused on his work as political philosopher.

[12] I. de Haan, *Het beginsel van leven en wasdom. De constitutie van de Nederlandse politiek in de negentiende eeuw* (Amsterdam, 2003), passim.

[13] I. de Haan en H. te Velde, 'Vormen van politiek. Veranderingen van de openbaarheid in Nederland 1848-1900', *BMGN*, 111-2 (1996), pp. 167-200, especially pp.167-170 and pp. 183-185. R. Aerts, 'Emotie in de politiek. Over politieke stijlen in Nederland sinds 1848', in *Jaarboek parlementaire geschiedenis* (2003), pp. 12-15.

[14] On a political-philosophical level F.R. Ankersmit, *Macht door representatie. Exploraties III: politieke filosofie* (Kampen, 1997), pp. 117-168 has explored the relation between interpretations, representation and political rules. Ankersmit's work has been translated into English.

[15] D. van Eck [C. Tamse ed.], *De memoires van een enfant terrible. Politieke herinneringen van de Zeeuwse liberale afgevaardigde Mr. Daniel van Eck aan vijfendertig jaar Kamerlidmaatschap 1849-1884* (Middelburg, 1975).

[16] R. Van Raak, *In naam van het volmaakte*, *Conservatisme in Nederland* (Amsterdam, 2001), pp. 77-83. A. Houkes, 'Het succes van 1848. Politiek in de Aprilbeweging', in J. Vis en W. Janse (ed.) *Staf en Storm* (Hilversum, 2002), pp. 87-104. De Haan, *Het Beginsel van leven en wasdom*, pp. 62-70.

[17] Until this day the origins of the plan to build 'a Dutch Westminster' are unknown. Some historians, like P. Geyl, '1813 herdacht in 1863', in P. Geyl (ed.), *Pennestrijd over staat en historie* (Groningen, 1979), p. 275, claim that Willem III, and not parliament, asked for this parliament. Since the royal archives are closed for almost all researchers, the truth is not yet known.

[18] Fransen van der Putte was a typical colonial MP who like so many made his money in the Dutch Indies. C.A. Tamse, H. Boels en J. de Jong, 'inleiding', in C.A.Tamse e.a. (ed.) *J. Loudon, Eer en fortuin – leven in Nederland en Indië 1824-1900* (Amsterdam, 2003), pp. 53-60.

[19] For example in R. de Jong *Van standspolitiek naar partijloyaliteit. Verkiezingen voor de Tweede Kamer 1848-1887* (Hilversum, 2001), pp. 60-65, 128-130.

[20] H. te Velde, *Stijlen van leiderschap. Persoon en politiek van Thorbecke tot Den Uyl* (Amsterdam, 2002). R. Koole, *Politieke partijen in Nederland. Ontstaan en ontwikkelingen van partijen en partijstelsel* (Utrecht, 1995).

[21] Hopefully this question will be answered in forthcoming: E. Tanja, *Goede politiek. De parlementaire cultuur van de Tweede Kamer 1866-1940* (Amsterdam, 2010).

[22] I. de Haan, *Politieke reconstructie. Een nieuw begin in de politieke geschiedenis* (Utrecht, 2004), pp. 22-23.

[23] E. Hobsbawm, 'Introduction: Inventing Traditions' in E. Hobsbawm en T. Ranger (ed.), *The Invention of Tradition* (3rd edition, Cambridge, 1987), pp. 1-15.

Carla King

Westminster and Irish Nationalism, 1879-1914: J.J. O'Kelly and Michael Davitt

To historians of late nineteenth-century Irish and British affairs, the impact of the newly assertive Irish Parliamentary Party led by Charles Stewart Parnell in shaping politics at Westminster is well known. By means of obstructionist tactics, Irish issues were highlighted and both the content and practice of the parliament affected. This paper, however, aims to turn the subject on its head and address the influence of its involvement at Westminster in moulding Irish nationalism. The parliamentary careers of two Irish MPs: James J. O'Kelly and Michael Davitt, will be highlighted as case studies of how men who started their political lives as militant activists became convinced of the efficacy of constitutional politics.

Since the Act of Union of 1801, uniting the legislative jurisdictions of Britain and Ireland and abolishing the Irish Parliament, there had been sporadic attempts on the part of Irish nationalists to reverse this arrangement and reinstate Irish self-government. This had taken broadly two paths: a constitutional one, in which successive Irish political parties had pressed for Home Rule at Westminster and a militant tradition of insurrection and conspiracy. There was also a third method: peaceful mass organisation, carried out by means of demonstrations, mass meetings and other forms of passive resistance, to put moral pressure on British governments to grant reform. This first emerged under the Irish nationalist and Liberal MP, Daniel O'Connell in the 1820s and 1840s and a second important mass movement was founded in 1879, led by Michael Davitt and Charles Stewart Parnell, in the form of the Irish National Land League and its successor, the Irish National League.

The two men chosen for focus in this paper were individuals who promoted a transition from the physical force movement of fenianism into constitutionalism, both commencing their careers as Fenians but eventually serving as members of parliament. Neither could be called typical, as their political origins were more radical than most of their contemporaries, but they serve to demonstrate a trend. Born within a year of each other – O'Kelly in 1845 and Davitt in 1846 – both participated as young men in the Fenian organisation, the Irish Republican Brotherhood, rising to the leadership of the movement, its Supreme Council, and both were deeply involved in shipping arms to Ireland to prepare for an insurrection in the 1860s. The Irish Republican Broth-

erhood was a secret society founded in 1858, which aimed to free Ireland from British rule and establish a sovereign, democratic, secular republic. It rejected constitutional politics as a means to achieving this, expelling several of its members who ran for parliament. Officially it was argued that the Oath of Allegiance to the monarch taken by MPs was incompatible with the Fenian Oath, sworn by its members. But there was also the fear that those of its members who entered parliament might succumb to 'the atmosphere of the house'. As the twentieth-century writer Liam O'Flaherty put it: 'Such is its power that it is calculated to tame the wildest man and turn him into a *Right Honourable Gentleman*'.[1] The IRB carried out an unsuccessful raid on Chester Castle in England in February1867 and a similarly unsuccessful insurrection in Dublin the following month. However, despite practical failures there were some Fenian ideas that were to endure: for example, those about the type of government to be established if independence was achieved. In 1862, John Pigot, a Fenian publicist, wrote a constitution for an Irish republic and versions of his ideas survived in the movement for decades. He envisaged a modernised Ireland, with a strong army and navy. It would have an alliance with either France or the United States, and the constitution he proposed was heavily influenced by French and American models, with a directly elected lower chamber and a president for life elected by the upper chamber. The traditional capital city, Dublin, was to be abandoned and the legislature to be located in Athlone (centre of the country) with the executive in Limerick (South West of the country). There would be universal, secret manhood suffrage and control over education was to be handed over to the various churches (rather a curious proposal for an organisation that was constantly at odds with the clergy).[2]

James J. O'Kelly was born in Dublin, the son of a blacksmith, and became a Fenian in 1861, at the age of sixteen. He went to live with an uncle in London later that year and two years later enlisted in the French Foreign Legion. His regiment was sent to Mexico by Napoleon III in 1866 to support Emperor Maximilian. He was made prisoner by the Mexican General Canales but escaped, returned to France, and served in the French army as a captain until the fall of Paris in 1870. He then moved to New York, where he was employed as a journalist for the *New York Herald* and was sent to Cuba to report the Cuban revolt. He penetrated the Cuban lines to interview General Cespedes, president of the republic, and learn at first hand the reasons for the rising. Arrested by the Spaniards and condemned to be shot as a spy, he was shipped back to Spain and eventually reprieved and returned to his post in New York.[3]

O'Kelly had been interested in the parliamentary movement for

Home Rule led by Isaac Butt, and attended the inaugural meeting of his Home Government Association in Dublin on 19 May 1870.[4] Seven years later while in Europe as a war correspondent he had two interviews with Charles Stewart Parnell and was the first to advocate to American Fenians the potential for some rapprochement with the leaders of the Irish Parliamentary Party.[5] The Fenian leadership on both sides of the Atlantic was divided over whether to cooperate with parliamentarians, some holding to their traditional rejection of constitutional politics but others, including O'Kelly and Davitt, arguing that the physical force approach had led them up a blind alley. As Davitt put it: 'Mere conspiracy had nothing to offer to the mass of the Irish people except the experiences of penal servitude and the records of the abortive rising of 1867.'[6] Parnell's first serious biographer, R. Barry O'Brien, quotes an anonymous source, possibly Davitt, in describing why so many Fenians moved to support the Irish Parliamentary Party under Parnell's leadership:

> When I came out of prison I went back at once to the organisation. I began to collect arms, to conceal them, to organise. Then my attention was drawn to what was going on in Parliament, and to Parnell chiefly. This was something new. Here was a handful of men fighting the British Government on its own ground. People do not become Revolutionists for the fun of the thing. Every Fenian carried his life in his hand. There is not much fun in that. Why were we Fenians? Because in Fenianism was the only hope for Ireland. Parliamentarianism had always been contemptible. It was worse, it was mischievous. The London Parliament was simply a school for Anglicising Irishmen. We hated the thing. But if there were the slightest chance of getting an Irish Parliament by constitutional means, the vast majority of Fenians would be Constitutionalists. A real Irish Parliament, not a sham, would have satisfied the great majority of our people all the time. But we saw no chance of getting an Irish Parliament or anything else by constitutional means, and we became Revolutionists. But here was a new departure. Here was a new man with new methods. … Ought he not to get a trial, ought not his methods to get a trial? That is what I thought, and as the years passed Parnell impressed me more and more with his power, and ultimately I left the Fenian organisation and joined him.[7]

While the Irish Republican Brotherhood was pondering its relations with the parliamentarians a crisis intervened over the Irish land question. An economic depression led to tenants uniting to form the Irish National Land League in 1879, in order to defend themselves against eviction by their landlords when they were unable to pay rent. This new organisation was led by Michael Davitt and the Irish parliamentary leader, Charles Stewart Parnell but many of the organisers, at both local and national level, were members of the Irish Republican Brotherhood, so in fact a coming together of Fenians and parliamentarians and land reformers occurred over the land issue.[8]

O'Kelly initially threw himself into Land League activism, becoming an organiser for Ulster and a member of its Executive Council, but after a short time he came to focus most of his attention on parliamentary work and journalism.

Persuaded by his friend, Davitt to stand for parliament in 1880, O'Kelly was elected Nationalist MP for Roscommon, which he represented almost continuously until his death in 1916. In doing so, he abandoned the Irish Republican Brotherhood, and while retaining some of his old Fenian links, he, like Davitt, received death threats from more intransigent Fenians who viewed them as renegades to the cause. O'Kelly became one of the closest associates of Charles Stewart Parnell, leader of the Irish Parliamentary Party, and served for seven months in prison alongside him in 1881-2. He was convinced that Fenians ought to enter Parliament and work for reform from there, urging in 1885 that the organisation should abandon its abstentionist policies and allow its members stand as candidates, not least to counteract the attempt by the Catholic hierarchy to ensure the election of more right-wing nationalist MPs.[9] Apart from his parliamentary career, O'Kelly was to become one of the leading war correspondents of his day. With his brother, Aloysius, an illustrator for the press, he travelled to the Sudan, during the Mahdi revolt, as a correspondent to the London *Daily News*, becoming an authority on Middle East affairs.[10] O'Kelly was an active parliamentarian, both on Irish and on more general British and international issues. In 1884 he was appointed to the Irish Party's foreign affairs committee. Two years later he was chosen to serve on a proposed Select Committee on the Government of India, but it met with fierce opposition from the Conservative Party and was not established.[11] However, a contemporary asserted that despite his long years of service as a Member of Parliament, he was the least parliamentary of men, with 'fine, bright, defiant eyes… twisted eyebrows that added to the martial and almost ferocious look and … a violent temper'.[12] He was said to have challenged another MP, J.C. McCoan, to a duel.[13] In 1886, a fellow nationalist politician and journalist, T.P. O'Connor related that:

> O'Kelly has, while little known to the public, been one of the most potent forces in shaping the fortunes and decisions of the party. He has brought to its councils great firmness of will, world-wide experience, a common sense which may be described as ferocious, and a devotion to the interests of his country which is absolute.[14]

The other individual to be discussed here is Michael Davitt, born in 1846, the son of poor tenant farmers in the West of Ireland. His family suffered eviction during the Great Famine and moved to the industrial town of Haslingden in England, where Davitt, as a child of

eleven, lost an arm in an industrial accident. He joined the Fenians and rose rapidly to become organising secretary and arms agent for England and Scotland, but on 14 May 1870, he was arrested on the platform of Paddington Station and sentenced to fifteen years' hard labour, of which he served seven and a half. On his release, Davitt became one of the most active of the Fenian leaders in advocating co-operation with the Irish Parliamentary Party.[15] He failed in an attempt to win the Supreme Council of the IRB to his way of thinking but in 1879 he founded the Land League, the tenant farmers' organisation, and was eventually expelled from the Supreme Council, probably on 8 May 1880.[16] In successive conflicts over land during the next three decades, the tenants were to emerge victorious and land tenure in Ireland was eventually transformed from a landlord-tenant system to peasant proprietorship by means of a series of land acts.

Nevertheless, in the short term, the Land League was declared illegal by the government and Parnell, on his release from prison in 1882 made no effort to revive it. Over the years that followed Davitt became increasingly close to the British Radicals and socialists, in an effort to encourage them to support Irish demands for reform and Home Rule. In this he had to struggle against the alienating effects of dynamite attacks in Britain, carried out by Irish-American nationalists and made strenuous efforts to dissuade them from their bombing campaign, travelling to Chicago in 1886 to address the American National League Convention. He and O'Kelly were similar in being to the political left of the Irish movement and close to British Radicals, and like O'Kelly, Davitt earned his living through journalism. Davitt was much slower to enter Parliament than his associate. Despite many invitations to do so, including from British Radicals urging him to stand as a workingmen's representative, he only put his name forward in 1891, following a bitter split in Irish party when his side of the dispute needed all the MPs it could get. He was defeated in 1891, disqualified the following year and elected a third time in 1893, only to be forced to resign his seat owing to bankruptcy. He finally took his seat as MP for South Mayo in 1895.

O'Kelly and Davitt were far from being the only Fenians at Westminster. James McConnel has estimated that around one-quarter of the Irish Parliamentary Party between the 1880s and 1909 were former Fenians but he claims that their background does not seem to have influenced their behaviour and they do not appear to have acted as any kind of political bloc.[17] Alan O'Day has pointed out that despite their image as troublemakers in parliament in fact several Irish MPs became deeply involved in reform, and not just that relating to Ireland. If we examine the parliamentary records of our two heroes, we see that despite Davitt's description of himself as 'a rather silent

member',[18] they were quite active and their interests ranged very widely. In 1896 Davitt addressed 15 topics (nine Irish); O'Kelly 11 topics, of which 5 were on Irish subjects. In 1897 Davitt spoke on 40 issues, of which 15 were Irish and O'Kelly 13 subjects, of which 4 were about Irish subjects. Like several Irish MPs based in London, O'Kelly took an interest in the poor of the city. In May 1883, he opposed a private member's bill to allow a railway company to annex land in North London, arguing that

> within half a mile of the point which the Railway company sought to take possession of, there was a large mass of population living in most crowded dwellings. The people in the district certainly required all the air and all the open spaces they could get.[19]

Davitt, who had spent three separate terms of imprisonment in Britain and Ireland, was something of an expert on the subject of jails and in 1898, when a Prisons Bill was under discussion, he carried out an inspection of the main jails in Britain and played a central role on the Standing Committee on Law, having prison conditions improved, advocating the abolition of flogging (he didn't achieve this but the conditions under which it could be carried out were greatly limited), and demanding improvements in prison diet, including a reduction in the period to which prisoners could be sentenced to a bread-and-water diet, and administrative reforms.[20] He also served as a member of the Select Committee on Government Contracts in 1896 and the Select Committee on the Aged and Deserving Poor in 1899.[21] Both Davitt and O'Kelly were very active critics of British imperial policy. In 1897, Davitt drew attention to a famine that had broken out in the Central Provinces of India two years earlier.[22] Over the next few years he also denounced the mistreatment of the West African Ashanti king Prempeh by the British army; questioned the Royal Niger Company's behaviour in Benin; queried British involvement in Sudan; demanded to know why the Chinese leader Sun Yat Sen was excluded from Hong Kong; and condemned the use of dum-dum, or exploding bullets in India and South Africa.[23] O'Kelly tabled questions about a wide range of foreign issues: Russia, Crete, Cuba, Italian cruisers in the Red Sea, and of course, Sudan, on which he was an expert. Both men not only served as MPs at Westminster but wrote columns on parliamentary affairs for newspapers, O'Kelly for the *Irish Independent* and Davitt for the New York *Sun* and the *Westminster Gazette.*

Davitt was never at home in the gentlemen's club atmosphere of Westminster, once informing the house that he 'sighed while sitting helpless on these Benches, for the days when, instead of vainly trying to make laws, I might have built up a lasting reputation in Dartmoor as a stonebreaker' (referring to the years he spent serving a sentence

to hard labour).[24] In October 1899 he suddenly resigned his seat, in protest against the British government's decision to go to war against the Boers and travelled to South Africa as a war correspondent the following year.[25] Nevertheless, he never repudiated the parliamentary approach and in 1905, his last published long article for a journal was a satirical piece called 'The Irish National Assembly (Session of 1910)' in *The Independent Review,* a British radical paper. In it he imagined what Irish politics would look like in five years' time. In a massive piece of wishful thinking, he assumed, in the piece, that Home Rule had been granted in 1909 and universal suffrage introduced. A spirit of conciliation had broken out between Nationalists and Unionists, Catholics and Protestants, and the new government had introduced a whole range of reforms. What he predicted would happen, wrongly as it turned out, was that Irish parties would emerge along a right-left spectrum, with a Conservative party opposed by a National Democratic Party. There would also be a Labour Party and an Ulster Party.[26]

During the period under review there were three unsuccessful efforts to grant Ireland Home Rule. The first, in 1886, was defeated in the House of Commons; the second, in 1893, was defeated in the Lords; and the third might have been enacted but was postponed following the outbreak of the First World War. So why, in the face of failure, did Irish nationalist leaders remain so long faithful to the constitutional path? One reason was that the idea of taking on the world's most powerful state with relatively few men and some smuggled and often outdated guns was never likely to be realistic. But another was that real progress was being made, most dramatically regarding the land question. Irish nationalists had never believed that a British government would legislate to remove landlordism from Ireland because the landlords were the sector of society that was generally most loyal to British power. But that is what happened, in a series of laws that enabled the landlords to be bought out by the government, which was then repaid through an annual land tax by the new peasant proprietors. Eugenio Biagini in a recent study of *British Democracy and Irish Nationalism*, has emphasised the ideological and cultural ground that the Irish nationalists shared with their British Liberal counterparts[27] and the period at the end of the nineteenth century when the Liberals and Irish Nationalists worked closely together on reform and efforts to introduce Home Rule, has been dubbed the 'Union of Hearts'.

In fact, even the Conservative Party, despite their declared opposition to granting Home Rule to Ireland, carried out noteworthy reform, including the establishment of a development board for the impoverished west of Ireland; the introduction of an innovative department of

agriculture; and local government reform.[28] This may, as is sometimes asserted, have been in part an attempt to win Irish public opinion away from the demand for Home Rule but if that was a motivating factor, it failed. With the postponement in 1914 of a Home Rule measure that had passed into law, owing to the onset of the First World War, a younger and more radical generation did turn back to physical force, with the insurrection of 1916 and the War of Independence that followed less than three years later. And although in military terms the rising was a fiasco, it initiated a process that was ultimately to sweep away the old Irish Parliamentary Party leadership that had remained in place up to then but was now ageing. Indeed, of our two subjects, Davitt had died in 1906 and O'Kelly, long debilitated by illness, followed in December 1916.

In conclusion, it is argued here that the long period of steady reform, from the last three decades of the nineteenth century through to the outbreak of the First World War, demonstrated to the Irish public and its representatives the effectiveness of constitutional methods, even despite the failure to grant Home Rule. In particular, the Irish political elite who had come to public prominence in the 1880s and 1890s, were convinced of it, and held on, perhaps too long, to a focus on Westminster that ultimately left them out of touch with radicalising public opinion at home. They were ultimately to be pushed aside by the impatient young men who spearheaded a return to the physical force tradition in the War of Independence. Davitt, O'Kelly and other former Fenians largely remained loyal to their ultimate aim of a democratic, secular, sovereign republic, but they had been willing to compromise and to accept Home Rule, that is an Irish parliament within the British Empire, as an interim settlement. However, the party was split and discredited for almost a decade following a scandal over Parnell and the O'Shea divorce case in 1890 and it failed to attract able members to renew itself, becoming a rather cynical, sclerotic and denominational part of the establishment. The younger, more militant generation that formed the new Sinn Féin party reacted sharply against this and in a watershed election following the end of the First World War, overwhelmingly swept aside their political fathers. Nevertheless, having endured a period of violent conflict that racked the country between 1919 and 1923, with a War of Independence followed by a Civil War, the country settled down fairly rapidly into a rather conservative parliamentary democracy, heavily based on the Westminster model.

Notes

[1] Liam O'Flaherty, *The Life of Tim Healy* (London, 1927), p. 67.

[2] Tom Garvin, *Nationalist Revolutionaries in Ireland, 1858-1928* (Dublin, 1987), pp. 120-1.

[3] John Devoy, *Recollections of an Irish Rebel* (New York, 1929), pp. 333-46.

[4] T.P. O'Connor, *The Parnell Movement* (London, 1886), p. 224. This is also alluded to in an anonymous obituary for O'Kelly in the *Freeman's Journal*, 23 December 1916, p. 4, 'Toll for the Brave'.

[5] William O'Brien and Desmond Ryan (eds), *Devoy's Post Bag*, Vol. I (Dublin, 1948), p. 266. O'Kelly to Devoy, 5 August 1877.

[6] Michael Davitt, *The Fall of Feudalism in Ireland or the Story of the Land League Revolution* (London and New York, 1904), p. 117.

[7] R. Barry O'Brien, *The Life of Charles Stewart Parnell, 1846-1891* (London, 1899), vol. I, pp. 163-4.

[8] R.V. Comerford, *The Fenians in Context: Irish politics and society 1848-82* (Dublin, 1985), pp. 224-5; Owen McGee, *The IRB: the Irish Republican Brotherhood from the Land League to Sinn Fein* (Dublin, 2005), *passim*. T.W. Moody, *Davitt and Irish Revolution, 1846-82* (Oxford, 1981).

[9] McGee, *The IRB,* p. 141.

[10] Niamh O'Sullivan, '"Lines of Resistance": the O'Kelly brothers in the Sudan,' *Eire-Ireland*, 33 nos. 3-4 (1998), pp. 131-56.

[11] *The Times,* 19 April 1886. *Hansard* CCCV (17 May 1886), 1161-2; CCCVIII (7 Sept 1886), 1474.

[12] T.P. O'Connor, *Memoirs of an Old Parliamentarian* (London, 1929), vol. I, p. 277.

[13] *The Irish Book Lover,* VIII, 7-8 (Feb and March 1916-17), pp. 82-3. McCoan was MP for Co. Wicklow.

[14] O'Connor, *The Parnell Movement*, p. 362.

[15] Leon Ó Broin, *Revolutionary Underground: the story of the Irish Republican Brotherhood, 1858-1924* (Dublin, 1976), p. 14; R.V. Comerford, *The Fenians in Context: Irish Politics and Society 1848-82* (Dublin, 1985), pp. 224-5.

[16] T.W. Moody, *Davitt and Irish Revolution, 1846-82* (Oxford, 1981), p. 381.

[17] James McConnel, '"Fenians at Westminster: the Edwardian Irish Parliamentary Party and the legacy of the New Departure', *Irish Historical Studies,* XXXIV, 133 (May, 2004), pp. 42-64.

[18] *Hansard*, 4th ser., LIII (1898), 1094.

[19] *Hansard*, 3rd ser., CCLXXIX (1883), 217; quoted O'Day, p. 140.

[20] See *Daily Chronicle* articles, Trinity College Dublin, Davitt papers, MS 9352/564-571.

[21] Carla King, *Michael Davitt* (Dublin, 2009), p. 70.

[22] *Hansard*, 4th ser., XLV (1897), 1555.

[23] See Carla King, 'Michael Davitt, nationalism and the British Empire,' in Peter Gray (ed.), *Victoria's Ireland? Irishness and Britishness, 1837-1901* (Dublin, 2004), pp. 116-130.

[24] *Hansard*, 4th ser., LII (1897), 443-4.

[25] His fourth book, *The Boer Fight for Freedom* (New York and London, 1902) was based on his experiences there.

[26] Michael Davitt, 'The Irish National Assembly (Session of 1910)', *Independent Review,* 5 (April 1905), pp. 284-98; reprinted in *Michael Davitt: Collected Writings, 1868-1906* ed. Carla King (Bristol, 2001) vol. II.

[27] Eugenio Biagini, *British Democracy and Irish Nationalism, 1876-1906* (Cambridge, 2007), p. 30.

[28] Andrew Gailey, *Ireland and the Death of Kindness: the experience of constructive unionism, 1890-1905* (Cork, 1987).

Anna Gianna Manca

Incompatibilità parlamentari e forma di governo nella monarchia costituzionale italiana ottocentesca

1. Questo mio contributo si basa su lavori che sto conducendo già da qualche anno in vista della stesura di una monografia sulla presenza dei funzionari pubblici nella Camera dei deputati del Regno di Sardegna prima e d'Italia poi sino al 1922. Tale presenza era regolata infatti, o, più precisamente, pesantemente limitata, dalla normativa vigente sulle ineleggibilità e le incompatibilità parlamentari.

In questa sede farò anzitutto alcune considerazioni molto generali sul rapporto tra incompatibilità parlamentari e forme di governo dal punto di vista della storia politico-costituzionale comparata (1.). Mi concentrerò quindi sulle incompatibilità parlamentari nel giovane Stato costituzionale italiano del lungo Ottocento (2.), dove peraltro la legislazione non le distinse mai chiaramente dalle ineleggibilità. In particolare mi soffermerò prima sulla normativa che stabiliva la compatibilità parlamentare dei ministri (2.) e poi sulla tutt'altro che priva di eccezioni incompatibilità parlamentare dei funzionari pubblici (3.). Particolarmente in sede di conclusioni (4.), accennerò quindi alle principali difficoltà interpretative che si incontrano nel cercare di comprendere il significato più generale delle incompatibilità (-ineleggibilità) parlamentari dei funzionari pubblici nel processo di costruzione e di consolidamento dello Stato costituzionale e di diritto italiano nel periodo trattato.

Della 'collocazione sistemica' ('systematische Stellung') delle incompatibilità parlamentari in genere, vale a dire del ruolo più o meno determinante ad esse assegnato all'interno di un determinato sistema politico- e giuridico-costituzionale, si è occupato verso la fine degli anni Trenta in Germania, come giovane allievo di Carl Schmitt, il giuspubblicista Werner Weber.[1]

Nel suo studio Weber, sulla scia degli studi già compiuti dall'olandese Roelof Kranenburg era pervenuto ad una triplice differenziazione delle incompatibilità. Anzitutto aveva isolato dalle altre le incompatibilità cosiddette 'costituzionali', quelle cioè che sono fissate direttamente in costituzione e che quindi sono volte, almeno in linea di principio, non tanto ad attuare il principio della separazione dei poteri (peraltro mai effettivamente realizzato storicamente), quanto, più propriamente, a mantenere distinti i detentori personali delle tre funzioni classiche di governo. Incompatibilità parlamentari di tipo 'costi-

tuzionale' sono ad esempio quelle contenute nelle costituzioni francesi del 1791 e del 1795, ma sono anche quelle contenute nella costituzione di Cadice del 1812, come pure infine quelle sancite dall'art. 28 della costituzione francese del 1848.

Oltre alle incompatibilità cosiddette costituzionali, miranti alla realizzazione di differenziazioni organizzative all'interno di un sistema politico-costituzionale, Weber distingueva poi le incompatibilità 'di secondo tipo' da quelle 'di terzo tipo'. Le prime erano finalizzate a proteggere altri ambiti, ad esempio il giudiziario o l'esecutivo, diceva Weber, dagli effetti nocivi della funzione di deputato; le seconde miravano invece a proteggere il mandato parlamentare, il suo esercizio libero e autonomo da qualsivoglia condizionamento da parte dell'esecutivo. La distinzione weberiana tra questi due ultimi tipi di incompatibilità parlamentari per così dire 'non costituzionali' è peraltro quella che qui rileva più direttamente, perché è proprio in uno di questi due tipi che, come vedremo, deve essere fatta rientrare la normativa italiana di epoca liberale, non essendoci alcuna determinazione sulle incompatibilità parlamentari nel notoriamente assai laconico Statuto Albertino.

La conclusione a cui Weber perveniva al termine della sua indagine sulla natura e la valenza sistemica delle incompatibilità parlamentari, era peraltro questa: 'Le incompatibilità parlamentari non formano alcun sistema (…) Esse possono essere poste al servizio dei più diversi scopi politici (…) [e] il tentativo di coglierle sistematicamente conduce solo a molti gruppi di incompatibilità parlamentari, certo coordinati tra loro, tra i quali esistono numerosi passaggi e collegamenti, che hanno però le loro specificità (…) [Esse] non formano assolutamente delle serie in sé conchiuse'.[2] E tuttavia, proseguiva Weber spezzando una lancia a favore dell'introduzione delle incompatibilità parlamentari nella legislazione weimariana, 'se anche il significato delle incompatibilità parlamentari muta con il mutare della situazione politica e il loro baricentro si è spostato più volte, ciononostante esse restano irrinunciabili all'interno di ogni forma di costituzione, per mantenere la nervatura fine e l'equilibrio del sistema delle forze politiche (…) La loro importanza – precisava Weber dando a mio avviso il suo contributo più originale alla questione della valenza sistemica delle incompatibilità – non si esaurisce nel loro effetto giuridico positivo come norme della separazione. Attraverso di esse si manifesta la specificità della distribuzione delle forze politiche voluta da una determinata costituzione, attraverso la negazione della compatibilità si definisce, per contenuto e limiti, il compito della funzione statale protetta dall'incompatibilità'.[3]

Per quanto riguarda in particolare le incompatibilità parlamentari 'costituzionali', e cioè del primo tipo, e il nesso che le legherebbe ad

una particolare forma di governo, uno è il punto fermo a cui sulla base dello studio di Weber ci si sente autorizzati ad accedere, e cioè che solo laddove si è sviluppato un sistema parlamentare di governo la compatibilità parlamentare dei ministri non costituisce minaccia alcuna per il principio della differenziazione dei poteri.[4] Secondo Weber, un governo parlamentare può anche non prevedere incompatibilità parlamentari sia per i ministri che per i funzionari pubblici da essi dipendenti, senza che con ciò sia necessariamente a rischio l'autonomia del parlamento dal governo.

Quale indicazione da questa corrispondenza per così dire 'naturale' indirettamente ribadita da Weber tra un governo parlamentare e l'assenza di incompatibilità parlamentari si possa trarre nel tentare di comprendere la relazione esistente tra la architettura e la ingegneria politico-istituzionale della monarchia italiana del lungo Ottocento tradizionalmente detta parlamentare da un lato, e le norme elaboratissime e di laboriosissima applicazione previste per regolare l'accesso alla Camera dei deputati sia dei ministri che dei funzionari pubblici più in genere dall'altro, è però destinato a restare oscuro sino a quando non si individua, per dirla con Weber, quale fosse qui la 'funzione statale protetta dall'incompatibilità'.

Di certo l'avere anche Weber ribadito quella tendenziale corrispondenza di ordine per così dire 'sistemico', induce e anzi costringe a porsi alcune domande sia sulla natura e il senso delle incompatibilità parlamentari italiane nel periodo considerato, sia sulla 'vera' natura del sistema politico-istituzionale entro cui esse trovavano applicazione.[5] Anzituttto: erano le incompatibilità parlamentari sancite dalla legislazione del Regno di Sardegna prima e del Regno d'Italia dopo effettivamente tali, o non erano piuttosto esse a ben vedere delle ineleggibilità? Inoltre: in quale degli ultimi due ultimi tipi di incompatibilità parlamentari individuati da Weber si possono far rientrare quelle italiane ottocentesche, e cioè qual'era il loro fine intrinseco, quale il potere che con esse si voleva difendere e tutelare dagli altri? A quale sistema politico di governo erano coerenti e funzionali le norme sulle incompatibilità parlamentari per ministri e funzionari pubblici emanate su suolo italiano dal 1848 al 1922? Erano funzionali e coerenti rispetto ad un sistema di governo parlamentare e quindi tendenzialmente monistico o invece ad uno ancora strutturalmente dualistico, e cioè monarchico-costituzionale? Presupponevano e/o avevano di mira dette norme, nella concezione della classe politica dirigente che le aveva concepite e/o che le volle mantenere in vita, la costituzione di una rappresentanza popolare di un certo tipo e, strettamente connesso a ciò, l'instaurazione di un ben preciso sistema di relazioni tra parlamento e governo? E se si, quale? A queste domande si tenterà di trovare una risposta nel seguito di queste note.

2. La prima normativa sardo-piemontese sulle ineleggibilità e le incompatibilità parlamentari appare a prima vista, soprattutto al confronto con altre normative europee di epoca costituzionale, non solo estremamente dettagliata ma anche, per certi versi, addirittura occhiuta. Sin da subito si rivelò anche di non semplice applicazione. Il particolare zelo profuso dal 'legislatore' del 1848 nell'elaborare la normativa in questione, come pure la volontà di quello successivo di mantenerla in vita nonostante le evidenti e sempre nuove difficoltà applicative, fanno subito sospettare che esse dovessero rispondere ad esigenze di razionalizzazione del sistema politico.

Nel cercare una risposta alla domanda sullo 'spirito' di questa normativa non ci può soccorrere se non in minima parte l'opera dei grandi giuspubblicisti italiani dell'epoca, generalmente troppo interni al progetto di *State-* e *Nationbuilding* della classe politica dirigente liberale. [6] Ad essi non ci si può dunque appoggiare fiduciosi nel tentare di comprendere la *ratio legis* della sin qui solo evocata normativa italiana sulle incompatibilità e ineleggibilità parlamentari, dove significativamente queste, come si è già accennato, non erano chiaramente distinte le une dalle altre. Per vedere però cosa esse stabilissero prima rispetto ai ministri e poi rispetto ai funzionari pubblici in genere conviene prendere le mosse dalla lettera stessa della legge.

La cosiddetta 'legge' elettorale del 17 marzo 1848, n. 680, che in verità, particolare tutt'altro che trascurabile per l'argomentazione che qui si va svolgendo, era un regio editto,[7] non aveva certo escluso i ministri dalla eleggibilità alla Camera dei deputati. Secondo i più autorevoli interpreti liberali ottocenteschi del diritto costituzionale vigente, ciò sarebbe stato stabilito in coerenza con la natura parlamentare dello Stato sardo-piemontese prima e italiano poi.[8]

I ministri non risultavano, infatti, tra i soggetti ineleggibili per funzione di cui all'art. 98 della 'legge' citata. Essi erano eccettuati anche dalla conta dei funzionari-deputati, o deputati-impiegati come allora si chiamavano più comunemente i servitori dello Stato eletti deputati, che, secondo l'art. 100, non dovevano in nessun caso superare il quarto del totale dei deputati (51 su 204) da eleggere per la Camera subalpina nel 1848. L'elezione a deputati dei ministri era cioè libera, non si voleva pregiudicare in alcun modo la loro presenza e partecipazione ai lavori della Camera.

Sul punto della libera eleggibilità dei ministri la normativa del 1848 sarà confermata di fatto dalla prima legge elettorale del Regno d'Italia del 17 dicembre 1860, n. 4513. Con essa, com'è noto, fu estesa a tutto il Regno la 'legge' elettorale piemontese del 1859, che a sua volta aveva modificato solo minimamente quella del 1848 e che, al pari di essa, era in realtà un decreto. Nella legge del 1860, infatti, all'art. 97, i 'Ministri Segretari di Stato', insieme ai loro 'Segretari Generali

dei Ministeri' e ad altri funzionari amministrativi di livello assai elevato, erano eccettuati esplicitamente dalla generale ineleggibilità dei 'Funzionarii ed Impiegati Regii aventi uno stipendio sul bilancio dello Stato'. All'ultimo capoverso dell'art. 100 della medesima legge si ribadiva inoltre che 'I Ministri Segretari di Stato (…) non [sarebbero stati] computati nel novero degli impiegati pubblici' ai fini del sorteggio attraverso cui, sempre secondo la legge, si doveva procedere ad escludere gli impiegati pubblici eletti in soprannumero rispetto stavolta al quinto del totale dei deputati eleggibili (all'epoca 88 su 443).[9]

Il destino per così dire 'privilegiato' dei ministri-deputati rispetto agli altri alti funzionari dello Stato era poi confermato dalla successiva legge sulle incompatibilità parlamentari del 13 maggio 1877, n. 3830. Al suo articolo 6, dopo aver ulteriormente ridotto il numero assoluto dei 'funzionari ed impiegati eleggibili', fissandolo a soli 40 dei 508 deputati di cui si componeva la Camera dei deputati italiana a partire dal 1870, essa affermava infatti che nel novero dei 40 non si dovessero ritenere 'compresi i Ministri Segretari di Stato ed i segretari generali dei Ministeri, anche quando cessino da tali uffici e siano rinominati a quelli civili o militari che antecedentemente coprivano'.

C'erano però, sia nella 'legge' elettorale del 1848, come in quella successiva del 1860 e anche in quella appena vista del 1877, dei passaggi da cui trapelava invece la tendenza contraria ad assimilare i ministri agli altri impiegati dello Stato.

Questo balza agli occhi anzitutto se si guarda all'art. 103 della 'legge' elettorale del 1848 che, nell'affermare il principio per cui un deputato nominato ad un impiego regio o promosso, doveva sottoporsi a rielezione da parte del collegio uninominale da cui era stato eletto, non prevedeva nessuna eccezione per il caso di nomina a ministro di un deputato. E la stessa tendenza 'livellatrice' emerge dalla legge elettorale del 1860. Parimenti, anche la già citata legge del 1877 sulle incompatibilità parlamentari conservò l'obbligo alla rielezione per i deputati nominati Ministri Segretari di Stato o segretari generali dei ministeri, mantenendo aperto il *vulnus* che in questo modo si apriva nell'architettura del sistema 'specificamente italiano' di governo parlamentare.

Fu solo a partire dalla legge del 3 maggio 1888, n. 5381, che, come non mancò di rilevare con soddisfazione Attilio Brunialti, lui stesso a lungo deputato-impiegato, si stabilì 'implicitamente', come disse Brunialti, 'che la nomina di un deputato a ministro, come pure a sottosegretario di Stato, non rende[va] vacante il posto nel rispettivo collegio'.[10] Ma, come interpretare l'obbligo di rielezione in vigore sino a quel momento, sino al 1888, per i deputati nominati ministri?

Certo, la consuetudine era che nella realtà e concretezza storica 'non si metteva mai in questione la rielezione di un deputato chia-

mato all'ufficio di ministro, ma la si considerava come una formalità priva di qualsiasi significato'. [11] Nondimeno è indubitabile che l'obbligo di sottoporsi a rielezione per un deputato nominato a ministro produceva l'effetto, del tutto anomalo per un v e r o governo parlamentare, di sottoporre nuovamente alla approvazione popolare un deputato nominato ministro, perché evidentemente tale nomina, effettuata, secondo l'art. 65 dello Statuto Albertino, niente meno che dal Re, gettava un'ombra di sospetto sulla possibilità oggettiva e soggettiva del deputato di mantener fede all'impegno assunto verso il 'suo' popolo al momento dell'elezione.

Si può certo provare ad abbracciare la spiegazione che della legislazione italiana di prima del 1888 si diede l'autorevole giurista e consigliere di Stato Attilio Brunialti[12] quando aveva sostenuto che, tanto il costituente quarantottesco come anche il legislatore successivo nell'introdurre quest'obbligo 'male' avevano interpretato lo spirito del tempo, 'alterando' e addirittura 'contraddicendo' al 'vero' e 'retto concetto del sistema rappresentativo'.[13] Ma una tale interpretazione della lettera non di una sola legge ma addirittura di più leggi successive come frutto di un errore, di un fraintendimento, e per giunta relativamente a una figura politico-istituzionale come quella del ministro di centrale importanza, non convince fino in fondo e impone di continuare a interrogarsi sulla *ratio* di una normativa che, di fatto, assoggettava una libera scelta del Re, la sua nomina a ministro di un deputato, ad una (ri)conferma da parte del popolo elettore. Non potrebbe forse essere che l'obbligo di rielezione a cui dovettero sottoporsi i ministri sino al 1888 discenda dalla presa d'atto dello stesso legislatore che una distanza incolmabile si veniva a frapporre fra un deputato ed i suoi elettori nel momento in cui il primo veniva nominato a ministro 'del' Re, ammettendo così che un dualismo strutturale e un conflitto sempre latente caratterizzavano i rapporti tra Parlamento da un lato e Governo monarchico dall'altro, proprio come avveniva in tutte le altre monarchie costituzionali europeee dell'epoca, a dispetto del sedicente governo parlamentare instaurato in Italia?

3. Le perplessità scaturite da una considerazione critica dell'obbligo di rieleggere i deputati nominati ministri sulla effettiva sussistenza nell'Italia liberale della compatibilità parlamentare dei ministri come 'correlato' del governo cosiddetto parlamentare,[14] sono destinate ad emergere ancora più nettamente qualora si sottoponga a verifica storica l'altra corrispondenza apoditticamente affermata dalla giuspubblicistica a partire dalla seconda metà del XIX secolo, ma sino praticamente all'altro ieri, e cioè quella per cui solo un governo parlamentare, come ad esempio quello realizzato dalla Gran Bretagna nell'Ottocento e a cui anche l'Italia si ispirava, poteva garantire la neutrali-

tà politico-partitica del corpo dei funzionari. La possibilità dell'alternanza politico-partitica alla guida del governo dello Stato propria del sistema parlamentare di governo, implicava cioè necessariamente, così la vulgata, che al corpo dei funzionari, eccezion fatta solo per alcuni di essi (i funzionari cosiddetti politici), fosse riconosciuto il diritto/dovere di mantenersi equidistante dalle contrapposizioni degli schieramenti politici, e questo in primo luogo in nome della necessaria continuità dell'amministrazione, vale a dire dell'ordinato ed efficiente funzionamento dello Stato.

Il nesso funzionale a doppia mandata generalmente riconosciuto dalla giuspubblicistica dell'epoca, e particolarmente da quella liberal-moderata, tra governo parlamentare e neutralità del corpo dei funzionari,[15] non solo non trovava però fedele riscontro nella realtà, ma non lo trovava nemmeno nella legislazione.

Il legislatore subalpino prima e italiano poi nel disegnare le ineleggibilità e le incompatibilità parlamentari dei funzionari pubblici aveva infatti preso le mosse proprio dal presupposto diametralmente opposto, quello cioè per cui il corpo di funzionari, nella sua gran parte, non avesse modo di essere o mantenersi indipendente dall'esecutivo. In particolare, sia la condizione economica e sociale degli impiegati 'di grado inferiore', sia quella degli 'impiegati anche superiori i quali, per l'indole del loro ufficio, siano in una più stretta dipendenza dal Governo. (...) e questi sono i funzionari politici',[16] erano stati determinanti nell'orientare la classe dirigente liberale ottocentesca verso una concezione del corpo dei funzionari come tutt'altro che neutrale e politicamente indipendente. Il fatto che in epoca liberale, come segnalò in seguito Emilio Brusa, non si vollero a lungo distinguere chiaramente i funzionari politici da quelli amministrativi,[17] a differenza di quanto avveniva ormai da tempo in altri stati europei tra cui la Germania, come pure il fatto che poco o nulla per lungo tempo si fece per riconoscere i diritti più elementari di status giuridico ed economico agli impiegati italiani che generalmente ne erano privi,[18] è certo molto significativo di come nel sedicente governo parlamentare del Regno d'Italia tra la rappresentazione (ideologica) della realtà e la realtà della amministrazione ci fosse un baratro. Il sistema politico-costituzionale italiano, ben al di qua dell'ideale del governo parlamentare tanto declamato, si attarderà a lungo su equilibri e dinamiche di interazione tra parlamento e governo tipicamente monarchico-costituzionali. Niente di più logico e prevedibile che tali equilibri e dinamiche non potessero consentire, come difatti non consentirono, quanto caldamente auspicato anche da Domenico Zanichelli, e cioè il consolidarsi di un corpo di impiegati dello Stato indipendenti dal Governo e cioè politicamente neutrale.[19]

Determinazioni sulle incompatibilità parlamentari dei funzionari

pubblici allo scopo di proteggere la giovane istituzione parlamentare da tentativi di subornazione da parte del Re o dei suoi ministri erano state introdotte tra Sette e Ottocento nelle costituzioni di molti Stati costituzionali, europei e no. Sono queste le incompatibilità cosiddette di terzo tipo di cui ha parlato Werner Weber. Incompatibilità parlamentari dei funzionari pubblici furono però introdotte anche a tutela di altre funzioni dello Stato come l'esecutivo, dai danni che ad esse possono provenire stavolta dal mandato parlamentare. Sono queste ultime le incompatibilità che Werner Weber ha detto di secondo tipo e che si trovano ad esempio nella Costituzione americana del 1787. Alla loro base, prendendo le mosse da una malcelata sfiducia nel legislativo, stava anzitutto la volontà di assicurare l'indipendenza da questo dell'esecutivo federale e della sua amministrazione. Come ha osservato Ettore Rotelli, rispetto al divieto fatto a ogni 'Senatore o Rappresentante (…) durante il periodo per il quale è stato eletto (…) di essere nominato a qualsiasi carica pubblica sotto l'autorità degli Stati Uniti, che sarà stata istituita o la cui retribuzione sia stata aumentata durante tale periodo' (*Constitution*, Art. I, Sezione 6), ben 'più incisivo' era destinato a rivelarsi l'altro divieto, quello per cui 'nessuna persona che detenga una qualsiasi carica alle dipendenze degli Stati Uniti potrà essere membro di una delle Camere finchè resta in carica nell'ufficio', insieme a quello, previsto parimenti a tutela dell'indipendenza dell'esecutivo e contenuto invece altrove (Art. II, Sezione 1), per cui 'nessun Senatore o Rappresentante …potrà essere nominato Elettore [del Presidente degli Stati Uniti d'America]'.[20] Della natura e della finalità di queste incompatibilità parlamentari di secondo tipo sarà utile ricordarsi nel momento di classificare quelle italiane di epoca liberale, all'interno di una più generale concezione della rappresentanza politica quale quella liberale ottocentesca, che affonda le sue radici in paradigmi, come già è stato detto, pre-moderni e pre-liberali.[21]

Ma torniamo a noi. Sulla eleggibilità parlamentare dei funzionari pubblici la legge del 1848 aveva posto oltre alla limitazione quantitativa di cui si è già detto, oggetto in seguito di critiche continue da parte dei liberali moderati italiani, anche una limitazione qualitativa. Al suo articolo 98 erano, infatti, elencate le diverse tipologie di funzionari pubblici che non potevano essere eletti deputati: '1° I funzionari stipendiati ed amovibili dell'ordine giudiziario; 2° I membri del Corpo diplomatico in missione; 3° gli Intendenti generali di divisione, gli Intendenti di provincia, ed i Consiglieri di Intendenza; 4° gli impiegati stipendiati dell'Ordine amministrativo che esercitano un impiego di grado inferiore a quello d'Intendente generale, ad eccezione degli uffiziali del Genio civile e delle miniere, non inferiori al grado d'ingegnere-capo, e degli uffiziali sanitari che siano membri del protomedi-

cato, e dei consigli di sanità; 5° gli ecclesiastici aventi cura d'anime, o giurisdizione con obbligo di residenza; 6° gli uffiziali di qualunque grado [che] non potranno essere eletti nei distretti elettorali sui quali esercitano un comando'. Di questa legge elettorale del 1848 si è detto generalmente in seguito, essere una legge che aveva in linea di principio optato per la eleggibilità dei funzionari pubblici pur prevedendo delle eccezioni. [22]

A ben guardare tuttavia nelle sue determinazioni sulle ineleggibilità dei funzionari si arriva invece alla conclusione che la legge, pur ammettendo delle eccezioni, optò in linea generale per l'incompatibilità.[23] In particolare si arriva inevitabilmente a questa conclusione se, a differenza di quanto amavano fare i liberali della Destra Storica, si considera attentamente la quarta categoria di esclusi dall'eleggibilità dall'art. 98, e cioè gli impiegati pubblici che a noi qui interessano più da vicino, e che nell'articolo appena citato sono indicati come: 'gli impiegati stipendiati dell'Ordine amministrativo che esercitano un impiego di grado inferiore a quello d'Intendente generale (…)'. La legge del 1848, infatti, laddove e nello stesso momento in cui sembrava voler enumerare le eccezioni alla generale eleggibilità dei funzionari pubblici stipendiati dallo Stato, in realtà sbarrava la strada del parlamento alla loro stragrande maggioranza, ammettendovi solo quelli tra essi che erano insediati ai massimi vertici degli apparati burocratici.

La successiva legge elettorale del 17 febbraio 1860, nel momento in cui affermava all'art. 97 la generale ineleggibilità dei 'Funzionari ed Impiegati Regii aventi uno stipendio sul bilancio dello Stato' capovolgeva, ma solo apparentemente, il principio che aveva presieduto all'art. 98 della precedente legge. Se ci si concentra, infatti, non solo sulle esclusioni quantitative della legge, e si prendono invece in considerazione più da vicino le esclusioni qualitative, si arriva inevitabilmente alla conclusione che la legge del 1860 aveva invertito di segno solo la lettera della legge del '48, ma non la sua sostanza.

La legge del 1860 prevedeva infatti delle eccezioni al principio della generale ineleggibilità dei funzionari pubblici, ma delle eccezioni circoscritte a determinate e poche figure di funzionari, alti e altissimi funzionari dello Stato che arrivavano via via sino ai Segretari generali e ai ministri. Nella sostanza essa finiva per ridisegnare come per miracolo una platea di eleggibili che, sia qualitativamente che quantitativamente, poco si discostava da quella che era stata a ben vedere, *mutatis mutandis*, la risultante dell'applicazione della precedente legge. Insomma, laddove nel 1848 si erano dichiarati tutti eleggibili gli impiegati pubblici tranne quelli di livello medio e basso, nel 1860 gli stessi erano stati dichiarati tutti ineleggibili tranne quelli di alto e altissimo livello. Il risultato e il senso dell'esclusione evidentemente non cambia.

Anche la legge del 1877, stigmatizzata dai liberali moderati come 'legge di proscrizione' per avere ulteriormente e 'illiberalmente' ridotto il numero dei deputati-impiegati eleggibili a soli 40,[24] non fece che confermare e ribadire quanto principalmente urgeva a tutta la classe politica dirigente italiana dell'epoca: che solo i livelli più alti dell'amministrazione, quelli comunque già coinvolti per la loro funzione in prima persona nella organizzazione e quindi nella direzione politica del giovane Stato costituzionale italiano, potessero aspirare a sedere alla Camera dei deputati. Insomma, la Camera doveva risultare quanto più possibile omogenea alla ristrettissima e selezionatissima classe politica-dirigente che esprimeva (anche) il governo. In nessun modo si sarebbe dovuto aprire alla eventualità, consentita dalla possibilità per il deputato-impiegato di conservare lo stipendio durante il mandato parlamentare, che fossero immessi nella Camera elementi disomogenei rispetto alla selezione sociale operata per così dire 'dal basso' dal diritto elettorale censitario attivo estremamente ristretto del 1848, quindi del 1860 e ancora del 1882.

4. Al termine di queste considerazioni la suggestione che si fa imperiosamente strada è che le incompatibilità parlamentari italiane anziché tra quelle che Weber ha detto del terzo tipo, rivolte cioè alla protezione del mandato parlamentare da influssi negativi provenienti da altri ambiti, possano e debbano essere fatte rientrare più agevolmente tra quelle del secondo tipo. La classe politica dirigente attraverso le incompatibilità parlamentari tutelava indirettamente l'esecutivo e il governo da essa espresso dalla potenziale minaccia costituita dalla rappresentanza popolare della Camera dei deputati, teneva sotto tutela l'amministrazione e vigilava sul rispetto del principio di gerarchia e di disciplina burocratica su cui essa si basava, mantenendo così la amministrazione saldamente al servizio del Governo anche quando faceva il suo ingresso alla Camera dei deputati.

Non è certo un caso che, di fatto, attraverso le incompatibilità parlamentari si agevolasse anche alla Camera, come secondo lo Statuto già accadeva al Senato, principalmente l'ingresso di alti gradi delle forze armate e di consiglieri di Stato, oltreché naturalmente della cosiddetta 'legione' di professori universitari, come emerge chiaramente da una spunta delle liste dei deputati-impiegati compilate dalla Commissione per l'accertamento dei deputati-impiegati, prima, e dalla Giunta delle elezioni ancora sul finire del secolo, poi.

Anche la legislazione italiana sulle ineleggibilità e sulle incompatibilità parlamentari, e non solo quella sulla limitazione dell'elettorato attivo, lascia così emergere, al di là di qualche calcolata concessione ai criteri di un governo parlamentare, una complessiva concezione della rappresentanza politica che di sicuro mal si sarebbe potuta conciliare con l'aspirazione ad instaurare una forma di governo e un si-

stema politico-costituzionale di tipo sinceramente parlamentare. Anche in tale legislazione l'organo della cosiddetta rappresentanza nazionale risulta guardato con malcelato sospetto; anche da essa filtra la convinzione che sulla composizione della Camera dei deputati urgesse intervenire 'a monte' affinché questa non 'rispecchiasse' le divisioni e le contrapposizioni di classe, e si facesse così portavoce 'solo' dei ceti sociali più o meno direttamente e attivamente coinvolti nel processo di *State-* e *nation-building*. In particolare bisognava evitare che la contrapposizione di classe si traducesse anche in una radicalizzazione del dualismo politico-istituzionale tra parlamento e governo, perché esso naturalmente avrebbe messo a nudo il carattere solo apparente del governo parlamentare instaurato. Solo le proposte di riforma della legislazione sulle incompatibilità avanzate dal socialista Turati sin dal 1909, anticiperanno la più liberale normativa italiana del secondo dopoguerra.

Note

[1] Cfr. W. Weber, 'Parlamentarische Unvereinbarkeiten (Inkompatibilitäten)', *Archiv des öffentlichen Rechts*, NF, 19. Band, 2.Heft, Der ganzen Folge, 58. Band, 1930, pp. 161-255, qui p. 162.

[2] Ibidem, pp. 253-4.

[3] Ibidem, p. 254.

[4] Ibidem, p. 176.

[5] Cfr. il mio 'Il Sonderweg italiano al governo parlamentare (a proposito delle acquisizioni della più recente storiografia costituzionale italiana)', *Quaderni fiorentini per la storia del pensiero giuridico moderno*, 33/34 (2005), pp. 1285-1333.

[6] Cfr. in merito L. Mangoni, 'Giuristi e politica. Il diritto come supplenza', in A. Schiavone (ed), *Stato e cultura giuridica in Italia dall'Unità alla Repubblica* (Roma-Bari 1990), pp. 303-40.

[7] Sul regio editto del 17 marzo 1848, n. 680 (in Atti del Parlamento Subalpino [APS], I legislatura, Sessione unica: 8 maggio-30 dicembre 1848, Documenti parlamentari, pp. 5ss, ma pubblicato anche nella *Collezione celerifera delle leggi, decreti, istruzioni e circolari*, vol. 17, pp. 213 ss.), elaborato da una Commissione governativa presieduta dal Presidente del Consiglio, il conte Cesare Balbo, ancora fondamentale il saggio di R. Romanelli, 'Le regole del gioco. Note sull'impianto del sistema elettorale in Italia (1848-1895)', in *Quaderni storici*, nuova serie, 1988, n. 69, pp. 685-725.

[8] Cfr. ad esempio D. Zanichelli, *Le incompatibilità parlamentari*, in *Questioni di diritto costituzionale e di politica,* II (Bologna, 1887), pp. 1-130, qui, p. 46: 'Se queste disposizioni non fossero, non potrebbe in Italia esplicarsi pienamente il governo parlamentare', e F. Racioppi – I. Brunelli, *Commento allo Statuto del Regno* (Torino, 1909), vol. II, p. 468, dove si dice che il governo di Gabinetto non potrebbe esistere se i ministri non fossero eleggibili.

[9] Sul variare del numero dei deputati eletti nel Regno d'Italia dal 1861 al 1922 cfr. ora P. Corbetta-M.S. Piretti, *Atlante storico-elettorale d'Italia. 1861-2008* (Bologna 2009), pp. 5-7 e *passim*.

[10] A. Brunialti, voce 'Elezioni politiche', in *Enciclopedia Giuridica Italiana*, V (Milano, 1895), parte I, pp. 486-727, qui p. 709.

[11] Ibidem.

[12] Cfr. G. Melis, 'Attilio Brunialti', in *Il Consiglio di Stato nella storia d'italia. Le biografie dei magistrati 1861-1948* (Milano 2006), I, pp. 660-685.

[13] Brunialti, 'Elezioni politiche', p. 709. Anche secondo Zanichellli, *Le incompatibilità parlamentari*, pp. 50-51: al 'retto concetto del sistema rappresentativo è contrario radicalmente l'obbligo della rielezione dei deputati nominati ministri o segretari generali'.

[14] Weber, 'Parlamentarische Unvereinbarkeiten', p. 223.

[15] Cfr. Zanichellli, *Le incompatibilità parlamentari*, p. 7: 'Importa molto negli Stati retti a sistema parlamentare, dove il governo è in mano dei partiti in maggioranza, che l'amministrazione e gli amministratori non siano esposti alle vicende politiche e agli arbitrii dei capiparte'.

[16] Brunialti, 'Elezioni politiche', p. 661, che riprende nella sostanza gli argomenti già esposti nel 1887 da Zanichelli, *Le incompatibilità parlamentari*, p. 11.

[17] Cfr. E. Brusa, 'Das Staatsrecht des Koenigsreichs Italien', in *Handbuch des offentlichen Rechts der Gegenwarts,* hrsg. von H. Marquardsen, Bd. IV, 7. Abteilung (Freiburg i. B. 1892), pp. 255-56, che rilevava però una prima 'violazione' del principio 'dell'unità della famiglia dei funzionari pubblici' nella legge del 14 luglio 1887 sui prefetti e dell'11 luglio 1889 sui funzionari diplomatici e dei consolati, che assicuravano a quei funzionari maggiori garanzie di status economico in cambio di una superiore amovibilità dall'ufficio.

[18] G. Melis, *Storia dell'amministrazione italiana. 1861-1993* (Bologna, 1996), p. 28 ma anche sulle cause di ciò p. 49.

[19] Cfr. Zanichelli, *Le incompatibilità parlamentari*, p. 9.

[20] Cfr. E. Rotelli, *Forme di governo delle democrazie nascenti. 1689-1799* (Bologna, 2005), pp. 218 e 221.

[21] Cfr. a questo proposito M. Dogliani, 'L'idea di rappresentanza nel dibattito giuridico in Italia e nei maggiori paesi europei', in P.L.Ballini (ed), *Idee di rappresentanza e sistemi elettorali in Italia tra Otto e Novecento* (Venezia, 1997).

[22] R. Bonghi, 'Le incompatibilità parlamentari', in *Nuova Antologia*, 1883, vol. 72, pp. 728-766, qui p. 742; M. Mancini - U. Galeotti, *Norme ed usi del Parlamento italiano. Trattato pratico di diritto e procedura parlamentare* (Roma, 1887), p. 41; G. Arcoleo, *Diritto costituzionale. Dottrina e storia* (Napoli, 1904), p. 284.

[23] In questo senso interpreta anche M. Pacelli, 'Le incompatibilità parlamentari', in *Il Parlamento italiano 1861-1988*, II: *1866-1869: La costruzione dello Stato da La Marmora a Menabrea* (Milano, 1988), pp. 104-105, qui 104.

[24] Zanichelli, 'Le incompatibilità parlamentari', pp. 17 e 19.

Francesco Soddu

The 'Commissioni di vigilanza' in the Nineteenth Century Italian Parliament

'The importance of some public services and the nature of the relations which they establish between the public administration and the people – Mario Mancini and Ugo Galeotti wrote, at the end of 1880s, in their important volume *Norme ed usi del Parlamento italiano* –, led the legislator to determine a special and continuous activity of supervision in the course of the administrations which were entrusted with these services; this without prejudice of the ordinary and higher control which the Parliament exercises on these services as well as on the other services of the State'.[1]

Actually it was a form of control which pre-existed the parliamentary system: the 'Commissione di vigilanza sull'amministrazione del debito pubblico', which was established by the Act of 12 March 1859 n. 2, was in fact the conversion of the Councils which had been established in the Kingdom of Sardinia by the edict of 24 December 1819 'as material and moral guarantee that would inspire the State's creditors with the needed confidence, ensuring at the same time the credits of the State'.[2] With the beginning of the representative system this function of guarantee couldn't but fall upon organisms in which the Parliament played a relevant role.

In fact during the first decades of the constitutional regime's functioning, the 'Commissioni di vigilanza'[3] (supervision Commissions) enjoyed a good success as instruments which favoured the Parliament's control on some delicate sectors of the public administration. At the beginning of the Fifties the 'Commissione di vigilanza per la Cassa dei depositi e prestiti' was established (Act 18 November 1850, n. 1097; then confirmed by the Act 17 May 1863 n. 1270).[4] The latter, at the art. 6, decided that the administration of the 'Casse dei depositi e prestiti' should be supervised by a commission which was constituted by three members of the *Senato* and three members of the *Camera dei deputati*, who were selected every year by the respective assemblies; by three members of the Council of State and by a councillor of the Court of Accounts, who were appointed by their respective presidents. This 'mixed' composition (to which the Parliament, the Government, the different administrations which were involved in this field, the supreme organism of control and advice, contributed) characterized the layout of all these organisms, even though with different balances. In this particular case, at the end of

each four-month period the administrator of the 'Cassa centrale' had to submit the accounting reports of the several funds (their regionalist articulation had been one of the subject which had been more discussed during the parliamentary debate) to the minister and to the 'Commissione di vigilanza'. The latter could prescribe all the checks which were considered opportune and its president should submit to the Parliament a report 'on the moral running and the material situation of the Funds' (art.33).[5]

Also the creation of the 'Commissione di sorveglianza sull'amministrazione della Cassa militare' dated back to the years of the Unification. It was established by the Act 7 July 1866, n. 3062. The Fund should receive the sums which had to be given by those people who had had the chance to be replaced by somebody else in the military service. The Fund was put under the supervision of a Commission which was composed by two *senatori* and two *deputati* who were chosen each year by the respective Chambers, by two councillors of the Court of accounts appointed by the president of that Court and by four generals who were chosen by the Minister of War. The Commission, like the previous case, elected its president among its members. In an annual report 'to be divulged' (therefore not expressly directed to the Parliament, like in other cases) the Commission should present the Fund's situation and its remarks on the Fund's administration.

In the same date, 7 July 1866, the General Lieutenant of the Kingdom enacted a royal decree (n. 3036) for the dissolution of religious orders. The decree established the 'Commissione per la sorveglianza delle operazioni concernenti il Fondo per il culto'. This Commission received the legacy of the 'Commissione di sorveglianza sulla Cassa ecclesiastica', which had been established by a law regarding the abolition of religious communities in 1855. On this case I will focus my attention

This law was deeply disputed and it led the country towards a constitutional crisis. The crisis turned out in favour of the parliamentary majority which was the expression of the liberal line of Cavour, but only after a prolonged conflict and with some concessions to the oppositions which had appeared mainly in the Senate. The Act formally came from the need which was determined by the cancellation, in the budget of the State, of the sum which was set aside for supplying the poorest priests with a 'congrua'. It actually had more ambitious aims, which were announced in the ministerial report which introduced the bill: it aimed to bring a 'wide quantity' of estates which were immobilized back to the production circuit ('to the commerce and to the industry' but also 'to public services' use'). The problem of an infringement of the right of ownership was one of the main themes in the parliamentary debate. At the same time, the bill aimed to realize a more fair distribution of the revenues of the 'asse ecclesiastico'. The reme-

dy was found in the sensible reduction of the 'stabilimenti ecclesiastici' which were not 'really necessary'. In this way the institutes of religious orders which were not devoted to the preaching, to the education and to the care of the sick, as well as the 'capitoli delle chiese collegiate', and the 'benefici semplici senza servizio religioso' stopped existing as legally established bodies. In a first draft the bill stated that all the properties had to be put 'under the State property administration'; that their incomes had to be deposited in a 'particular Fund' and it had to be utilized for 'ecclesiastic uses' which were listed in detail (mainly for paying the pensions to the members of the communities which had been abolished and for paying a 'fair supplement' to the poorer priests).

As it is clear, it was an especially 'sensible' measure. A form of control of the parliamentary assemblies should be accordingly established. 'In order for the Nation to obtain a guarantee for the fulfilment of this Act' – the ministerial report concluded – the ministers who proposed the bill were requested 'to report each year to the Parliament' about the activity of the Fund.[6]. The report presented by the parliamentary Committee, which was appointed by the *Uffici*,[7] gave some indications of a close confrontation with the Government, even though there was a unanimous agreement on the principle from which the bill originated. In the end the bill was passed 'with the changes which the Ministry would approve'.[8] The Parliament's intervention was still conceived as a 'warrant' intervention *a posteriori*. An amendment introduced by the Mp Valerio during the final stage of the parliamentary procedure would introduce the institution of a Commission, composed by two members elected by the Senate, two members elected by the elective Chamber and chaired by a president appointed by the Government, which was entrusted with the supervision (organized as suggestions directed to the Government)[9] on the destination of works of art, books and manuscripts in favour of public galleries and libraries, as well as with the suggestions regarding the preservation of frescoes and historical buildings.[10] Thus in the debate of this bill a first form of 'commissione di vigilanza' appeared. On the 9th March 1855 the bill was passed in the elective Chamber and then introduced to the Senate. The report of the *Ufficio centrale* (it was the name given in the Senate to the parliamentary Committee, which was appointed by the *Uffici*) showed the conflict which had emerged in that organism and had produced three different positions: two members of the Committee 'totally disagreed in passing the bill'; two others were in favour of the bill but with amendments; the fifth member, finally, took sides with the first two in rejecting the bill due to the articles which abolished the religious bodies although he was in favour of the rule which provided for their contribution to the 'congrue parroc-

chiali'.[11] Essentially from the Committee's debate 'two different proposals, sustained by two different majorities',[12] in connection with different parts of the project emerged.

These contrasts emerged again during the debate on the floor (which began on the 23rd April).[13] On the 26th of April the debate was suspended as a result of the proposal of the senator Nazari di Calabiana (who was a bishop) who aimed to make the bill retired by solving its economic reason through offering, in the name of the piedmontese episcopate, the sum needed to make up for the deficit which was going to be produced in the budget of the State with regards to the payment of the 'congrue'.[14] The first consequence was Cavour's resignation; the minister of the War, Giacomo Durando, was then called upon to form a new Government but without success; finally Cavour formed a new Government. The parliamentary debate on the bill resumed on the 5th May and reproduced the different positions with a range of shades that is not possible to examine here. I just recall the solution of having recourse to a 'parliamentary inquiry' as 'the only way' for 'depurating, between the opinion of the Ministry and the judgment of the Parliament, the true facts from the preconceptions'.[15] It was proposed by Sclopis who imagined to limit the application of the law only to the 'noxious' corporate bodies (on the contrary, for those of 'lesser utility' prevailed the general principle imposed by 'the conditions of our actual liberty' which 'want that the Government does not meddle in the life of civil bodies, nor in that of individuals' but 'enables the widest liberty of action for all the people').[16] The Parliament would make a 'preventive' intervention with regards to the dissolution of the corporate body. This first phase of the debate ended with the adoption of a series of amendments formulated by the two members of the 'Ufficio centrale' who were not against the bill (Des Ambrois and Di Collegno), to which the Government agreed reluctantly.[17]

On the 18th May a new committee, appointed by the Senate after the passing – narrowly[18] – of the amendments, passed the report prepared by Des Ambrois.[19] The report gave an account of the positive confrontation with the Government which led to the abolition of the art. 2 of the bill (the one which submitted to the discretionary power of the Government a series of heavy obligations with regards to the corporate bodies which had not been suppressed), to other changes in the original text (as a consequence, 'the civil power remains more clearly inside the limits of its competence and it respects the religious vows', and 'the discretion of the executive power is deeply reduced'). Furthermore it admitted that in the text some imperfections still remained, which the concrete application of the law would suggest how to be rectified. In any case, the characteristics of the Fund were better defined as well as the role of control ('alta sorveglianza') exercised by the

Parliament. Rather, as the report specified, by 'persons from the three great powers of the State': as the article 8 clarified they were three senators and three members of the 'Camera dei deputati' who were elected each year by the respective Chambers, and three members appointed by the king following the suggestion of the Minister of 'Justice and ecclesiastic affairs'. This Committee was entrusted with 'the high inspection of the Fund's operations'; the latter was managed, according to the art. 6, by the general director of the Public Debt Administration 'with the help of a special Council' which was composed by the general accountant of the 'benefizi vacanti' (ecclesiastic estates devoid of holder) and five other members appointed by the king. The Committee, each year, should present to the king a report on the Fund's state; the report should then be distributed to the members of the Chambers and published in the official journal of the Kingdom. The final debate on the floor did not come back to the theme of the supervision committee. The bill was passed, on the 22nd May, with 53 votes in favour and 42 against.

The extension of the ecclesiastic legislation to the countries which had been gained with the Unification did not take place in a uniform manner (as Lorenzo Spinelli noted in an essay published on the occasion of the Unification's centenary).[20] The creation of a unique ecclesiastic fund for the whole Italian kingdom was not possible (the ecclesiastic legislations of the pre-unitarian States were very diversified). It took some years for having two normative provisions (the already mentioned royal decree of 7 July 1866, n. 3036; and the Act 15 August 1867, n. 3848) which would put in order this complex subject. The two provisions – Spinelli noted – 'in addition to expand the previous Act of 29 May 1855, revised and completed the latter, both including a wider number of bodies under its rules, and abolishing the exceptions'.[21] Essentially all the properties which belonged to the religious communities that had been suppressed were assigned to the State property, with the obligation to fix a 5% revenue in favour of the Cult Fund, which in this way gained a juridical existence.[22] The Fund was burdened with several obligations, in particular the payment of the allowances for the priests who were unprovided with economic means. The Act established a different administration from the other State administrations for its managing. This was led by a general director who was appointed by the Government and was assisted by a board which had to decide on the most important affairs, such as passing the budgets, incurring loans and deciding on the complaints regarding the 'congrue'.[23] The Fund's activity intersected that of the administration which was charged with the running and the alienation of the properties of the bodies which had been suppressed.

It was a complex mechanism which was submitted to the supervi-

sion of several organisms. In particular, beside the 'Commissione di vigilanza', which had been established by the royal decree of 1866, the Act of 1867 established a 'Commissione centrale di sindacato sull'Amministrazione dell'Asse ecclesiastico' (that was chaired by the minister of Finance) which should 'supervise the administration and the alienations' course' and then present a annual report to the Parliament.[24] It was, in this case, a 'ministerial' commission but its composition revealed the strong permeation with the parliamentary circles, whose members constituted the essential framework of these ministerial organisms.[25] The annual report – the law stated – had to be submitted to the exam of the Budget Committee. The choice of the report's final receiver was significant. Actually the Budget Committee, which during the years had undertaken a more and more central position in the decisional mechanism of both Chambers (but with more evidence in the elective one), would constitute the crucial element in the progressive marginalization of the 'Commissione di vigilanza'; but, at the same time, paradoxically, it would be the vehicle through which the latter succeeded in keeping its role and visibility.

This 'Commissione di vigilanza' – but the same mechanism affected also the others, in a more or less marked way – was nearly crushed in a mechanism which had as leading actors the Government and the Budget Committee, and which did not leave institutional spaces to other organisms to operate.

A proof of this tendential simplification (or, by an other point of view, concentration) of roles in favour of the executive on one hand, of a parliamentary 'strong' point of reference like the Budget Committee, on the other hand, comes from the choice fixed (or, better, confirmed) by the R.D. 30 September 1869, n. 5299. This decree stated (art.4) that 'the relations among the Cult Fund, the Council of State and the *Commissione di vigilanza* should pass through the Ministry of cults, to which for that reason the relative documentation will be destined'; further, in the art. 5: 'Preliminary budgets and final budgets that, according to the law, are presented by the administration of the Cult Fund to the *Commissione di vigilanza*, will be remitted to the Ministry for a preventive exam and approval, to be then sent by the Minister of Justice to the same commission'. Which was the reason of this ministerial filter? Or, better, of this reassertion of the ministerial authority? The reason could reside in the words of the rapporteur to the budget of the Ministry of Justice for the 1874, De Donno, who reminded that decree in relation to 'a difference of opinion' provoked by 'the relations between the Ministry of Justice and the Direction of the Cult Fund',[26] which had tried to gain spaces of autonomy counting on the institutional support of the 'Commissione di vigilanza'.

The latter, however, not always had come up to the expectations. De

Donno specified that the reports the Commission would have to present each year to the king (to be then sent to the Parliament), did not respect that cadence. The one sent to the elective Chamber in 1873 concerned 'the accounts of the Cult Fund management from its institution to the full 1871' and followed the one dated 30 June 1869.[27]

The 1873 report was written by Agostino Magliani, Commission member for the ministerial part although he had been already appointed as senator.[28] His name recurred also in the 'Commissione per l'Asse ecclesiastico', in confirmation of a tendency to the specialization in the roles (and in the expertises) of these organisms, and maybe also in confirmation of the narrowness of the ruling class circle from which it was possible to draw off persons for that kind of tasks.

The Magliani's report testified an activity not at all secondary carried out by the Commission. Magliani, for example, reminded that the Commission, to remedy the inaccuracy and vagueness that marked the way the budgets had been compiled, had been compelled to ask the administration to give a supplement of information. It was, therefore, a control not without efficacy. The verified irregularities concerned the relations with furnishers but also the staff management (bonus, benefits and personnel out of the staff roll). The Commission also asked the administration for exerting itself to reduce the number of lawsuits. To these solicitations the Commission ascribed the progressive decrease of the grants in favour of the odd-job men that the administration had largely given to avoid 'troubles and suits for small expenses': from 1780 cases in 1866 to 147 in 1871.

The element I would like to stress is the wide space that the Budget's rapporteur De Donno reserved for the considerations of the 'Commissione di vigilanza' whose documents, therefore, differently from what Mancini and Galeotti wrote, did not pass over in silence. De Donno expressly recommended their 'complete reading'.[29]

The Budget's bill arrived at the parliamentary debate in the first days of December. The critical remarks of the 'Commissione di vigilanza' and the suggestion regarding the irregularities were punctually resumed by a member of the elective chamber, Giovanni Della Rocca,[30] who belonged to the 'sinistra costituzionale' which, in that time, was at the opposition. It provoked the defensive reaction of the minister. The parliamentary debate registered also a contrast between the minister and the rapporteur: the former criticized the latter for having not quoted in his report just the words of the 'Commissione di vigilanza' that in some way absolved the administration from the formal faults which had been found in the accounts as well as in the administrative practice. The Minister's behaviour did not change the deep belief of the rapporteur who declared himself 'much troubled' for the concomitant and conflicting feeling 'of authority and of subordi-

nation' towards the 'Commissione di vigilanza' (which, according to him, challenged the management of the Cult Fund and, as a consequence, the ministers of Justice who followed one another since the Fund's establishment) and towards the minister 'who had the confidence of the *Camera'*.[31] Actually the critical target of the rapporteur was the too much autonomous management of the Fund that avoided the subordination and the management's control which the law assigned to the minister, who was dangerously exposed to criticism by that behaviour. The Fund's director on the other hand, had often avoided to meet the requests of the Commission both of procedural (like that of making the accounts be approved preliminarily by the minister) and of managing kind (for example the request of cutting the office expenses). De Donno, defending his personal role and dignity as well as the one of the parliamentary organism that he represented, persevered with the proposals of the Budget Committee with regards to the formal requests ('ordini del giorno') that pressed for the reorganization of the administration of the Cult Fund (according to the suggestions of the 'Commissione di vigilanza'); the minister, instead, would like to lessen their impact.[32]

The Camera approved the motion ('ordine del giorno') in the text proposed by the Commission with the integration, proposed by Della Rocca, which bound the minister to examine the accounts of the Fund's administration 'giving prompt information to the *Camera*'.[33]

On the 9th November 1875 the minister of Justice and cults, Vigliani, sent to the Chamber the *Resoconto dell'amministrazione del Fondo per il culto a tutto il 1874*. It was an act that had become necessary in consequence of the law reform the same Vigliani had promoted to comply with that 'ordine del giorno'.

The Act 22 June 1874 had introduced in that administration too the rules imposed by the accountancy law of 1869 (as it had been requested first by the 'Commissione di vigilanza' and then by the Budget Committee). With this reform, as Vigliani wrote, 'the wished control can be said as completely assured'.[34] The minister had also provided for answering the second part of the 'ordine del giorno', entrusting the general director Vittorio Grimaldi with the reconstruction of the Fund's management from its establishment to the entire December 1874.

The report represented analytically the receipts and expenses outline. A fluctuating course of the results could be observed, with a clear predominance of the ones with a negative sign, marked by even substantial deficits. These fluctuations had to be ascribed – according to Grimaldi – to the series of legislative measures that had changed the Fund's conditions 'with regards to basic parts', causing 'changes in the assets and innovations in the administrative procedure' which 'in-

evitably' produced uncertainty in the budget estimation and in the results of the annual management.[35]

At the beginning of 1880 Grimaldi, on the order of the minister, went back to the reconstruction of the Fund's events starting from its establishment, with the aim – he said – of remedying 'the uncertain and conflicting opinions on the conditions and the procedures of this institution' that, according to the general director, proved its inadequate knowledge.[36] Grimaldi one time again stressed the provisions which had undermined the operativeness of the Fund just after its establishment. From his reconstructions the progressive depauperation of the Fund's assets in favour of the Treasury (as again and again had been requested by the Government as well as by the Parliament to balance the advances which had been made by the Finance administration) could be appraised. It was a danger, as Grimaldi noted, that had been already pointed out by the 'Commissione di vigilanza', which had observed that the assets assigned to the Fund would revealed itself insufficient for meeting the needs which it had been entrusted with.[37] A contrast with the Finance's administration can be discovered when, for example, the Fund claimed the registration of a revenue on the public debt for the properties of the dissolved 'Cassa ecclesiastica' and of the ecclesiastic bodies which had been later suppressed which, instead, did not result in the Finance's budget, although the 'Commissione centrale di sindacato sull'amministrazione dell'asse ecclesiastico' had 'ever recognized' it in its annual reports to the Parliament.[38]

On the other hand the Budget Committee of the elective Chamber ascribed this deficit to the Fund's management, at least in part. In the report on the 'Stato di previsione dell'Entrata e delle Spesa dell'Amministrazione del Fondo per il culto per l'anno 1880',[39] which had been presented some months before,[40] the rapporteur Melchiorre had challenged the revenue's management and had pressed for 'a sharp-witted, continuous and firm surveillance' as well as for 'rigorous inspections at the receiving offices and Finance's local offices'. In front of a deficit of nearly four million and half of lire, Melchiorre wondered whether it would be necessary to realize a deep change to avoid that the Fund would 'incur a certain and irreparable collapse'. He got to the point of urging, through an order of the day voted unanimously by the Committee, the suppression of the Fund's administration.

In conclusion a vivid confrontation between the Budget Committee and the Fund's administration can be noticed,[41] in which the 'Commissione di vigilanza' seemed rather to stand aside often. However, references – perhaps instrumental – to its remarks did not lack. One of the most interesting observations in the Grimaldi's report already quoted, at least with regards to the reconstruction of the role of the

'Commissione di vigilanza', is in the final part of the report when Grimaldi noted that the Commission had suggested several remedies to the Government in order to improve the service and the budget of the Cult Fund: in particular the grant of a free legal aid by fiscal advocacy and a 'reasonable relief' of registration fees and stamp duties. The government's reply, however, had been totally disappointing.[42] Also from this event an idea of a complex role of the 'Commissione di vigilanza' can be drawn. It was a role of control but also of suggestion that was fitted in a complex relation among different institutions which were involved in the complex game of managing the fulfilments that the ecclesiastic bodies' suppression requested. My impression, as I tried to show, is that the role of the 'Commissione di vigilanza' finally ended up weakened for the progressive simplification of the relations just around two centres: the Budget Committee and the Government.

The 'Commissione di vigilanza' seemed to be progressively marginalized except a role of 'cushion' in favour of other players who really influenced the institutional framework. It was a 'cushion' that the different players searched for in turn to support their positions.

A reason of this marginalization can be traced in the same role of these commissions that belonged to an institutional framework by that time outdated, in which the function of guarantee and supervision on behalf of the public opinion, that the parliamentary institutions performed, had the same dignity and importance of the decision-making function.

Notes

[1] M. Mancini - U. Galeotti, *Norme e usi del Parlamento italiano* (Roma, 1887), p. 408. I have already presented some of these considerations in F. Soddu, *In Parlamento. Deputati e senatori nell'età della Destra* (Sassari, 2005), pp. 169 ff.

[2] Mancini - Galeotti, *Norme e usi*, p. 408. At the time of the Unification of Italy, the Act 10 July 1861 n. 94, which established the 'Gran libro del Debito pubblico, put the Public Debt administration 'under the supervision' of a Commission composed by three members of the Senate and three members of the elective chamber elected for each session by the respective chambers, by three councillors of State and one councillor of the Court of Accounts appointed by the respective presidents, and finally by one of the presidents of the 'Camere di commercio' of the kingdom appointed by the minister of Agriculture, industry and commerce, and by the general secretary of the Court of Accounts.

[3] In the sources, the word 'vigilanza' prevailed and it was frequently used to indicate the organisms that the law named 'Commissioni di sorveglianza'.

[4] An 'Ufficio di cassa di depositi e di anticipazioni di fondi per i lavori pubblici' had been established with the Carlo Alberto's reforms in 1831. The Act of 1850 assigned to the Fund the function both of centralizing the voluntary as well as the administrative and judiciary deposits which had been prescribed in the current economic activity, and of managing them as loans for public works and for the forgiveness of debts to local authorities. In 1857 a law promoted by Cavour reorganized its activity. On this event see

L. Conte, 'Amministrare il risparmio: la Cassa Depositi e Prestiti da azienda a impresa-organo del Ministero del Tesoro. 1850-1913', in M. De Cecco - G. Toniolo (eds.), *Storia della Cassa Depositi e prestiti* (Roma-Bari, 2000), pp. 91 ff.

[5] Like the 'Commissione di vigilanza sull'amministrazione del debito pubblico', this one too lasted for a long time: S. Bulgarelli (with the assistance of A. De Antoniis and I. Scotti), 'La documentazione parlamentare', in F. Venturini (ed.), *Le fonti per lo studio dell'amministrazione pubblica italiana. Guida bibliografica. 1848-1992* (Bologna, 1994), p. 214.

[6] See AP, Camera, *Documenti*, Leg. V, sess. 1853-54, n. 110, p. 10.

[7] The 'uffici' were internal organisms in which all the *deputati* (or, in the other chamber, all the senators) were periodically assigned by lot, and which were entrusted with the task of a first exam of the bill as well as of the election of one member for each 'ufficio' who would compose another organism, that was charged of a deeper exam of the bill as well as of the choice of the final rapporteur for the debate on the floor. This organism, called *Ufficio centrale* in the Senate, *Commissione* in the elective chamber, limited its function to just one bill.

[8] See AP, Camera, *Documenti*, Leg. V, sess. 1853-54, n. 110-C, p. 13.

[9] The destination of these things would be defined with royal decrees.

[10] See the proposals of amendments in AP, Camera, *Documenti*, Leg. V, sess. 1853-54, n. 110-E.

[11] See AP, Senato, *Documenti*, Leg. V, sess. 1853-54, n. 104-bis. The commission was composed by Colla, Des Ambrois, Ludovico Sauli, Giacinto Di Collegno, Sclopis.

[12] Ibidem, p. 34.

[13] It was – the same Cavour noted – a debate of 'unusual passion'. AP, Senato, *Discussioni*, Leg. V, sess. 1853-54, 25 April 1855, p. 658.

[14] The bishops' offer stressed the sensible aspects regarding the relations with the Holy See. The reasons of the offer's rejection were efficaciously summarized by the minister Rattazzi on the 8th May and confirmed by Cavour the following day: see AP, Senato, *Discussioni*, Leg. V, sess. 1853-54, 8 May 1855, pp. 735 ff.; and 9 May, pp. 767 ff.

[15] Ibidem, p. 728. In the following meeting the senator Pinelli could observe that the use of that instrument could end up by establishing 'solemnly the Parliament's authority of providing or not the necessities for the religious corporate bodies' (p. 732).

[16] AP, Senato, *Discussioni*, Leg. V, sess. 1853-54, 7 May 1855, p. 731.

[17] In this direction the Cavour's intervention was explicit: although he considered that proposal not to be 'better, under any aspects, than the ministerial project', nevertheless he maintained its principles firm. 'The representative government – Cavour stressed – is the government of the compromises, not with regards to the principles but rather with regards to the means through which carry out the same principles'. See ibidem, 9 May 1855, p. 767.

[18] The Senate passed the first amendment by Des Ambrois (which replaced the suppression with the lost of the recognition as moral bodies in order to the civil consequences) with 47 votes in favour and 45 against. This result was welcomed with 'very noisy applauses from the galleries', as the note of the parliamentary reporter registered, and provoked the threat of their evacuation advanced by the president of the Senate: Ibidem, 10 May 1855, p. 791. The second amendment (which assigned these properties to the 'Cassa ecclesiastica') obtained much more approval.

[19] AP, Senato, *Documenti*, Leg. V, sess. 1853-54, n. 104-quater.

[20] L. Spinelli, 'Gli organi statali in materia ecclesiastica con particolare riguardo al Fondo per il culto', in P. A. D'Avack (ed.), *La legislazione ecclesiastica* (Milano, 1967), p. 489.

[21] Ibidem, p. 490.

[22] The Fund's incomes – Spinelli observed – were constituted also by the yield of the share charged to the survived religious bodies.

[23] Spinelli, 'Gli organi statali in materia ecclesiastica', p. 502.

[24] The first report of the 'Commissione centrale' would be presented to the *Camera*

by the minister of Finance Sella on the 11th March 1870. See AP, Camera, *Documenti*, Leg. X, sess. 1869-70, n. 47-quater.

[25] In the first composition were included the minister Sella and, among the members, the senators Francesco Di Giovanni, Diodato Pallieri and Giuseppe Saracco, the Mp Francesco Crispi, the councillor of the Court of Account (but close to the appointment as senator) Agostino Magliani, and finally Giovanni Gallarini, general secretary of the same Court. In the following years the composition had few changes. In 1874 the Fund's director to come, Grimaldi, joined.

[26] See AP, Camera, *Documenti*, Leg. XI, sess. 1873-74, n. 4-203-A, p. 33.

[27] In the report of 1869 the Commission had pointed out that 'from an inspection made in the offices of that administration' some irregularities resulted. From the documentation it is not clear whether the inspection was made by the Commission or by other organisms: in the first case, it would not be a mere formal control *a posteriori* but more incisive powers of inspection and control directed to verifying the fairness of that administration's management. The passages of the reports of the 'Commissione di vigilanza' are ibidem, pp. 37 ff.

[28] The members appointed by the Senate at that date (June 1873) were Des Ambrois, Duchoque and Giovanola. The members elected by the *Camera* were Grossi, Boncompagni and Mazzagalli.

[29] Ibidem, p. 46.

[30] See AP, Camera, *Discussioni*, Leg. XI, sess. 1873-74, 3 December 1873, pp. 255 ff.

[31] Ibidem, p. 274. De Donno in fact argued that he had kept silent about some passages of the Commission's report in order to not stress the criticism (for example on the wrong, or at least inaccurate, management of the residual assets): 'my wrongs – he declared – are in the opposite direction with respect to the minister's reproaches'.

[32] Ibidem, p. 278.

[33] 'The Chamber is confident the minister of Justice will proceed to reorganize the Cult Fund's administration, in order to ensure an effective control, presenting, when required, those bills which would be considered necessary. It also asked the minister of Justice for examining the accounts of the Cult Fund's administration informing then promptly the Chamber about the result of this exam'. Ibidem, 4 December 1873, p. 282.

[37] AP, Camera, *Documenti*, Leg. XII, sess. 1874-75, n. 153, p. 1. The report of the Budget Committee of the Senate, which had been entrusted with the exam of the bill, recognized the active role played by the 'Commissione di vigilanza' in pressing for the reform: AP, Senato, *Documenti*, Leg. XI, sess. 1873-74, n. 83-A.

[35] AP, Camera, *Documenti*, Leg. XII, sess. 1874-75, n. 153, p. 7.

[36] See the *Relazione presentata alla Camera dal ministro di Grazia e giustizia e dei culti sull'Amministrazione del Fondo per il culto dalla sua istituzione al 31 dicembre 1879*, in AP, Camera, *Documenti*, Leg. XIII, sess. 1880, n. VIII.

[37] Ibidem, p. 9.

[38] Ibidem, p. 45.

[39] AP, Camera, *Documenti*, Leg. XIII, sess. 1878-79, n. 250-A bis. As a result of the Act 14 August 1879 n. 5035, the approval of the body's budgets and final balances were taken away from the authority of the Fund's board. It was decided that from the following year budgets and final balances had to be submitted to the vote of the Parliament at the bottom of those of the Ministry of Justice. See Spinelli, 'Gli organi statali in materia ecclesiastica', p. 502.

[40] The Grimaldi's report was presented by the minister Villa on the 19th April 1880; the one by the Budget Committee on the 11th December 1879.

[41] In the report of 1880, for example, Grimaldi did not hide an express critique to the observations of Melchiorre in order to the opportunity of making the properties more profitable.

[42] AP, Camera, *Documenti*, Leg. XIII, sess. 1880, n. VIII, p. 41.

Alessandro Isoni

Indagini sulle commissioni d'inchiesta nel Parlamento statutario

La mancata approvazione del progetto di legge Pisanelli

Il 10 giugno 1863 Giuseppe Pisanelli, ministro di Grazia, Giustizia e Culti, presentava alla Camera dei Deputati il progetto di legge recante 'Disposizioni sulle inchieste parlamentari'. Sebbene non fosse il primo tentativo di istituire una legge sulle inchieste parlamentari, tema su cui si era già cimentato senza apprezzabili risultati il Conte di Cavour nel 1858, la proposta del ministro Pisanelli, attenta a 'scansare il pericolo che questa legge divenisse argomento di conflitto tra i poteri dello Stato', mirava ad assicurare alle commissioni d'inchiesta 'tutti quei mezzi […] necessari al compimento del loro mandato', vale a dire a dotarle di quei poteri 'per costringere i testimoni, per ordinare perizie, tutelare la loro dignità, garentire con sanzioni penali le prescrizioni corrispondenti ed indicare i magistrati competenti a pronunziarle'.[1] Senza entrare nello specifico delle singole disposizioni del testo, peraltro molto breve e ordinato in otto agili articoli, tutto il progetto era funzionale, da un lato, a circondare di garanzie e tutele il rapporto tra cittadini e commissioni d'inchiesta e, dall'altro, ad individuare con precisione gli ambiti operativi delle commissioni d'inchiesta e dell'autorità giudiziaria.[2] Quest'ultimo aspetto era assicurato dalla previsione di una serie di misure tese a coinvolgere la magistratura ogni qualvolta vi fosse la necessità di imporre misure coercitive sui testimoni chiamati a deporre di fronte alla commissione. In particolare, speciali cure venivano dedicate alle fattispecie della falsa testimonianza di fronte alle commissioni parlamentari d'inchiesta, con vari richiami alle norme dei codici penale e di procedura penale.

Senza dilungarci nelle pieghe del dibattito parlamentare, ci pare utile segnalare come, a distanza di un solo mese dalla presentazione del progetto di legge, l'esame in commissione alla Camera sfociasse in una relazione che, nonostante qualche piccolo emendamento, sposava in pieno la necessità di dotare l'ordinamento italiano di una disciplina generale sulle inchieste parlamentari.[3]

Tutto il dibattito alla Camera si concentrò, così, sulla legittimità del potere d'inchiesta in capo alle Assemblee rappresentative e sulla natura delle commissioni d'inchiesta, che non si sarebbero dovute occupare di affari 'né penali, né civili', bensì di 'affari politici, amministrativi e finanziari'. La fondamentale convergenza su questi argomenti e gli esiti sostanzialmente unanimi in cui sarebbe sfociata la

votazione alla Camera dei deputati non facevano prevedere in nessun modo la successiva battuta d'arresto del Senato.[4]

Infatti, anche i senatori ritenevano il potere d'inchiesta una delle attribuzioni 'naturali' dei Parlamenti, sull'esempio di quanto avveniva all'estero. Ciononostante, suscitava perplessità l'impianto complessivo della legge, giudicato inopportuno e capace di introdurre 'non poca confusione nei diversi Poteri dello Stato', specie per quanto riguardava alcune attribuzioni apparentemente lesive dei poteri dell'autorità giudiziaria, tanto da indurre l'Ufficio centrale del Senato a proporre il diniego all'approvazione del progetto già votato dalla Camera. Queste considerazioni emergono con particolare intensità negli emendamenti presentati dai senatori Vacca e Cadorna, entrambi risoluti nel ribadire l'assoluta separazione tra potere legislativo, esecutivo e giudiziario stabilita dallo Statuto e decisi, inoltre, a limitare la legge solamente ai rapporti tra le commissioni d'inchiesta ed i cittadini. Fu così che, nella seduta del 6 marzo 1865, il senatore Ceppi, relatore dell'Ufficio centrale del Senato, affossava definitivamente la legge sulle inchieste parlamentari, proponendo di rinviarne la discussione 'alla prossima sessione' del Senato, poiché di una legge sulle commissioni d'inchiesta non si riteneva 'abbastanza dimostrato il bisogno…, massime a fronte delle varie inchieste che, senza di essa, hanno potuto eseguirsi'.[5] Nonostante altri tentativi, l'ordinamento italiano non avrebbe avuto una norma esplicitamente dedicata al potere d'inchiesta delle Camere fino all'entrata in vigore della Costituzione nel 1948.[6]

Le commissioni parlamentari d'inchiesta nella dottrina giuridica italiana

Il travagliato *iter* parlamentare del progetto di legge presentato da Pisanelli ebbe, tuttavia, il merito di dare il via ad un vivace dibattito scientifico relativo alla natura del potere d'inchiesta, ai suoi limiti e all'opportunità di introdurre nell'ordinamento italiano una normativa volta a disciplinare questo istituto.[7]

Avvalendosi dell'esperienza di membro della commissione che aveva presentato la relazione alla Camera dei deputati, il primo ad occuparsi del tema fu, nel 1866, Giuseppe Devincenzi, autore di un lavoro significativamente intitolato *Delle commissioni parlamentari d'inchiesta e di alcune altre riforme nel governo*, in cui il deputato abruzzese tendeva a collocare i poteri delle commissioni nell'ambito più generale della forma di governo, anche grazie ai numerosi e puntuali richiami all'esperienza parlamentare inglese.[8]

Il continuo riferimento alla storia costituzionale britannica era funzionale a giustificare due ordini di interventi: da una parte, a procedere per mezzo di riforme lente e ponderate e, dall'altra, a di-

mostrare come le commissioni potessero rappresentare il più valido strumento informativo in mano alle Camere del neonato Stato unitario, il cui compito precipuo era di approntare quelle riforme indispensabili per incanalare la società italiana nell'alveo della modernità.

Nel lavoro di Devincenzi, peraltro, erano presenti alcuni punti che si sarebbero riscontrati anche nelle opere successive, riassumibili nel carattere imprescindibile delle commissioni nella forma di governo parlamentare, sia per il già accennato carattere informativo, sia per la loro funzione ispettiva, funzionale al controllo del potere esecutivo da parte del Parlamento e, in ultima analisi, dei cittadini.

Anche nel giudizio di Giorgio Arcoleo, illustre costituzionalista e uomo politico, il Parlamento, 'oltre al compito di far leggi', aveva anche 'quello di vigilare sui modi onde il Governo esplica la vita dello Stato, o interroga e soddisfa i bisogni della Nazione', sebbene questo diritto 'benché riconosciuto da tutti, nel suo fondamento, è dei più controversi nel suo sviluppo; fino a provocare il dubbio, che l'esercitarlo importi pericolo e confusione di competenze'.[9] L'esame delle vicende relative all'affermazione del Parlamento nell'ordinamento costituzionale britannico dimostrava come questo potere avesse dovuto affrontare numerose prove per essere riconosciuto, con la progressiva definizione di tre strumenti di controllo parlamentare sull'Esecutivo, vale a dire la discussione del bilancio, il diritto di presentare interpellanze, mozioni ed interrogazioni e, *last but not least*, il diritto di promuovere inchieste.

Tuttavia, sebbene rientrasse tra le attribuzioni classiche del potere legislativo, il potere d'inchiesta, se non disciplinato e non circoscritto a casi veramente eccezionali, rischiava di configurarsi come un'arma pericolosa nelle mani delle Assemblee, come sottolineava con forza il costituzionalista Antonio Ferracciu, il quale paventava che l'intromissione del potere legislativo nelle vicende amministrative potesse infliggere serie ferite alle prerogative proprie dell'esecutivo, inficiando, in ultima analisi, il principio della separazione dei poteri. Ad ogni modo, il fulcro intorno a cui ruotavano queste riflessioni era l'esatta definizione del principio della responsabilità ministeriale, sottoposto a numerose critiche da parte di tutti gli studiosi per il suo carattere confuso e per la sostanziale impossibilità di distinguere la gestione amministrativa dei ministeri dalla funzione di guida politica del Governo.[10]

In particolare, l'aspetto che suscitava maggiore attenzione era il tentativo di individuare i limiti del potere d'inchiesta, come Ruggiero Bonghi avrebbe significativamente intitolato il suo lavoro.[11] Oggetto delle varie indagini sarebbe stata la questione relativa all'attribuzione di funzioni proprie dell'autorità giudiziaria alle commis-

sioni d'inchiesta, in palese violazione, a detta di tutti gli autori, del principio della separazione dei poteri sancito dallo Statuto. In tal senso, Bonghi si sarebbe dimostrato il più deciso fautore di istanze garantiste di schietta ispirazione liberale, insistendo sull'assenza di reati su cui indagare da parte delle commissioni e negando, *de facto*, il parallelismo delle funzioni, perlomeno in assenza di tutte le garanzie assicurate ai cittadini chiamati di fronte ad un magistrato.[12] Tutta l'opera del Bonghi si sarebbe rivelata una serrata e limpida requisitoria contro la prassi invalsa nel funzionamento delle commissioni d'inchiesta in Italia, veri e propri mostri giuridici, contro i quali l'unica arma a disposizione sarebbe stata l'istituzione di una legge generale.

Lasciando da parte, per il momento, la classificazione delle inchieste, il problema dei limiti riguardava, in ultima analisi, la questione relativa alla maggiore o minore autonomia delle Camere, con la possibilità per quest'ultime di indagare su aspetti relativi anche a comportamenti tenuti dai suoi membri all'infuori dell'esercizio del loro mandato. Si trattava, con tutta evidenza, delle cosiddette inchieste personali, una delle tante ipotesi ricostruttive formulate dalla scienza giuridica ottocentesca per procedere alla classificazione dei tipi di inchieste parlamentari, secondo una moda peraltro tipica dell'ideologia positivistica allora in auge.[13]

Il primo tentativo di sistematizzare i vari tipi di inchieste, per la verità piuttosto impreciso e confuso, era stato quello di Carlo F. Ferraris, cui era seguita la più raffinata distinzione proposta dall'Arcoleo, il quale proponeva una triplice classificazione, distinguendo tra inchieste ispettive, conoscitive e giudiziarie, di cui peraltro proponeva l'abolizione.[14] Un'altra distinzione carica di significati era quella tra inchieste reali, che 'intendono chiarire una determinata condizione di cose e sono preparazione a riforme' e le inchieste personali, che secondo l'illustre costituzionalista siciliano avrebbero avuto 'per iscopo la ricerca di elementi, che possono colpire membri del Parlamento, e sono preparazione a un giudizio'.[15] Anche il più famoso manuale di diritto parlamentare del periodo statutario, redatto da Mario Mancini ed Ugo Galeotti, utilizzava il concetto di inchieste reali e, anziché la locuzione 'inchieste personali', indicava semplicemente le inchieste parlamentari, le quali sarebbero solamente quelle 'dirette a reprimere un abuso della amministrazione od a migliorare l'amministrazione medesima'.[16] In tal senso, il punto di arrivo delle riflessioni sviluppatesi durante il primo quarantennio di vita unitaria del Regno d'Italia è rappresentato dalla voce 'Inchiesta politica' del *Digesto Italiano*, redatta da Antonio Ferracciu, il quale suddivideva le inchieste parlamentari in legislative, politiche, elettorali, giudiziarie e personali.[17]

Come si è avuto modo di vedere, il modello delle inchieste personali sembrava costituire uno dei maggiori ostacoli ad una serena accoglienza di questo istituto nell'ordinamento italiano. Agli occhi di tutti i commentatori esse presentavano due profili di dubbia costituzionalità: primo, i rapporti delle Assemblee rappresentative, seppur in veste di commissioni parlamentari d'inchiesta, con il potere giudiziario e, secondo, la necessità di tutelare i diritti dei cittadini di fronte a possibili abusi delle commissioni stesse.[18]

Il principale problema in merito ai rapporti con l'autorità giudiziaria era rappresentato, a giudizio dell'Arcoleo, dal fatto che le inchieste personali fossero prive di giudici costituiti prima del fatto che avrebbe dato luogo al reato, visto che i commissari non sarebbero stati eletti che in seguito e, per di più, sotto influenze politiche. Inoltre, in palese violazione del codice di procedura penale, mancava la difesa dell'imputato e, aspetto certo non secondario, la separazione dell'ufficio d'inquirente da quello di accusatore. In ogni modo, andava assolutamente evitato che il corpo politico si trasformasse in giudiziario: infatti, le inchieste personali andavano intese come atti essenzialmente politici, e politici avrebbero dovuto essere i suoi risultati. A tal fine, veniva proposta una serie di accorgimenti procedurali che, a stento, erano in grado di celare, dietro una cortina formalistica, i rilevanti problemi giuridici alla base del potere d'inchiesta dei Parlamenti.[19]

Il tema della confusione dei poteri, dunque, sembra costituire una vera e propria ossessione per gli studiosi dell'epoca, a testimonianza di un irrisolto dilemma funzionale relativo ai poteri delle Camere, cui si cercò di dare una soluzione con la proposta di dotare l'ordinamento italiano di una legge generale sulle inchieste, riprendendo dunque l'intento del ministro Pisanelli.

Tra i principali propugnatori della necessità di istituire una legge generale vi era anche Guido Jona, il quale, se definiva 'l'inchiesta parlamentare…quale naturale estrinsecazione del potere di sindacato proprio del Parlamento', poneva tuttavia in luce come essa fosse 'rimasta…qualche cosa di indeterminato, di mal definito,…limitata entro confini tanto angusti da renderla più che un vero attributo costituzionale un'inutile procedura parlamentare'.[20] Nel propugnare una legge ordinaria a difesa dei diritti dei cittadini Jona era in perfetta sintonia con quanto affermato da Arcoleo qualche anno prima, il quale aveva sottolineato come la legge generale, per risultare efficace, si sarebbe dovuta 'stringerla in brevi confini, quanto bastino a determinarne la natura, lo scopo dell'inchiesta, le funzioni e i mezzi idonei' secondo una linea propugnata anche dallo stesso Ferracciu.[21] A giudizio del costituzionalista sardo, tuttavia, la legge si sarebbe dovuta occupare anche di 'quel complesso di mezzi coercitivi da accor-

darsi alle Commissioni in confronto dei cittadini, onde obbligarli a presentarsi a deporre il vero davanti ad esse ed a comunicare i richiesti documenti; mentre in mancanza della legge, essi non avrebbero che il semplice dovere morale di farlo'.[22] In tal senso, il punto più controverso riguardava la opportunità di far prestare giuramento ai cittadini chiamati a deporre di fronte alla commissione d'inchiesta. Salvo rare eccezioni, era parere unanime che il giuramento costituisse, da un lato, la garanzia più valida per ottenere deposizioni veritiere e, dall'altro, lo strumento di tutela principale per coloro che si fossero trovati coinvolti in accuse false, specie nelle inchieste cosiddette personali, perché in quel modo si sarebbero potuti incriminare i testimoni per spergiuro.

Il potere d'inchiesta dei Parlamenti: memoria del diluvio?

Nonostante l'importanza del giuramento, abbiamo deliberatamente collocato questo tema alla fine, perché, a nostro avviso, oltre a rappresentare uno tra i più rilevanti problemi teorici relativi al potere d'inchiesta dei Parlamenti, ci consente di esaminare alcuni aspetti problematici che condizionarono pesantemente il dibattito scientifico ottocentesco e assillano ancora oggi la scienza costituzionale.[23]

Il profilo di più complicata soluzione teorica per i giuristi del diciannovesimo secolo era costituito dall'eventualità di far deporre sotto giuramento i testimoni convocati di fronte alle commissioni. Consentendo questa pratica, non si sarebbe forse replicata un'attribuzione tipica del potere giudiziario, dando, in ultima analisi, legittimità formale al tanto paventato rischio di una confusione di poteri? E poi, come interpretare giuridicamente questa attribuzione, se tutte le ricostruzioni storico-teoriche erano state funzionali a tracciare, da un lato, la distinzione tra potere legislativo ed autorità giudiziaria e, dall'altro, a trovare soluzioni formali e procedimentali quanto più distanti e distinte rispetto alle procedure in uso in ambito giudiziario?

Ciononostante, tutti gli studiosi citati erano concordi nel ritenere che, al fine di non inficiare in partenza i risultati delle inchieste parlamentari, fosse necessario imporre ai testimoni la pratica del 'sacramento del potere', secondo la felice formula coniata da Paolo Prodi qualche anno fa, il quale non a caso ha indicato nel giuramento uno degli istituti da cui è impossibile prescindere se si vuole comprendere la storia costituzionale dell'Occidente.[24]

In effetti, il tema del giuramento permette di sviscerare la natura più intima del potere d'inchiesta e, inoltre, di utilizzare la controversa affermazione di questo potere in capo alle Assemblee rappresentative anche come uno straordinario caleidoscopio per osservare alcuni tra i più rilevanti mutamenti avvenuti nello *jus publicum* europeo a cavallo tra diciottesimo e diciannovesimo secolo.[25]

Una delle principali motivazioni addotte per giustificare le testimonianze giurate di fronte alle commissioni parlamentari d'inchiesta era il continuo richiamo alla tradizione anglosassone. Secondo Giorgio Arcoleo, infatti, la facoltà di imporre il giuramento ai testimoni era sempre stata un'esclusiva della Camera dei *Lords*, derivante dalle sue attribuzioni giudiziarie.[26] In tal senso, quasi tutti gli autori richiamavano le vicende relative alla Camera Alta del Parlamento inglese, con il giuramento inizialmente dichiarato nelle mani dei giudici di pace che sedevano al suo interno e che, quindi, erano intrinsecamente investiti di un'autorità giudiziaria e, successivamente, esteso a tutti i *Lords* in ragione della definitiva affermazione del potere d'inchiesta del Parlamento.[27]

Ma non è forse vero che, al pari della Camera dei *Lords*, anche tutti gli altri Parlamenti di Antico Regime avessero attribuzioni giudiziarie? Non si trattava forse di tribunali, come del resto indicano ancora oggi i loro nomi, come le *Cortes* spagnole?

Se la risposta a tale interrogativo è affermativa – e noi crediamo che lo sia – non si potrebbe forse dire che il potere d'inchiesta non rappresenti altro che una sorta di 'memoria del diluvio' dei Parlamenti, assimilabile quindi a quel mito che gli etnologi e gli antropologi ci hanno insegnato essere presente nelle culture di numerosi popoli della Terra.[28] Dunque, esso costituirebbe una sorta di retaggio, presente in tutti i Parlamenti, di un mondo ormai perduto ma che, per un lungo periodo, avrebbe rappresentato l'orizzonte costituzionale di riferimento all'interno del quale avevano agito e operato i Parlamenti di Antico Regime. Proseguendo nella metafora, la fine dell'Antico Regime in Europa si può ben dire che abbia rappresentato una sorta di diluvio, 'uno spettacolo non mai più veduto nel mondo', per citare il felice titolo di un recente libro, portando al capovolgimento degli equilibri politici e, aspetto non meno rilevante, ad una rivoluzione nell'esperienza giuridica europea, radicalmente mutata dalla definitiva affermazione dei principi e della pratica della codificazione di derivazione statale.[29]

Questa trasformazione, seppur indirettamente, interessò anche i Parlamenti, i quali durante il Medio Evo e l'Antico Regime avevano svolto un ruolo di contropotere rispetto alle prerogative regie, ponendosi inizialmente come organi deputati a svolgere una funzione di *juris dictio*, impegnati a dirimere le controversie operando una scelta tra lo *jus commune* e le norme di derivazione regia e, successivamente, svolgendo un ruolo di opposizione nei confronti delle pretese assolutistiche dei sovrani.[30] In questa prospettiva, i Parlamenti, così come i giudici di Antico Regime, sarebbero irriducibilmente fuori dal perimetro statuale o, utilizzando una delle categorie politiche che sarebbero andate affermandosi nel corso dell'Età moderna,

dalla cornice della sovranità. Il potere cui avrebbero risposto non era quello della Corona o quello successivo dello Stato, ma quello della tradizione giuridica del paese e delle consuetudini sedimentatesi nel corso dei secoli, di cui i giudici ed i Parlamenti sarebbero stati gli interpreti ed i custodi. Nel momento in cui il Parlamento inglese, dopo una lunga e solo apparentemente unitaria vicenda storica, uscì finalmente vittorioso dal conflitto con la Corona e fu così coinvolto nella gestione del potere attraverso l'istituto della fiducia verso il Gabinetto, si giunse ad una sorta di mutazione genetica di questa istituzione, in cui sembrava ormai superfluo un suo ruolo giurisdizionale, dato che il sistema delle fonti del diritto vedeva al centro il Parlamento stesso.[31]

Tuttavia, a testimonianza della rimozione di cui fu oggetto questo passaggio chiave, occorre sottolineare che, ancora nell'Ottocento, Walter Bagehot affermava come, tra le funzioni dei Parlamenti, la più importante fosse la *informing function*, intesa sia come capacità di trarre informazioni dalla società per rispondere ai suoi bisogni sia come funzione 'pedagogica' svolta dalle Assemblee rappresentative a favore dell'opinione pubblica: entrambe funzioni, abbiamo visto, svolte principalmente dalle commissioni d'inchiesta.[32]

Non suonerà strana questa affermazione se ritorniamo alla eredità giurisdizionale dei parlamenti, i quali in origine non dovevano legiferare, funzione che Bagehot, anzi, colloca all'ultimo posto per importanza, ma avrebbero invece dovuto rappresentare una sorta di tribuna – o tribunale, meglio – in cui fosse possibile confrontare le opinioni, secondo uno schema tipico del *judicium* di Antico Regime. Ancora oggi, le commissioni d'inchiesta risponderebbero a questo modello logico, il quale, a differenza del *processus* disciplinato dai codici, è caratterizzato dalla dialettica, la quale non rientra nello schema del sillogismo scientifico, con la sua diade vero/falso, ma nell'ambito del ragionamento, appunto, *more iuridico*, vale a dire all'insegna del probabile, con l'assoluta prevalenza di due elementi tipici e, diremmo, topici del diritto e della pratica parlamentare: l'opinione ed il consenso.[33] Infatti, le commissioni d'inchiesta non hanno il compito di giudicare e condannare, potere attribuito costituzionalmente all'autorità giudiziaria, ma solo di procedere ad indagare e fare luce su eventi di particolare interesse o gravità, cercando di esaminarli in maniera quanto più completa, così che il Parlamento e, quindi, i cittadini possano esserne informati.[34]

In altri termini, per richiamare la lezione teorica di Alessandro Giuliani, l'attività dei Parlamenti di Antico Regime e delle commissioni d'inchiesta attuali sarebbe improntata ad una logica dialogica – *parlamentare*, appunto – dove, anziché la forza dei numeri, tipica di un sistema maggioritario, prevarrebbero le ragioni del dialogo e del con-

fronto tra opinioni, senza che ciò sfoci necessariamente in una conclusione.[35] Quello che era importante, e lo è tuttora, è la disponibilità al confronto con gli altri, in modo che attraverso la discussione e per mezzo di errori, aggiustamenti, progressive correzioni di tiro, si possa giungere ad individuare i vari aspetti delle questioni, senza procedere ad una riduzione della complessità dettata dalla logica maggioranza/minoranza.[36]

In questa prospettiva teorica, il mutato ruolo del Parlamento, a nostro avviso, sarebbe anch'esso una spia del passaggio da un ordine isonomico, basato sulla dialettica, sulla controversia e sulla prova e di cui le commissioni parlamentari d'inchiesta costituirebbero una sorta di fossile, ad un ordine asimmetrico, il quale, viceversa, avrebbe una costitutiva vocazione per l'autorità, la gerarchia e la rapidità della decisione.[37]

Tornando all'ipotesi delle commissioni d'inchiesta come 'memoria del diluvio', potremmo dire che, con la fine dell'Antico Regime, anche i Parlamenti uscirono dal cosiddetto *ordo iudiciarius*, contrassegnato dal suo carattere pubblico ed argomentativo, in cui veniva riconosciuto agli stessi tribunali il modo di operare, e di cui i Parlamenti conserverebbero memoria nel principio di autonomia regolamentare.[38]

Alla luce di queste considerazioni si comprende meglio anche perché il Senato, tra i due rami del Parlamento sicuramente quello più legato alle origini storiche dei Parlamenti, abbia negato al potere esecutivo l'approvazione di una legge che avrebbe sicuramente costituito una *perversio ordinis judiciari*, dato che i fondamenti costituzionali e gli aspetti procedurali delle commissioni d'inchiesta, con la loro base sapienziale, preesistevano al potere statuale e, soprattutto, non erano stati posti da esso. A questo proposito, si può sicuramente affermare come il Senato fosse molto più consapevole del suo passato, mentre non deve stupire che i principali sostenitori della necessità di una legge fossero proprio i deputati, membri di una Camera elettiva e, soprattutto, i teorici del diritto pubblico dell'Ottocento, totalmente immersi nella visione formalistica e giuspositivistica del secolo e, perciò, incapaci di concepire l'esperienza giuridica fuori dalla statualità e dalle prerogative sovrane dello Stato.[39]

Nel chiudere queste brevi considerazioni relative al potere d'inchiesta dei Parlamenti, vorrei richiamare il valore etico ed epistemologico dell'insegnamento di Gino Gorla, vero e proprio pioniere degli studi sui mutamenti costituzionali, il quale ci ha indicato, tra le tante cose, come sia necessario rivedere in maniera critica tutti quegli insegnamenti tralatizi che vengono a noi dalla giuspubblicistica dell'Ottocento, sforzandoci invece di risalire alle radici dei problemi, senza accontentarci di spiegazioni semplici a fenomeni che, al contrario, si distinguono per la loro complessità.[40]

Note

[1] Nel 1858 la proposta di una legge generale sulle inchieste parlamentari era stata avanzata dal deputato Valerio e dai ministri Cavour e Deforesta. Sul progetto di legge Pisanelli si veda G. Galletti, P. Trompeo, *Atti del Parlamento Italiano*, Sessione del 1863-64, (Roma, 1886), p. 158.

[2] Cfr. Camera dei Deputati, *Raccolta dei documenti stampati*, vol. II, n° 62-139, (Torino, 1865).

[3] La relazione, peraltro piuttosto breve, fu illustrata alla Camera dei Deputati durante la seduta del 13 luglio 1863. La Commissione era composta dai deputati G. Fabrizj, Giorgini, Guerrieri-Gonzaga, Devincenzi, Chiapusso, Panattoni, Poerio, Depretis e Piroli.

[4] La votazione alla Camera dei Deputati ebbe luogo il 23 luglio 1863, e vide, su duecento presenti, centosettantatre voti favorevoli al progetto di legge, un astenuto e soli ventisei voti contrari.

[5] In *Senato del Regno*, VII Legislatura, Sessione 1863-64, Atti interni, Vol. II (n. 33-55).

[6] Dopo il fallimento del progetto Pisanelli, ci sarebbero stati i tentativi del deputato Laporta nel 1865, del Ministro Trajani nel 1879 e, per ben due volte nel 1880, da parte del Ministro Villa. In merito alle vicende parlamentari durante il periodo liberale si veda G. Perticone, *Il regime parlamentare nella storia dello Statuto Albertino* (Roma, 1960).

[7] Per un quadro della dottrina costituzionalistica pre-repubblicana cfr. M. Galizia, 'Profili storici della scienza del diritto costituzionale', in *Archivio Giuridico Filippo Serafini* XXXIII, (1963), p. 80 e, dello stesso autore, la voce *Diritto costituzionale* (profili storici), in *Enciclopedia del Diritto* (Milano, 1964), vol. XII, p. 966 e, infine, A. Giannini, 'Gli studi di diritto costituzionale in Italia (1848-1948)', in *Rassegna di diritto pubblico* 1, (1949), pp. 88-109.

[8] G. Devincenzi, *Delle commissioni parlamentari d'inchiesta e di alcune altre riforme nel governo* (Firenze, 1866), aveva maturato una conoscenza diretta dell'ordinamento costituzionale britannico durante i lunghi anni di esilio trascorsi a Londra, a causa della sua opposizione al regime borbonico. Per un primo profilo biografico di uno tra i più prestigiosi rappresentanti della Destra storica, pioniere dello sviluppo agricolo ed alfiere del progresso tecnologico, si veda R. Colapietra, 'I deputati abruzzesi nei primi anni dopo l'unità', in *Nuovi Quaderni del Meridione*, n. 16 (gennaio-marzo 1966), pp. 26-75.

[9] Secondo G. Arcoleo, *L'inchiesta nel governo parlamentare* (Napoli, 1881), p. 1, il diritto d'inchiesta era 'inerente alla natura stessa del Parlamento, ed anche nel silenzio dello Statuto' trovava il suo fondamento nella 'funzione ispettiva', che assumeva un triplice oggetto: 'esame di cifre, riguardo al Bilancio; di atti, in rapporto al Gabinetto; di servizi, rispetto all'Amministrazione'.

[10] Su questo punto si vedano gli studi di A. Predieri, *Lineamenti della posizione costituzionale del Presidente del Consiglio dei Ministri. Evoluzione dell'istituto. Formazione dell'organo*, 2 vols (Firenze, 1951), vol. I; E. Rotelli, *La presidenza del Consiglio dei ministri. Il problema del coordinamento dell'amministrazione centrale in Italia. 1848-1948* (Milano 1972) e, infine, G. U. Rescigno, *La responsabilità politica* (Milano 1967).

[11] Si fa riferimento al contributo di R. Bonghi, 'Dei limiti del potere d'inchiesta nelle Assemblee', apparso in *Nuova Antologia* 11, (1869), pp. 822-854.

[12] Secondo Bonghi, 'Dei limiti del potere', p. 826, infatti, 'o si lascia autorità di giudizio alle conclusioni della Commissione d'inchiesta, e allora questa non è solo *giudice istruttore*, *Camera di Consiglio*, *sezione d'accusa*, ma *giudice nel merito*, *tribunale giudicante* anche, ch'è un ritorno alla primitiva barbarie; ovvero si ritiene che *le conclusioni della Commissione d'inchiesta* non sieno più che consultazioni e proposte'. I corsivi apparivano già nella versione originale per rafforzare quelli che, nell'aspra critica del

Bonghi, sembravano apparire veri e propri ircocervi giuridici.

[13] Nella monografia che doveva condensare mezzo secolo di riflessioni sul tema, A. Ferracciu, *Le inchieste parlamentari nel diritto pubblico moderno* (Torino, 1899), sosteneva come le inchieste personali non dovessero riguardare che gli atti parlamentari compiuti dai membri dell'Assemblea e la loro rispettabilità. In tal senso, la Camera avrebbe potuto anche prendere in considerazione le accuse fatte ad un suo membro, sia da privati, sia da altri membri, sempre però che i fatti cui l'accusa si riferiva avessero una effettiva relazione con la sua condotta parlamentare o con l'esercizio del suo mandato.

[14] Si fa riferimento al saggio *Le inchieste pubbliche*, contenuto nella raccolta di C. F. Ferraris, *Saggi di economia, statistica e scienza dell'amministrazione* (Torino-Roma, 1880), pp. 95-126.

[15] Cfr. Arcoleo, *L'inchiesta nel governo*, p. 38.

[16] Cfr. M. Mancini, U. Galeotti, *Norme ed usi del Parlamento italiano. Trattato pratico di diritto e procedura parlamentare* (Roma, 1887), p. 378. Le inchieste reali, a loro volta, potevano essere governative o ministeriali, con quest'ultime che si suddividono in amministrative, giudiziarie e, qualora fossero presenti entrambi i caratteri, miste.

[17] Si veda alla voce di A. Ferracciu, 'Inchiesta politica', in *Il Digesto Italiano* (1902-1906), vol. XIII, p. 497.

[18] Al riguardo si vedano i dubbi sollevati da V. Miceli, *Inchiesta parlamentare* (voce), in *Enciclopedia giuridica italiana*, 1902, vol. VIII, p. I, pp. 634-656.

[19] Sulla stessa linea dell'Arcoleo si collocava anche il saggio di T. Martelli, 'Il diritto d'inchiesta nelle assemblee parlamentari', in *Studi Senesi* 15, (1898), pp. 301-340. A giudizio di Ferracciu, *Inchiesta politica*, p. 503, il compito di una commissione non avrebbe dovuto essere quello di 'riunire le prove di colpevolezza da servire ad un giudizio, per cui essa verrebbe a sostituire l'azione del giudice, bensì quello di rischiarare ed illuminare i fatti sottoposti ad esame dinanzi al Parlamento ed al paese'.

[20] Si fa riferimento al lavoro di G. Jona, 'Le inchieste parlamentari e la legge', in *Archivio giuridico*, 38 (1887), p. 1.

[21] Cfr. Arcoleo, *L'inchiesta nel governo*, p. 37.

[22] Cfr. Ferracciu, *Inchiesta politica*, p. 508.

[23] È impossibile in questa sede dare conto dei numerosi lavori dedicati nel periodo repubblicano al tema delle commissioni parlamentari d'inchiesta, dopo la brusca interruzione degli studi durante il fascismo. Per avere un quadro aggiornato e completo delle riflessioni della dottrina costituzionale si veda, da ultimo, il saggio di R. Dickmann, 'Profili costituzionali dell'inchiesta parlamentare', in *Diritto e società* 3, (2007), pp. 459-517, con amplia bibliografia.

[24] Cfr. P. Prodi, *Il sacramento del potere. Il giuramento politico nella storia costituzionale dell'Occidente* (Bologna, 1992).

[25] Per valutare meglio la straordinaria importanza dell'istituto del giuramento, non solo sotto il profilo giuridico ma anche sotto quello antropologico e simbolico, si veda lo studio di G. Agamben, *Il sacramento del linguaggio. Archeologia del giuramento* (Roma-Bari, 2008).

[26] Sull'evoluzione dei rapporti tra il sovrano e la Camera dei Lords durante il Medioevo e la prima Età moderna cfr. lo studio di L. Sturlese, *Il Re e i Lords nel Parlamento medievale inglese* (Milano, 1963).

[27] Su questo aspetto si veda il lavoro di T. Taylor, 'A Note for Laymen on British Parliamentary Investigative Practice', in *Grand Inquest, The Story of Congressional Investigation* (New York, 1955), pp. 285-295.

[28] Sono numerosi i miti che fanno riferimento al diluvio. Sul punto si veda, *ex multis*, la ricerca di M. Buonfiglio, *Sulle tracce del diluvio. Un'indagine sulle origini alla luce della scienza e della Bibbia* (Milano, 2004).

[29] Si fa riferimento all'ultimo lavoro di L. Guerci, *Uno spettacolo non mai più veduto nel mondo. La Rivoluzione francese come unicità e rovesciamento negli scrittori controrivoluzionari italiani* (Torino, 2008).

[30] Cfr. G. G. Floridia, *La costituzione dei moderni: profili tecnici di storia costituzionale*. I. *Dal medioevo inglese al 1791* (Torino, 1991).

[31] Per una ricostruzione di queste trasformazioni si rimanda ai classici della storia istituzionale inglese, come F. W. Maitland, *Constitutional History of England* (Cambridge, 1961); May Sir T. Erskine, *Constitutional History of England*, 3 vols. (London, 1912); G. B. Adams, R. L. Schuyler, *Constitutional History of England* (London, 1963); D. L. Keir, *The Constitutional History of Modern Britain, since 1485* (London, 1975).

[32] Si fa riferimento a W. Bagehot, *La Costituzione inglese* (Bologna, 1995).

[33] Sul tema si veda il fondamentale lavoro di N. Picardi, *La giurisdizione all'alba del terzo millennio* (Milano, 2007), con particolare attenzione alle pagg. 199-249, in cui l'autore illustra molto chiaramente le implicazioni giuridiche e concettuali insite nel passaggio dal modello del *iudicium* a quello del *processus*.

[34] Si vedano i lavori di P. Magarò, 'Le suggestioni del momento giudiziario nella prassi delle commissioni parlamentari d'inchiesta in Italia e in Belgio', in *Diritto pubblico comparato ed europeo* 4, (1999), pp. 1539 ss; M. Midiri, 'Inchiesta parlamentare e indagini giudiziarie', in *Studi L. Elia*, II, (1999), pp. 951-1009 e, infine, R. Orlandi, 'Dubbi sul valore probatorio degli atti di una Commissione parlamentare d'inchiesta', in *Cassazione penale* 4, 1994, pp. 2814-2827.

[35] Il punto riguarda, in particolare, i rapporti tra logica ed istituzioni. Su questi aspetti si vedano i lavori di Ch. Perelman, *Logica giuridica: nuova retorica* (Milano, 1979); L. Gianformaggio, 'Il gioco della giustificazione: in margine ad una teoria procedurale dell'argomentazione giuridica', in *Materiali per una storia della cultura giuridica*, XIV, (1984), pp 475-504 e, da ultimo, gli studi di A. Giuliani, *Il concetto di prova* (Milano, 1961); *La controversia. Contributo alla logica giuridica* (Pavia, 1966).

[36] È quanto sosteneva, unico tra i suoi contemporanei, Ferraris, *Le inchieste pubbliche*., p. 119-120, il quale propugnava 'l'*oralità*' come uno dei requisiti essenziali delle inchieste parlamentari. Sul punto si veda, tra gli altri, il saggio di L. Wittengstein, *Della certezza* (Torino, 1978).

[37] Al riguardo si veda il fondamentale lavoro di A. Giuliani, *Giustizia ed ordine economico* (Milano, 1997).

[38] Questo passaggio è stato ricostruito da N. Picardi, 'Processo civile (dir. moderno)', in *Enciclopedia del diritto* 36, (1987), pp. 101-118.

[39] Si veda la raccolta curata da N. Picardi, A. Giuliani, *Testi e documenti per la storia del processo* (Milano, 1996).

[40] Si fa riferimento, in particolare, alla raccolta di scritti di G. Gorla, *Diritto comparato e diritto comune europeo* (Milano, 1981) e, per comprendere appieno la sua importanza nel panorama degli studi giuridici italiani della seconda metà del ventesimo secolo, si vedano i tre tomi di contributi contenuti in *Scintillae juris. Studi in memoria di Gino Gorla* (Milano, 1994).

Bruno Ziglioli

Le Commissioni parlamentari di inchiesta nella storia politica dell'Italia repubblicana: il caso della Commissione parlamentare di inchiesta sul disastro di Seveso (1977-1978)

Le inchieste parlamentari hanno avuto un influsso considerevole sulla vita politica dell'Italia repubblicana. Le relazioni conclusive che ne sono derivate sono state spesso al centro del dibattito pubblico: è sufficiente citare il caso delle varie inchieste antimafia, l'inchiesta sul Sifar, quella sul rapimento e l'assassinio di Moro, quella sulla loggia massonica P2, quella sulle stragi, e l'elenco potrebbe continuare.

Intorno alle Commissioni parlamentari di inchiesta, e alla documentazione che hanno prodotto, si è sviluppata una consistente letteratura di tipo giornalistico, composta soprattutto da *pamphlet* e da libri di denuncia. Il vastissimo materiale raccolto dalle Commissioni di inchiesta di epoca repubblicana è stato invece scarsamente utilizzato dagli storici. La ragione di questa lacuna risiede forse nella 'difficoltà di mantenere il necessario distacco scientifico di fronte a materiali che ancora suscitano opposte passioni e idonei a un uso militante'.[1] Inoltre il motivo va ricercato nella diffidenza verso un tipo di fonti il cui uso, sul piano metodologico, presenta aspetti particolarmente delicati. Infatti, nell'accostarsi a esse, occorre avere alcune cautele aggiuntive rispetto a quelle con cui si utilizzano – per esempio – le carte processuali: occorre cioè prestare costantemente attenzione al modo di procedere di un corpo politico costituito in organo inquirente, che produce sia una 'verità giudiziaria' che una 'verità di parte' – o una 'verità politica' – basata su elementi funzionali a un determinato progetto di società.[2]

Proprio questa ambivalenza costituisce invece un punto di osservazione particolarmente efficace per studiare gli assetti, gli equilibri e i conflitti che caratterizzano le istituzioni politiche e amministrative in un determinato momento storico. Un *case study* esemplare è rappresentato dalla Commissione di inchiesta che ha indagato sulle responsabilità e sulle conseguenze del disastro di Seveso.[3] A un primo sguardo essa può sembrare di rilievo minore rispetto ad altre più note: innanzi tutto operò nel breve arco di dodici mesi, dal luglio 1977 al luglio 1978, nel cuore della VII legislatura; in secondo luogo tale inchiesta, pur avendo indagato su un caso che aveva scosso l'opinione pubblica italiana e internazionale, non è rimasta impressa nella me-

moria politica del paese, e non ha goduto neppure di una grande attenzione da parte dei mezzi di comunicazione, impegnati a raccontare gli altri gravi avvenimenti di quell'anno. L'attività di questa Commissione, invece, è particolarmente significativa proprio per il contesto nel quale era calata, caratterizzato, sul piano politico, dall'esperimento della solidarietà nazionale e dall'emergenza terroristica e, sul piano istituzionale, dall'evoluzione indotta dal trasferimento dei poteri alle regioni.

Senza entrare nei dettagli della dinamica del disastro,[4] l'incidente che si verificò il 10 luglio 1976 nello stabilimento ICMESA di Meda, di proprietà della multinazionale svizzera Givaudan, provocò una consistente fuoruscita di diossina sul territorio di almeno quattro comuni (Seveso, Meda, Desio e Cesano Maderno). Nei giorni e nei mesi successivi le istituzioni e i cittadini furono costretti a confrontarsi con una serie di questioni scottanti dal punto di vista giuridico, sociale, economico e morale, in un contesto molto confuso e incerto sotto il profilo degli interventi pubblici. Si intersecarono alcuni temi potenzialmente dirompenti per la fragile trama degli equilibri politici di allora, e per un assetto regionale non ancora ben rodato. Fra questi, per esempio, il problema dell'aborto. Di fronte ai possibili effetti teratogeni e mutageni della diossina, nell'agosto 1976 la Regione Lombardia autorizzò i medici a praticare l'aborto terapeutico sulle donne incinte esposte alla contaminazione, perché venne considerato come un grave danno alla salute della madre anche il potenziale stress psicologico derivante dalla possibile nascita di bambini con malformazioni. Questa decisione, assunta con un anticipo di due anni rispetto all'approvazione della legge 194/78, divise la Democrazia cristiana e provocò forti polemiche nel mondo cattolico.[5]

L'altro tema estremamente controverso era quello della bonifica. La scienza non era in grado di fornire indicazioni certe sul metodo di decontaminazione, ed erano state affacciate molte ipotesi.[6] Nel settembre del 1976 La Regione Lombardia decise di orientarsi verso il sistema più radicale: la decorticazione del terreno inquinato e la sua combustione in un forno inceneritore, da costruirsi nell'area dello stabilimento ICMESA.[7] Il progetto, che non venne mai realizzato, fu alla base di una dura controversia: la giunta regionale, guidata dal democristiano della corrente 'Base' Cesare Golfari, si trovò per mesi a essere investita da un fuoco incrociato di polemiche scientifiche e politiche. Il tentativo di trapiantare in Regione la formula della solidarietà nazionale fu duramente osteggiato dalla destra democristiana proprio a partire dal tema degli aborti e della bonifica a Seveso.[8] Il Partito comunista, dal canto suo, mantenne una posizione prudente, cercando di evitare da un lato che si producessero eccessive lacerazioni nel rapporto con la DC, e dall'altro che fossero riviste o censurate le delibe-

razioni assunte dalla giunta lombarda in materia di interruzione di gravidanza.[9]

Si trattava di temi sui quali i due maggiori partiti si trovavano a disagio, perché logoravano la loro difficile collaborazione, e davano spazio a quelle forze conflittuali che la visione organicista sottesa alla solidarietà nazionale si proponeva di contenere.[10] Dal punto di vista dei partiti della maggioranza occorreva perciò riprendere in mano la situazione, riallacciando i fili sparsi di un solidarietà nazionale in affanno: ciò non poteva che avvenire in sede parlamentare, data la centralità che le Assemblee elettive rivestivano in quella legislatura in funzione della stessa solidarietà nazionale, e una Commissione parlamentare di inchiesta poteva costituire uno strumento adeguato a tale scopo.[11]

La Commissione parlamentare di inchiesta sul disastro di Seveso, istituita con la legge 16 giugno 1977 n. 357, rispecchiò in modo intelligibile questi equilibri e queste linee di frattura, sia per la sua natura di organo politico, sia per la sua specifica composizione. Furono infatti chiamati a farne parte quindici deputati e quindici senatori, i quali – con la sola eccezione del senatore Pisanò – sostenevano tutti il governo in carica con il loro voto favorevole o con la loro astensione.[12] Ne furono esclusi i gruppi parlamentari 'conflittuali': nella Commissione, infatti, non erano presenti due forze (i radicali e i demoproletari) che rappresentavano due posizioni alternative alla visione organicista della solidarietà nazionale, e che si erano dimostrate molto attive nella vicenda di Seveso.

Peraltro anche i liberali non erano rappresentati da alcun commissario: il numero di quindici deputati e quindici senatori, comune fino ad allora a quasi tutte le commissioni di inchiesta di epoca repubblicana, era troppo esiguo per garantire la rappresentanza dei gruppi minori. Negli anni successivi, con la legge istitutiva della cosiddetta 'Commissione Moro' (legge 23 novembre 1979, n. 597), questo numero venne ampliato a venti deputati e venti senatori, prevedendo contemporaneamente che – oltre a garantire la proporzionalità tra i vari gruppi – si dovesse assicurare la presenza di un rappresentante per ciascuna componente politica costituita in gruppo in almeno un ramo del Parlamento.[13]

I gruppi parlamentari, nell'effettuare le designazioni, si attennero a un criterio prevalentemente territoriale: ben ventiquattro commissari su trenta erano lombardi, o comunque eletti in Lombardia, soprattutto nelle province di Milano e Como,[14] e molti di essi si erano occupati a più riprese della vicenda di Seveso.[15] Vi era perciò il concreto rischio di riproporre all'interno della Commissione le divisioni che stavano scuotendo la Regione Lombardia.

Inoltre furono inseriti nella Commissione anche i relatori del pro-

getto di legge sull'interruzione volontaria della gravidanza, sia di maggioranza (Giovanni Berlinguer – PCI) sia di minoranza (Bruno Orsini – DC). Orsini, fanfaniano genovese, venne eletto presidente dell'organo parlamentare[16] sia per la sua specifica competenza professionale (era un medico specializzato in Medicina legale e delle assicurazioni e in Neuropatologia e psichiatria) sia per la sua 'terzietà' territoriale. Il suo profilo politico non infondeva però molta fiducia nei commissari comunisti, i quali lo consideravano un integralista e un uomo legato agli ambienti imprenditoriali, designato alla presidenza per garantire il mantenimento di una posizione rigida.[17] Sembrava insomma ripetersi anche nella Commissione lo stesso schema del governo di solidarietà nazionale presieduto da Andreotti: la collaborazione con il PCI doveva essere guidata da persone che, per storia personale e politica, apparissero come garanti di fronte ai timori di eccessivi sbandamenti a sinistra.

Come previsto dalla legge istitutiva, furono tre i principali filoni di inchiesta affidati alla Commissione: l'accertamento delle responsabilità 'ad ogni livello, centrale o locale, relative all'insediamento, alla sicurezza e alla nocività della produzione, ai controlli e ad ogni altra misura indispensabile atta ad evitare la calamità';[18] la valutazione delle conseguenze dell'incidente, tanto sul piano medico e ambientale quanto su quello economico;[19] infine, la formulazione di proposte 'per una più efficace normativa a tutela della salute dei lavoratori e dei cittadini, e per l'equilibrio dell'ambiente naturale'.[20]

Il 19 luglio 1978 la Commissione di inchiesta approvò all'unanimità una relazione conclusiva da trasmettere ai presidenti dei due rami del Parlamento. Il generale accordo che le forze politiche presenti in Commissione manifestarono con il loro voto può apparire sorprendente, se si considerano tutte le tensioni e le divisioni indotte dall'incidente di Seveso. Infatti questa unanimità risultò essere più apparente che reale.

Alla luce di quanto detto, infatti, vi erano almeno due temi che avevano rischiato di dividere la Commissione: l'aborto e la bonifica. La maggioranza della Commissione, e le sinistre in special modo, cercarono di evitare che l'organo di inchiesta si occupasse di tali questioni: esso si sarebbe dovuto limitare a una registrazione notarile dei fatti, senza esprimere alcuna valutazione in proposito. Oltre agli effetti che una eventuale censura parlamentare avrebbe provocato all'interno della giunta lombarda e negli equilibri di corrente della DC, una spaccatura della Commissione sul tema dell'aborto, per esempio, avrebbe potuto avere delle ripercussioni sull'iter di quella che sarebbe diventata la legge 194, e sul delicatissimo compromesso che ne era alla base; a sua volta, un inciampo sul percorso di quella legge avrebbe messo in serio pericolo la tenuta della maggioranza parlamentare e del-

l'intera politica di solidarietà nazionale. La maggioranza dell'organo mantenne perciò un atteggiamento estremamente cauto, ritenendo che questi problemi andassero risolti in altro modo e in altra sede: nel caso dell'aborto, attraverso la regolamentazione legislativa in via di approvazione.[21]

L'obiettivo di alcuni commissari democristiani ostili alla solidarietà nazionale era invece proprio quello di dare uno scossone a tutti questi precari bilanciamenti. In particolare il ciellino Andrea Borruso e l'esponente della corrente 'Forze nuove' Antonio Marzotto Caotorta cercarono ripetutamente di obbligare la Commissione di inchiesta a occuparsi di aborto e di bonifica, proprio per tentare di provocare uno scontro politico e di costringere alla riemersione le diverse posizioni sopite.[22]

Il perseguimento, da parte di alcune correnti democristiane, di una 'strategia del conflitto' nei confronti della solidarietà nazionale, ebbe termine con il sequestro Moro, quando la DC formalmente si ricompattò di fronte all'attacco al cuore dello Stato e del partito.[23] Anche all'interno della Commissione di inchiesta gli interventi polemici in tema di aborto e di bonifica si fecero più radi, fino a cessare del tutto nel mese di aprile 1978. D'altra parte la legge sull'interruzione volontaria della gravidanza, definitivamente approvata dalla Camera il 13 aprile e dal Senato il 22 maggio, aveva chiuso qualsiasi spazio di polemica verso le decisioni assunte dalla Regione.

Nel tentativo di ricucire le lacerazioni indotte dall'incidente di Seveso, la presidenza della Commissione cercò di concentrare l'attenzione dell'organo parlamentare sugli aspetti dell'inchiesta capaci di coagulare il maggior consenso possibile tra le forze politiche. La ricerca delle responsabilità dell'incidente presentava certamente aspetti sensibili: si trattava di indagare anche sulle mancanze di alcune amministrazioni pubbliche, quali l'amministrazione comunale di Meda, la Provincia di Milano, il comando provinciale dei Vigili del Fuoco, eccetera. Ma essa si prestava bene allo scopo, per due ragioni. Innanzitutto si trattava di sottolineare in modo inequivoco la responsabilità di una azienda straniera che avrebbe potuto facilmente sottrarsi a un rigoroso accertamento, tanto più di fronte alle lungaggini dell'inchiesta giudiziaria.[24] In secondo luogo, l'indicazione di precise responsabilità era funzionale al recupero della fiducia dei cittadini nei riguardi delle istituzioni, dopo un disastro che aveva messo a nudo gravi inadeguatezze dei pubblici poteri.[25] E fu proprio il tema delle responsabilità quello su cui la Commissione sviluppò la maggior parte delle sue valutazioni più originali, e fu l'aspetto dell'inchiesta che ebbe maggiore diffusione sotto il profilo mediatico.

Sugli altri compiti che le erano stati conferiti, la Commissione, nella relazione conclusiva, non sviluppò valutazioni autonome: si limitò

a raccogliere, ordinare e trasmettere al Parlamento, a fini conoscitivi, le risultanze e le valutazioni di altri organismi tecnici, scientifici o amministrativi. In questo modo essa riuscì a rendere apparentemente neutri tutti i problemi maggiormente suscettibili di creare contrapposizione. La questione delle interruzioni di gravidanza trovò spazio nella relazione conclusiva in misura ridottissima: venne semplicemente indicato il numero degli aborti effettuati,[26] e si annotò, a proposito delle analisi eseguite sui feti e sul materiale embrionale proveniente da trentaquattro aborti, che i risultati 'non [avevano] identificato alcun danno fetale che indicasse un effetto mutagenico, teratogeno o embriotossico' dell'esposizione alla diossina, aggiungendo però, subito dopo, che era 'assai aleatorio stabilire il grado di esposizione [alla diossina] subita dalle donne incinte'.[27]

Allo stesso modo si procedette in merito alla bonifica: la Commissione si limitò a inserire nella relazione conclusiva una raccolta di dati tratti dalle relazioni ufficiali degli organi regionali, e ad annotare quasi di sfuggita: 'L'attuazione [del programma regionale di bonifica] ha incontrato ritardi, difficoltà e ripensamenti, specialmente in ordine alla proposta di distruzione [della diossina] mediante incenerimento, *che è oggetto di motivati contrasti*'.[28]

In quella legislatura il Parlamento visse in una condizione di continua eccezionalità, dapprima per le spossanti dinamiche della solidarietà nazionale, poi per la contestazione giovanile e per l'emergenza terroristica, quindi per l'ostruzionismo dei radicali che – nel corso del sequestro Moro – bloccarono a lungo l'attività legislativa.[29] I lavori e le conclusioni della Commissione parlamentare di inchiesta sul disastro di Seveso ci offrono, in questo quadro, una rappresentazione efficace del modo con cui le istituzioni – e con loro le forze politiche che sostenevano con maggiore o minore convinzione l'accordo di governo – cercarono di difendersi e di uscire da quella che veniva avvertita come una situazione di assedio.

La vicenda di questa Commissione costituisce perciò un indicatore eloquente e inedito delle dinamiche proprie di quel delicato passaggio politico-istituzionale, della sua capacità di produrre soluzioni di compromesso, e della sua tendenza a eludere i potenziali elementi di divisione e di conflitto. Era un'esperienza che stava entrando nella sua fase terminale: come ha scritto Agostino Giovagnoli, 'al di là delle intenzioni dei suoi membri, con il rapimento e l'assassinio di Moro, il terrorismo delle Brigate rosse si rivelò funzionale ai disegni di quanti sul piano interno e su quello internazionale volevano fermare l'esperienza della solidarietà nazionale: dagli americani ai sovietici, dalla destra democristiana alla base comunista, da Craxi a Pannella'.[30]

Anche l'altra inchiesta che terminò nel corso della VII legislatura –

quella sulla cosiddetta 'giungla retributiva' – si concluse senza che fosse presentata alcuna relazione di minoranza. Le altre due Commissioni istituite in questi anni (sul terremoto del Belice e sulle forniture di armamenti) – che invece conclusero i lavori nella legislatura successiva – tornarono a dividersi e a presentare due o più documenti conclusivi, come peraltro accadde per tutte le inchieste dell'VIII legislatura ('Moro', 'P2', e 'Sindona').[31]

Va comunque osservato che la Commissione sul disastro di Seveso produsse un risultato apprezzabile in un tempo molto breve, almeno in rapporto ad altre Commissioni di inchiesta. Le sentenze dell'autorità giudiziaria arrivarono con grande lentezza e con esiti contraddittori: per molto tempo, quindi, la relazione conclusiva dell'organo parlamentare costituì l'unica deliberazione dello Stato italiano in cui le responsabilità dell'ICMESA e della Givaudan venivano dichiarate ufficialmente. Da questo punto di vista essa ha retto bene alla prova del tempo, tanto da essere citata in modo positivo anche dalle ricostruzioni più polemiche verso i pubblici poteri,[32] e da mantenere intatta la sua validità anche di fronte alle ipotesi e alle rivelazioni più recenti sull'incidente.[33]

In conclusione, è auspicabile che il tema delle Commissioni parlamentari di inchiesta venga affrontato in modo sistematico dalla storiografia: una serie di ricerche dedicate a questi organi potrebbe aggiungere elementi importanti non solo alla storia del Parlamento italiano, ma più in generale alla storia politica del paese. Le inchieste parlamentari possono inoltre costituire un sensore interessante sullo stato dei rapporti tra potere legislativo e potere giudiziario. Le relazioni tra esse e gli uffici titolari dei procedimenti giudiziari sui fatti oggetto dell'inchiesta talvolta (come nel caso di Seveso) possono essere relativamente collaborative,[34] talaltra possono sfociare in veri conflitti tra poteri dello Stato di fronte alla Corte costituzionale (come era accaduto nel caso dell'Antimafia nella V e nella VI legislatura).[35] Anche in questo caso lo studio delle inchieste parlamentari può quindi mettere in luce aspetti importanti e inediti delle vicende politiche e istituzionali dell'Italia contemporanea.

Note

[1] C. Crocella, 'I fondi delle Commissioni parlamentari di inchiesta come fonte per la storia dell'Italia repubblicana', in *Le fonti archivistiche della Camera dei Deputati per la storia delle istituzioni. Atti del convegno organizzato dall'Archivio storico della Camera dei deputati, Roma 20 giugno 1995* (Roma, 1996), p. 163.

[2] Ibid., p. 161.

[3] Il nome completo era 'Commissione parlamentare di inchiesta sulla fuga di sostanze tossiche avvenuta il 10 luglio 1976 nello stabilimento ICMESA e sui rischi potenziali per la salute e per l'ambiente derivanti da attività industriali'.

[4] Per una sintetica ricostruzione del disastro v. S. Luzzi, *Il virus del benessere. Ambiente, salute, sviluppo nell'Italia repubblicana* (Roma-Bari, 2009), pp. 140-55; B. Ziglioli, 'Il disastro di Seveso tra ecologia e politica', in *Storia e Futuro* 18, (2008), http://www.storiaefuturo.com/it/numero_18/articoli/1_disastro-seveso-ecologia~1209.html; L. Centemeri, *Ritorno a Seveso. Il danno ambientale, il suo riconoscimento, la sua riparazione* (Milano, 2006), pp. 9-59.

[5] Ziglioli, 'Il disastro'; G. Scirè, *L'aborto in Italia. Storia di una legge* (Milano, 2008), pp. 108-14. V. anche M. Ferrara, *Le donne di Seveso* (Roma, 1977), un libro-inchiesta coevo agli eventi.

[6] Per esempio vi era stata una proposta avanzata dalla Givaudan secondo la quale si sarebbe dovuto 'bombardare' da un aereo con olio di oliva la zona maggiormente inquinata: l'olio avrebbe sciolto la diossina e l'azione della luce solare l'avrebbe resa innocua. D. Colombo, *Quelli della diossina* (Roma, 2006), pp. 101-2.

[7] L. Conti, *Visto da Seveso. L'evento straordinario e l'ordinaria amministrazione* (Milano, 1977), pp. 102-3

[8] Ibid., pp. 34, 78 e 135; Ferrara, *Le donne*, pp. 191-2; F. Rocca, *I giorni della diossina* (Milano, 1980), pp. 85 e 117.

[9] Conti, *Visto*, p. 99.

[10] P. Ignazi, *Il potere dei partiti. La politica in Italia dagli anni Sessanta a oggi* (Roma-Bari, 2002), pp. 46-84.

[11] G. Recchia, *L'informazione delle Assemblee rappresentative* (Napoli, 1979), pp. 385-407 e 282-84.

[12] La DC era rappresentata da dodici parlamentari (i deputati Andrea Borruso, Antonio Marzotto Caotorta, Gaetano Morazzoni, Bruno Orsini, Aristide Tesini, Emilio Trabucchi, e i senatori Lucio Benaglia, Vincenzo Bombardieri, Luigi Borghi, Samuele Giacomo Mazzoli, Giancarlo Ruffino e Mario Santi); il PCI da dieci (i deputati Aimone Balbo di Vinadio, Giovanni Berlinguer, Cecilia Chiovini, Edmondo Raffaelli, Guido Venegoni, e i senatori Giovanni Bellinzona, Giorgio Milani, Michele Miraglia, Generoso Petrella, Antonino Piscitello); il PSI da tre (i deputati Aldo Aniasi e Marte Ferrari e il senatore Bruno Luzzato Carpi); i gruppi della Sinistra indipendente, del PRI, del PSDI, della Costituente di destra-Democrazia nazionale e il MSI erano infine rappresentati da un parlamentare ciascuno (rispettivamente il senatore Angelo Romanò, il deputato Susanna Agnelli, il senatore Egidio Ariosto, il deputato Giovanni Andrea Borromeo d'Adda e il senatore Giorgio Pisanò).

[13] G. Troccoli, 'Le Commissioni parlamentari di inchiesta nella esperienza repubblicana', in G. De Vergottini (ed.), *Le inchieste delle Assemblee parlamentari* (Rimini, 1985), p. 85.

[14] Erano stati eletti a Milano e provincia i deputati Aniasi, Balbo di Vinadio, Borruso, Chiovini, Marzotto Caotorta, Morazzoni, Raffaelli, Tesini, Trabucchi, Venegoni, e i senatori Luzzato Carpi, Milani (entrambi nel collegio di Rho), Petrella (nel collegio di Monza), Pisanò (nel collegio Milano II), Romanò (nel collegio di Vimercate). In provincia di Como erano stati eletti i deputati Agnelli, Ferrari e Borromeo D'Adda, nonché il senatore Borghi. Infine, il senatore Ariosto era stato eletto a Salò (Brescia), il senatore Bellinzona a Voghera (Pavia), il senatore Benaglia a Novara (ma era bergamasco di origine), il senatore Bombardieri a Treviglio (Bergamo) e il senatore Mazzoli a Breno (Brescia). Cfr. *Repubblica Italiana 1948-1998. 50 anni di Parlamento, Governi, Istituzioni* (Roma, 2000).

[15] Trabucchi, farmacologo, era stato al centro di furibonde polemiche in quanto considerato tra i 'minimizzatori' dei pericoli della diossina: il 31 luglio 1976, nel corso di una assemblea con la cittadinanza, si era infatti dichiarato disponibile ad andare a vivere nella zona evacuata e a bere il latte contaminato (E.B. [Enzo Biagi], 'Tensione a Seveso: la gente sfollata vuole riprendere la vita normale', in *Corriere della Sera*, 1° agosto 1976. V. anche Luzzi, *Il virus*, pp. 143 e 144 n.). Chiovini aveva partecipato anch'essa sin dall'inizio alle assemblee nei comuni colpiti dalla nube tossica; in quella del 31 luglio, tra l'altro, fu tra coloro che contestarono duramente Trabucchi (testimo-

nianza orale di Cecilia Chiovini, già vicepresidente della Commissione, raccolta a Milano il 17 maggio 2005; una sua testimonianza coeva è in Ferrara, *Le donne*, pp. 103-6). Susanna Agnelli aveva appoggiato la proposta, avanzata da Emma Bonino, di un atto legislativo *ad hoc* per consentire l'interruzione di gravidanza alle donne di Seveso ('Si cerca l'antidoto alla nube tossica', in *Corriere della Sera*, 30 luglio 1976). Luzzato Carpi, eletto nel collegio senatoriale che comprendeva le zone contaminate, si era recato in visita dal sindaco di Seveso pochi giorni dopo l'incidente (Rocca, *I giorni*, pp. 58 e 90-1). Anche Borruso, esponente di Comunione e liberazione e del suo 'braccio politico', il Movimento popolare, visitò le zone inquinate dopo la scoperta della gravità del disastro (ibid., p. 99). Marte Ferrari, infine, aveva scritto allo stesso sindaco il 15 ottobre 1976, chiedendo di essere tenuto informato sulla situazione economica e occupazionale della zona inquinata (v. la lettera di risposta del sindaco di Seveso Rocca all'on. M. Ferrari, 25 ottobre 1976, in Archivio 'Il ponte della memoria', Circolo Legambiente 'Laura Conti' di Seveso, b. 'Documenti 1976-A', fasc. 'Atti Comune di Seveso 1976'). Molti commissari – tra i quali Borruso, Marzotto Caotorta, Bellinzona, Pisanò, Ferrari – avevano presentato, nei mesi precedenti all'istituzione della Commissione, numerose interpellanze e interrogazioni che lasciavano chiaramente trasparire punti di vista radicalmente diversi su temi quali l'aborto e le procedure di bonifica. La banca dati completa degli atti di controllo e di indirizzo politico di tutti i parlamentari a partire dalla VII legislatura è consultabile sul sito www.camera.it, alla voce 'Documenti', sotto-voce 'Banche Dati/Fascicolo degli atti di indirizzo e di controllo'.

[16] Atti Parlamentari, VII Legislatura, Doc. XXIII n. 6, Commissione parlamentare di inchiesta sulla fuga di sostanze tossiche avvenuta il 10 luglio 1976 nello stabilimento ICMESA e sui rischi potenziali per la salute e per l'ambiente derivanti da attività industriali, *Relazione conclusiva* [d'ora in poi CI, RC], p. 26. Alla vicepresidenza vennero eletti la comunista Chiovini e il socialista Luzzato Carpi.

[17] In questo senso si esprime anche Chiovini nella sua testimonianza orale.

[18] Art. 2 lettera C legge 357/77.

[19] Art. 2 lettere D ed E legge 357/77.

[20] Art. 3 legge 357/77.

[21] Concordano in questo senso anche la testimonianza orale di Chiovini e quella di Bruno Orsini, già presidente della Commissione, raccolta a Genova il 3 maggio 2005.

[22] Ciò avvenne in maniera particolarmente evidente nelle audizioni del presidente Golfari e dell'assessore alla Sanità Vittorio Rivolta (Archivio storico della Camera dei deputati, Fondo 'Commissione ICMESA' [d'ora in poi ASC, FCI], b. 5, resoconto stenografico, audizione del 25 ottobre 1977), dell'Incaricato speciale per Seveso Antonio Spallino (ASC, FCI, b. 8, resoconto stenografico, audizione del 22 novembre 1977), dei membri della commissione Sanità del consiglio regionale lombardo (ASC, FCI, b. 9, resoconto stenografico, audizione del 29 novembre 1977 – II gruppo di lavoro), e dei rappresentanti dei consorzi sanitari di zona (ASC, FCI, b. 13, resoconto stenografico, audizione del 22 febbraio 1978 – II gruppo di lavoro).

[23] A. Giovagnoli, *Il caso Moro. Una tragedia repubblicana* (Bologna, 2005), pp. 59-64.

[24] 'L'indagine istruttoria appare ancora lontana dalla sua definizione anche per la complessità degli accertamenti, sicché non è possibile, nemmeno per ipotesi, prevedere quando potrà essere celebrato il processo di primo grado'. CI, RC, p. 106. Sulla finalità primaria di mettere un punto sulle responsabilità dell'azienda concorda anche Orsini nella sua testimonianza orale.

[25] 'Far luce sulle responsabilità vorrà anche significare il recupero della fiducia degli abitanti delle zone colpite, il ripristino di un rapporto fiduciario con lo Stato espresso attraverso una fattiva collaborazione tra i cittadini e le istituzioni'; così si esprimeva la relazione delle Commissioni riunite XII e XIV della Camera sulle proposte di legge presentate in ordine all'istituzione di una Commissione di inchiesta sui fatti di Seveso (relatori Cuminetti e Giovanardi), riportata in CI, RC, p. 280.

[26] Ibid., p. 148.

[27] Ibid., p. 133.

[28] Ibid., p. 184. Il corsivo è mio. Per una disamina più ampia sulle conclusioni dell'inchiesta v. B. Ziglioli, 'La Commissione parlamentare di inchiesta "ICMESA"', in A. Cutrera, G. Pastorelli, B. Pozzo (eds), *Seveso trent'anni dopo: la gestione del rischio industriale* (Milano, 2006), pp. 74-85

[29] Giovagnoli, *Il caso*, p. 16.

[30] Id., *Il partito italiano. La Democrazia cristiana dal 1942 al 1944* (Roma-Bari, 1996), p. 190.

[31] Per una sintetica rassegna delle altre Commissioni di inchiesta della VI, VII e VIII legislatura v. A.P. Tanda (ed.), *Le Commissioni parlamentari di inchiesta* (Firenze, 1997), pp. 34-6. V. anche il sintetico volumetto a cura del Servizio studi – Dipartimento istituzioni della Camera dei deputati, *Le inchieste del Parlamento repubblicano* (Roma, 1990).

[32] D. Biacchessi, *La fabbrica dei profumi. La verità su Seveso, l'ICMESA, la diossina* (Milano, 1995), pp. 56-8.

[33] Come quella di G. Fochi, 'La diossina dispersa a Seveso non fu un fulmine a ciel sereno', in *TuttoScienze e Tecnologie*, supplemento de *La Stampa*, 8 giugno 2005.

[34] L'acquisizione di copia degli atti in possesso dell'autorità giudiziaria incaricata dell'inchiesta penale venne considerata indispensabile sin dalle prime sedute della Commissione (ASC, FCI, b. 21, fasc. 'verbali della Commissione', *Verbale II. Mercoledì 14 settembre 1977*). A questo scopo fu inviata al giudice istruttore di Monza una istanza motivata, consistente in una argomentata trattazione sui riferimenti normativi e sui precedenti che avrebbero consentito all'organo parlamentare di acquisire il fascicolo istruttorio (lettera del presidente Orsini al giudice istruttore di Monza Rosini, [Roma, 7 novembre 1977], in ASC, FCI, b. 21, fasc. 'corrispondenza in partenza'). I documenti richiesti furono trasmessi alla Commissione alla fine di gennaio 1978 (lettera del presidente Orsini ai componenti della Commissione, Roma 26 gennaio 1978, in ASC, FCI, b. 21, fasc. 'corrispondenza in partenza'). Nella relazione conclusiva si legge che 'la motivata richiesta di tale incarto processuale [...] non ha trovato ostacoli, ma anzi è stata accolta con spirito di aperta collaborazione' (CI, RC, p. 43).

[35] Un conflitto di attribuzione tra i poteri dello Stato venne sollevato dinanzi alla Corte costituzionale dai tribunali di Torino e Milano a seguito del reiterato rifiuto, opposto dalla Commissione parlamentare di inchiesta sul fenomeno della mafia in Sicilia, di trasmettere a questi uffici giudiziari alcuni documenti in possesso dell'organo parlamentare. La Corte costituzionale stabilì con la sentenza n. 231 del 1975 che la Commissione 'Antimafia' non aveva l'obbligo di trasmettere ai tribunali i documenti richiesti, in quanto rientrava nella sua potestà il potersi richiamare a un tipo di segreto indicato come 'funzionale', cioè 'funzionalizzato' al conseguimento dei fini assegnati alle Commissioni di inchiesta. M. Rodriquez, 'Il conflitto fra Commissione Antimafia e magistratura: una cronaca costituzionale', in *Diritto e società* 3-4, (1975), pp. 478-517; M. Dogliani, 'Commissione Antimafia e segreto funzionale: i documenti li leggeranno solo gli storici' in *Giurisprudenza Costituzionale* 6, (1975), pp. 3217-26; M. Pisani, 'Appunti sul segreto delle Commissioni parlamentari di inchiesta', ibid. 2, (1976), pp. 251-71.

Giuliana G. Carboni

La funzione finanziaria del Parlamento

1. *Le origini della funzione finanziaria*

Per capire l'importanza della funzione finanziaria del Parlamento[1] è necessario ripercorrere la storia delle istituzioni parlamentari. Una storia che ha avuto inizio nel XII e XIII secolo in Inghilterra, durante il Regno di Enrico III (1216-1272) e Eduardo I (1272-1307), quando il sovrano chiese un contributo ai rappresentanti del Regno per la difesa del territorio.[2] Questi rappresentanti furono inizialmente in numero ristretto, espressione della nobiltà, seguiti dai rappresentanti dei territori. Durante il Regno di Eduardo II (1327-1377) i Comuni divennero un ramo del Parlamento inglese e la imposizione di tasse venne sottoposta ad entrambi i rami. In cambio il re concesse spazi e prerogative, fino a riconoscere alle Camere il potere di fare le leggi. Da questo momento si è instaurata la correlazione tra lo sviluppo delle istituzioni di bilancio e l'evoluzione delle forme (e dei modi di selezione) della rappresentanza politica. Lo sviluppo delle funzioni finanziarie e delle istituzioni parlamentari non fu ne rapido ne lineare, perché il sovrano cercò di sottrarsi al controllo del Parlamento procurandosi risorse con il prestito o esercitando la forza. The Petition of Rights (1627) e The Bill of Rights (1689) contenevano il divieto di imposizione senza il consenso del Parlamento.

La lotta tra la Corona e il Parlamento esemplifica l'altra importante correlazione tra la funzione finanziaria e le istituzioni parlamentari, che riguarda quella che i costituzionalisti chiamiamo la forma di governo, ovvero il rapporto tra gli organi che hanno il compito di indirizzo politico. Per tutto il periodo di formazione e sviluppo dello Stato liberaldemocratico, il Parlamento ha lottato per sottrarre poteri al re e al suo Governo.

Il successivo sviluppo del raccordo Parlamento-Governo nell'ordinamento britannico può essere compreso solo tenendo presenti i caratteri essenziali del circuito democratico della rappresentanza, basato sulla formula elettorale maggioritaria e sul sistema bipartitico. La formula plurality ha consentito ai cittadini inglesi di scegliere i rappresentanti e il governo, assecondando il processo di concentrazione dell'autorità legislativa nelle mani dell'esecutivo. Il two party system descrive lo schema di funzionamento della competizione elettorale, o più semplicemente, i partiti che contano. Per effetto di questo assetto e della formula elettorale un solo partito và al Governo e uno all'Opposizione, in un incessante confronto parlamentare. Il sistema conse-

gna al Governo e alla sua maggioranza la politica di bilancio; l'esecutivo il compito di formulare le expenditure and taxis proposals, da presentare annualmente alla Camera dei Comuni.

Questo sistema nel realizzare il principio dell'auto-imposizione (secondo il quale sono i cittadini contribuenti, o meglio i loro rappresentanti in Parlamento, a decidere sul prelievo fiscale e sulla destinazione delle risorse pubbliche) mette in risalto non tanto la capacità dei rappresentanti di far valere gli interessi dei rappresentati, quanto la responsabilità del decisore e il suo dover rendere conto al termine del mandato delle scelte di governo.

Cosa rimane al Parlamento? Secondo la dottrina inglese, la funzione di controllo sulle proposte governative relative alle entrate e alle spese e sul modo in cui sono state impiegate le risorse.[3] Con l'aiuto del National Audit Office, guidato dal Comptroller and Auditor General, il Parlamento, e in specie il Public Account Committee esercita un controllo amministrativo, del tipo del controllo-verifica.

Nonostante abbia alle spalle una tradizione secolare, la procedura finanziaria del Parlamento di Westminster subisce oggi numerose critiche, che evidenziano la eccessiva complessità e la mancanza di trasparenza del processo di getting and spending.[4]

L'esperienza costituzionale inglese è esemplificativa del legame tra forma di governo e procedure finanziarie, dove è la prima a condizionare le seconde, con la conseguenza che le istituzioni parlamentari devono adeguarsi ai tempi e alle finalità delle forze politiche responsabili dell'indirizzo finanziario, che concorre così a definire i rapporti tra organi di governo.

Ne viene che, a seconda degli ordinamenti, l'indirizzo finanziario oscilla tra legislativo ed esecutivo, in modo da garantire il potere governante, ma senza escludere mai del tutto un ruolo di co-decisione delle assemblee rappresentative.

Questo aspetto, che ha costituito la prospettiva privilegiata di analisi delle procedure decisionali finanziarie,[5] non è più sufficiente per cogliere le molteplici diramazioni della funzione finanziaria. La decisione relativa al reperimento delle risorse, alla spesa e al bilancio, si arricchiscono infatti di nuovi elementi di valutazione, che impongono al decisore nazionale di tenere in considerazione la dimensione locale e quella sopranazionale.

2. *La funzione finanziaria nello Stato 'comunitario'*

A partire dalla seconda metà del XIX secolo la funzione finanziaria del Parlamento si misura con una nuova dimensione dello Stato. Nello Stato 'comunitario'[6] il potere di spesa e di riscossione delle tasse, al quale si è aggiunto il potere di bilancio, è formato da un 'complesso di decisioni con cui annualmente si definiscono le principali scelte allo-

cative, sul versante sia della spesa che dell'entrata, in coerenza (dalla fine degli anni Novanta) con gli obiettivi di finanza pubblica concordati a livello europeo'.[7]

I vincoli europei alle decisioni finanziarie degli Stati membri vennero stabiliti per la prima volta nel Protocollo n. 5 sulla procedura per i disavanzi eccessivi, allegato al Trattato di Maastricht. Gli indicatori ai quali devono fare riferimento gli Stati sono due: l'indebitamento netto, che non deve superare il 3 per cento del PIL, e il debito pubblico, per il quale il limite è del 60 per cento del PIL. L'obiettivo del Trattato era quello di mantenere la stabilità macroeconomica in Europa, per raggiungere il quale sono necessarie finanze pubbliche sane. L'impianto originario è stato conservato nelle versioni successive, tanto che lo stesso Trattato di Lisbona non apporta sostanziali modifiche alla disciplina dei conti pubblici.[8]

La sovrapposizione delle competenze comunitarie e nazionali determina una nuova correlazione tra rappresentanza, potere di bilancio e responsabilità finanziaria. Le istituzioni di governo dell'Unione europea, che esercitano un'influenza diretta sulla politica di bilancio e sulle politiche di settore, sono responsabili nei confronti degli Stati, benché le loro decisioni siano destinate a incidere sugli interessi dei privati (imprese e cittadini).

Gli organi di governo europei cercano di comporre questi interessi in modo da garantire l'efficienza dell'azione, piuttosto che la rispondenza ai titolari di tali interessi. Attraverso la dimensione 'efficiente' della rappresentanza le istituzioni europee ottengono una legittimazione diversa e ulteriore rispetto a quella tipica della dimensione 'identificante'.[9] La legittimazione ad agire in modo efficace deriva dalla finalità del progetto europeo, che si propone di realizzare l'unione economica e politica, alla quale è stato recentemente annesso un progetto di benessere sociale.

Il vincolo europeo sulle finanze pubbliche nazionali ha comportato importanti trasformazioni nel processo di bilancio dei singoli Stati, per cui la lettura delle disposizioni costituzionali deve ora necessariamente tenere conto del diritto di bilancio europeo.

Il potere di controllo sui bilanci nazionali è stato trasferito alla Comunità assieme ad altri poteri di politica economica e monetaria, regolati dal Titolo VI (art. 98 ss TCE), con i quali concorre al raggiungimento dei principi e delle finalità dei Trattati. Tra i poteri riconosciuti alle istituzioni europee in materia di politica economica, il controllo dei disavanzi eccessivi è il più importante e anche quello attualmente più discusso.

Il vincolo europeo sulle situazioni di bilancio e il debito pubblico degli Stati è stato ulteriormente rafforzato dal Patto di stabilità e crescita, formato da regolamenti attuativi e da altri atti degli organi co-

munitari, quali gli orientamenti del Consiglio, le comunicazioni e le conclusioni.[10]

Il Patto, al quale di recente sono state apportate alcune modifiche,[11] 'rafforza il principio della sorveglianza multilaterale e fornisce un'interpretazione restrittiva dei limiti e delle procedure per deficit eccessivo'.[12]

Mentre il divieto di cui all'art. 104 TCE opera in una fase successiva al verificarsi del disavanzo, la sorveglianza ha il compito di prevenire un disavanzo di bilancio. Ogni anno gli Stati presentano alle istituzioni europee un programma di stabilità nel quale sono contenuti i dati macroeconomici e l'obiettivo di bilancio, sulla base del quale il Consiglio europeo e la Commissione valutano l'attendibilità delle informazioni e l'adeguatezza delle misure adottate al raggiungimento degli obiettivi del Patto e, nel caso di scostamento della posizione di bilancio, possono rivolgere allo Stato le opportune raccomandazioni.

Infine, poiché il Trattato non detta meccanismi di definizione di una politica di bilancio comune, il Patto opera in modo da avvicinare le politiche degli Stati membri, che vengono guidate dagli orientamenti di massima per le politiche economiche decisi dal Consiglio. Gli Stati sono obbligati a raggiungere e conservare una serie di obiettivi macroeconomici, per dare stabilità alle loro situazioni finanziarie, nel rispetto delle regole che concorrono a elaborare e applicare attraverso la Commissione e il Consiglio europeo.[13]

Gli Stati membri, che si sono impegnati per salvaguardare la stabilità e a garantire all'Unione finanze pubbliche sane, devono quindi continuare sulla strada delle politiche di contenimento del disavanzo. I parlamenti nazionali esercitano la funzione finanziaria in coerenza con questo obiettivo.

3. *La funzione finanziaria nello Stato decentrato*

Il potere finanziario e la sua assegnazione ai diversi livelli di governo è rimasto a lungo un aspetto poco esplorato dell'organizzazione dello Stato nazionale. Ad esso, per un periodo di tempo che va dalla nascita della Costituzione americana, fino alla metà del XX secolo, si sono interessati gli studi giuridico–comparatistici degli ordinamenti federali, che hanno realizzato la prima forma moderna di organizzazione decentrata dei poteri economico–finanziari, alla quale si sono in vario modo ispirate le altre figure di organizzazione 'federalistica'.[14]

Il problema della distribuzione del potere finanziario all'interno dello Stato federale è stato affrontato all'interno dell'ampio dibattito sulla distribuzione dei poteri, che ha accompagnato la nascita della Costituzione federale degli Stati Uniti (1787).

Nel Federalist,[15] la distribuzione dei poteri fiscali è discussa in particolare da Hamilton, il quale esamina i vantaggi e gli svantaggi che

derivano dall'attribuire alla Federazione i compiti economici e finanziari che in origine erano degli Stati.[16] Dopo aver denunciato la inadeguatezza della situazione nella quale si trovava la Confederazione, per la mancanza di risorse proprie, egli afferma la necessità di istituire un sistema di tassazione federale, la cui definizione è attribuita al Congresso, per dare all'Unione la possibilità di svolgere i compiti attribuiti.[17]

Uno dei più autorevoli avversari dei federalisti, John Calhoun, giurista impegnato nella vita politica, sostenne con rigore la tesi che gli Stati Uniti sono una creazione degli Stati membri, i quali avrebbero perciò il diritto di annullare le leggi e gli atti considerati incostituzionali. In un celebre discorso al Senato, del 1833, egli contestò il potere del Congresso di imporre dazi all'industria e al capitale di una parte del Paese, in quanto ritenuto in contrasto con gli interessi di uno Stato membro.[18]

La teoria di Hamilton ebbe la meglio e la nascita dell'Unione condusse, da subito, al riconoscimento del potere federale di imposizione, all'estensione dei poteri federali in materia economica e finanziaria, e alla concorrenza tra livelli di governo nell'imposizione e nella spesa pubblica. Le idee dei Federalist Papers condizionarono in modo decisivo la nascita della Federazione canadese e di quella australiana, nelle quali la distribuzione dei poteri economico–finanziari è largamente ispirata al nuovo modello organizzativo degli Stati Uniti.

Nel Continente europeo, lo spirito del federalismo si mostrò da subito incline alla struttura piramidale del potere, con l'eccezione dell'esperienza Svizzera, dove non si è mai affermato un forte potere centrale, a causa del ruolo neutrale e del minor peso attribuito alla funzione di difesa esterna.

L'idea di uno Stato che ha il dominio delle competenze si trova tradotta nelle esperienze federali in forma di supremazia fiscale. La Germania imperiale e la Repubblica di Weimar prevedevano una completa supremazia del Reich e la dipendenza dal centro dei Länder; lo stesso può dirsi, a conferma di una comune tradizione costituzionale, della Costituzione austriaca del 1920 e di quella del 1929.[19]

Nelle esperienze europee e nord-americane si può rilevare la non perfetta coerenza tra principio federale, per cui, secondo la celebre definizione di Wheare, 'il governo centrale e quelli regionali di un paese siano indipendenti l'uno dagli altri entro la loro sfera, non siano subordinati l'uno all'altro ma coordinati tra loro',[20] e il sistema di finanziamento e autonomia finanziaria.

Ne è conferma il fatto che, in tutti gli ordinamenti liberaldemocratici che adottano una struttura federale, il parlamento conserva il potere di imposizione fiscale, il controllo finanziario delle spese federali e quello connesso del bilancio; la decisione sulle sovvenzioni agli Stati,

che possono diventare un potente strumento di coordinamento finanziario; la disciplina del commercio e il relativo poter di imporre dazi alle importazioni; il coordinamento dell'esercizio del potere fiscale.

L'organizzazione degli Stati contemporanei ha subito importanti trasformazioni tra la fine del XX e l'inizio del XXI secolo, dovute all'ondata di riforme in senso federale che ha interessato le democrazie europee, ma anche alcuni ordinamenti del costituzionalismo anglo–americano e numerosi paesi in via di sviluppo. Da un lato, Stati tradizionalmente unitari hanno avviato processi di decentramento e Stati regionali sono passati alla forma federale; dall'altro lato gli Stati federali hanno rinnovato la loro struttura e sono alla ricerca di assetti adeguati al nuovo contesto.[21]

La diffusione dei nuovi modelli organizzativi ha comportato l'abbandono del concetto di Stato federale sviluppato tra Sette e Ottocento e l'approdo a Stati che sperimentano idee nuove: come lo Stato autonomico in Spagna e la Devolution nel Regno Unito.

A fronte del generale cambiamento in atto negli Stati contemporanei, si registra una sostanziale continuità nella attribuzione dei poteri finanziari e di bilancio agli organi rappresentativi dello Stato centrale, almeno per quanto riguarda le finanze nazionali. D'altra parte, negli ordinamenti che sperimentano un decentramento di compiti finanziari, seppure in misura limitata, il processo di decisione finanziaria si svolge nelle assemblee rappresentative degli enti decentrati.[22]

4. *Prospettive evolutive della funzione finanziaria*

Le trasformazioni in atto nella dimensione locale e sopranazionale delle organizzazioni statali hanno prodotto importanti cambiamenti nei processo di decisione finanziaria di alcuni Stati dell'Europa comunitaria e nel modo in cui i parlamenti esercitano la funzione finanziaria

Le maggiori democrazie europee hanno risposto ai cambiamenti, intervenuti nell'ordine economico europeo e nell'organizzazione dei poteri a livello comunitario, introducendo strumenti normativi e tecniche di gestione della finanza pubblica adeguate per il migliore utilizzo delle risorse e il raggiungimento degli obiettivi fissati dall'ordinamento europeo.

In questo senso va interpretata l'opera di modernizzazione della legislazione sul bilancio, che ha interessato in modo particolare la Francia e la Spagna, e in misura diversa il Regno Unito, la Germania e l'Italia.

Tutti i paesi considerati conservano alla legge di bilancio una funzione di autorizzazione alla spesa e alla riscossione, che deriva dalla comune matrice liberal-democratica. A questa funzione tradizionale, le riforme hanno aggiunto un bilancio orientato ai risultati, da af-

fiancare a quello contabile e hanno modificato il processo decisionale finanziario, dotandosi degli strumenti necessari per svolgere la funzione di coordinamento e gestione della finanza pubblica.

La Francia e l'Italia hanno portato a termine una riforma parallela della classificazione del bilancio. In Francia la legge organica n. 692 del 1 agosto 2001 ha rinnovato la struttura del bilancio, in modo da trasformarlo da documento contabile nel quale sono riportate le categorie di spesa in un atto nel quale sono evidenziati i risultati della spesa. A tal fine, l'art. 7 ha introdotto i programmi, che raggruppano le spese destinate ad attuare un'azione o un insieme di azioni di un ministero, alle quali vengono associati precisi obiettivi, e che consentono una valutazione dei risultati conseguiti rispetto a quelli attesi.[23] In Italia, la legge n. 94 del 3 aprile 1997 ha innovato i criteri di redazione del bilancio in modo da ridurre le migliaia di voci di classificazione dello stesso a qualche centinaio di unità, sulle quali si eserciterà il voto parlamentare.[24]

La riforma della struttura del bilancio è stata dettata dall'esigenza di modificare le modalità di gestione per introdurvi trasparenza e efficienza. La tendenza è quella a passare da un sistema caratterizzato dall'autorizzazione alla spesa a uno basato sugli obiettivi della spesa. La riorganizzazione del bilancio è stata associata alla riforma amministrativa, e al ripensamento delle funzioni dell'apparato pubblico. Si tratta di riforme che hanno avvicinato il sistema anglosassone a quello continentale, ponendo in primo piano gli obiettivi e non la natura della spesa, l'erogazione dei servizi quale fonte di legittimazione dell'amministrazione in luogo della legge come base del comportamento dell'amministrazione.[25]

Sotto la spinta dei principi comunitari, gli ordinamenti nazionali hanno fatto proprio il principio di stabilità, pur con alcune differenze di rilievo. In Spagna la legge ordinaria n. 18 del 12 dicembre 2001 (Ley General de Estabilidad Presupuestaria) ha imposto il rispetto della stabilità nella elaborazione, approvazione e attuazione del bilancio, e ha individuato quattro principi che devono essere rispettati nella fase di elaborazione e attuazione del bilancio: oltre alla stabilità, la pluriennalità, la trasparenza, l'efficienza.

Il Regno Unito e la Germania hanno tradotto lo stesso principio nella c.d. Golden Rule; in base alla quale l'indebitamento può essere utilizzato solo per gli investimenti e non per le spese correnti.

Tutti gli Stati hanno rafforzato gli strumenti di programmazione, che, salva la diversa durata (tre anni in Spagna, Regno Unito e Italia; 5 in Germania; 4 in Francia), vengono solitamente accompagnati da una serie di documenti informativi sulla situazione dell'economia nazionale.

Sul piano della forma di Stato si nota lo sforzo compiuto dagli ordi-

namenti a struttura decentrata per estendere i principi di buona gestione, efficienza e responsabilità finanziaria a tutti i livelli di governo.

La Spagna ha approvato una legge (Ley Organica n. 5 del 13 dicembre 2001, complementaria a la Ley General de Estabilidad Presupuestaria) che, oltre a prevedere un incremento delle risorse e delle responsabilità delle Comunità Autonome, le impegna a rispettare con le loro politiche di bilancio il principio di stabilità. Per raggiungere l'obiettivo della stabilità la legge ha previsto meccanismi e organi di coordinamento finanziario (Consiglio di Politica Fiscale e Finanziaria delle Comunità Autonome).[26]

In Germania i rapporti tra Bund e Lander sono definisti dalla Legge fondamentale, la cui attuazione è affidata a una legge federale (approvata da entrambi i rami del Parlamento e quindi anche dal Bundesrat, espressione dei Lander). Il coordinamento delle finanze della Federazione e dei Länder è affidato al Consiglio di Pianificazione Finanziaria (Finanzplanungsrat),[27] composto dal Ministro delle Finanze, che lo presiede, dai Ministri delle finanze dei Länder e da 4 rappresentanti dei Comuni e delle Unioni di Comuni. Il Finanzplanungsrat, che ha un ruolo consultivo per la definizione delle politiche di bilancio dei diversi livelli di governo, contribuisce alla definizione del Programma di stabilità e a garantire il rispetto dei vincoli posti dall'articolo 104 del TCE e dal Patto europeo di stabilità e crescita. I pareri del Consiglio, formalmente non vincolanti, hanno acquistato un grande rilievo nei dibattiti parlamentari e presso le istituzioni europee.

L'Italia ha appena concluso il primo atto del processo di attuazione dell'art. 119 Costituzione, e ha approvato una legge delega sull'attuazione del federalismo fiscale (legge n. 42 del 5 maggio 2009) che, oltre a riconoscere maggiore autonomia finanziaria agli enti territoriali, li impegna a contribuire al conseguimento degli obiettivi di finanza pubblica nazionale in coerenza con i vincoli posti dall'Unione europea e dai trattati internazionali.

Volendo compiere una riflessione conclusiva, si può dire che il processo di bilancio dello Stato comunitario, attraverso il quale soprattutto si esercita la funzione finanziaria, si presenta come l'esito della sovrapposizione tra il diritto di bilancio del singolo ordinamento e il diritto di bilancio europeo. La componente statale è dominante per ciò che riguarda il binomio fonti del diritto-forma di governo; l'incidenza dell'ordinamento europeo è evidente per quanto riguarda la programmazione finanziaria e il vincolo di bilancio. Dall'integrazione tra l'ordinamento europeo e gli ordinamenti statali è ragionevole attendersi in futuro la nascita di nuovi principi comuni, quali la stabilità, la trasparenza e l'efficienza, in aggiunta e in sostituzione dei principi tradizionali, quali l'annualità e l'universalità, che appaiono in parte superati.

Attraverso i condizionamenti delle politiche di bilancio l'ordinamento europeo conferisce agli Stati membri uno 'specifico valore aggiunto di efficienza europea',[28] e li costringe ad aprirsi ad un processo d'integrazione che investe l'organizzazione i principi giuridici sui quali è stato costruito lo Stato europeo.

Note

[1] L'espressione rimanda alla classificazione di W. Bagheot, *The English Constitution*, trad. it. *La Costituzione inglese* (Bologna, 1995).

[2] P. Leopold, 'The Westminster Parliament's System of Financial Scrutiny', in G.G. Carboni (a cura di), *La funzione finanziaria del Parlamento* (Torino, 2009), p. 1.

[3] Leopold, 'The Westminster Parliament's System of Financial Scrutiny', pp. 3-4.

[4] A. Brazier, 'The Fiscal Maze: Parliament Government and Public Money', in *Parliamentary Affairs*, (2007), n. 2, pp. 346-355.

[5] Per una lettura in chiave comparata si segnalano, tra i contributi più recenti, F. Bassanini-S. Merlini (a cura di), *Crisi fiscale e indirizzo politico* (Bologna, 1995); G. Di Gaspare, N. Lupo (a cura di), *Le procedure finanziarie in un sistema istituzionale multilivello* (Milano, 2005); M.L. Bassi (a cura di), *Le procedure di bilancio in una prospettiva comparata* (Napoli, 2006); G. Rivosecchi, *L'indirizzo politico finanziario tra Costituzione italiana e vincoli europei* (Padova, 2007).

[6] Cfr. A. Pérez Calvo, 'Le trasformazioni strutturali dello Stato-nazione nell'Europa comunitaria', in *Quad. cost.* (2001), n. 3, pp. 591-604; A. Manzella, 'Lo Stato "comunitario"', in *Quad. cost.* (2003), n. 2, p. 279.

[7] Cfr. M. Degni, *La decisione di bilancio nel sistema maggioritario* (Milano, 2004), p. 22.

[8] Va dato conto del fatto che lo stesso Trattato introduce modifiche alle procedure concernenti il mancato rispetto degli indirizzi e dei vincoli da parte degli Stati membri. In particolare, l'art. 121, paragrafo 4, rafforza il potere della Commissione europea nell'esercizio del potere di avvertimento per mancato rispetto degli indirizzi di massima sulle politiche economiche. L'art. 126, paragrafo 5, conferisce alla stessa Commissione maggiori poteri nell'ambito della procedura di disavanzi eccessivi. G. Rivosecchi, 'L'Europa oltre i parametri, tra vincoli all'indirizzo finanziario degli Stati e (difficile) costruzione di un modello sociale', in Carboni (a cura di), *La funzione finanziaria del Parlamento*, pp. 95-97.

[9] Cfr. S. Bartolini, 'Integrazione europea e rappresentanza politica nazionale', in Associazione per gli studi e le ricerche parlamentari, Quaderno n. 11, Seminario 2000 (Torino, 2001), pp. 47-8.

[10] Sul sistema normativo europeo L. Albino, 'Il sistema delle fonti tra ordinamento interno e ordinamento comunitario', in *Rivista italiana di diritto pubblico comunitario,* (2001), n. 5, pp. 924-978.

[11] Patto di stabilità è l'espressione usata dalle istituzioni comunitarie per richiamare un sistema di norme composto dalla risoluzione del Consiglio d'Europa riunitosi ad Amsterdam il 15 giugno 1997; il regolamento n. 1466 del 1997; il regolamento n. 1467 del 1997. Le modifiche sono state determinate dal regolamento n. 1055 del 2005 e dal regolamento n. 1056 del 2005. Sul fondamento giuridico del Patto G. della Cananea, 'Il Patto di stabilità e le finanze pubbliche nazionali', in *Rivista italiana di diritto finanziario e scienze delle finanze,* (2001), n.4, p. 565; R. Perez, 'I nuovi contenuti del patto di stabilità e crescita', in *Giornale di diritto amministrativo,*(2005), n. 4, pp. 777-782.

[12] Cfr. G. Rivosecchi, 'Il Patto di stabilità al vaglio della Corte di giustizia, tra riaffermazione della legalità comunitaria e mancata giustiziabilità sostanziale degli equilibri finanziari dell'Unione', in www. *associazionedeicostituzionalisti.it*

[13] Cfr. R. Perez, 'Il patto di stabilità e crescita. Verso un Patto di flessibilità?', in *Giornale di diritto amministrativo,* (2002), n. 9, pp. 997-1003 s.

[14] Per questa terminologia G. Bognetti, 'Federalismo', in *Digesto disc. pubbl.*, (Torino, 1991), VI, pp. 273-302.

[15] Si veda, nella traduzione italiana, A. Hamilton, J. Jay, J. Madison, *Il Federalista* (Pisa, 1955).

[16] Il *Federalist* può essere considerato il primo consapevole tentativo di comparazione tra "federalismi" effettuato dopo la nascita dello Stato moderno. R. L. Watts, *The Historical Development of Comparative Federal Studies,* in *www.queensu.ca* (2007), pp. 1-33.

[17] Hamilton, Jay and Madison, *Il Federalista*, n. 15, pp. 90-92.

[18] J. Calhoun: *Against the Force Bill*, *February 5, 1833*, in *www.umsl.edu.* Il discorso seguì l'apertura di una crisi molto grave tra la Federazione e lo Stato del South Carolina, che aveva annullato con ordinanza alcune tariffe federali. Il Congresso, per contro, approvò un *Force Bill*, che autorizzò il Presidente ad usare la forza per far rispettare il potere impositivo federale. Un accodo venne infine raggiunto e recepito nel *Compromise Tariff Bill of 1833.*

[19] R. Bowie and C. Friedrich, *Studies in federalism*, trad. It. *Studi sul federalismo* (Milano, 1959), pp. 425-426.

[20] K. C. Wheare, *The Federal Government*, trad it. *Del Governo federale* (Milano, 1949), p. 182.

[21] B. Caravita, 'Stato federale', in *Dizionario di diritto pubblico*, diretto da S. Cassese, (2006), VI, pp. 5729-5742

[22] Particolarmente interessante, ad esempio, è il caso della *devolution* inglese, che ha dato vita a un processo di sperimentazione istituzionale, che ha riguardato lo Scottish Parliament e la Welsh Assembly, nonché l'assemblea del North Ireland. Il processo finanziario del Parlamento scozzese viene oggi guardato con estremo interesse come possibile modello di riforma del sistema Westminster. Cfr. Leopold, *The Westminster Parliament's System of Financial Scrutiny,* p. 11-12; A Torre, 'Il potere finanziario del Parlamento nel Regno Unito: alcune linee ricostruttive', in Carboni (a cura di), *La funzione finanziaria del Parlamento*, pp. 66-69.

[23] L'art. 7, c. 1, dispone : 'Un programme regroupe les crédits destinés à mettre en oeuvre une action ou un ensemble cohérent d'actions relevant d'un même ministère et auquel sont associés des objectifs précis, définis en fonction de finalités d'intérêt général, ainsi que des résultats attendus et faisant l'objet d'une évaluation'.

[24] P. De Ioanna, C. Goretti, *La decisione di bilancio in Italia* (Bologna, 2008), pp. 161-162.

[25] E. Ornago, 'Modelli per l'analisi comparativa e il trasferimento di esperienze estere in materia di riforma dei sistemi di management pubblico', in F. Pezzani (a cura di), *Logiche e strumenti di accountability per le Amministrazioni Pubbliche* (Milano, 2005), pp. 27-29.

[26] L. Aguiar de Luque, G.Rosado Iglesias, 'La estabilidad presupuestaria y su eventual proyección en el Estado de las Autonomias', in *Cuadernos de Derecho Público,* (2001), n. 12, pp. 9-12..

[27] Il Consiglio è disciplinato dall'articolo 51 della Legge tedesca sui principi di bilancio (*Haushaltsgrundsatzegesetz*) e ha funzioni di coordinamento delle finanze della Federazione (*Bund*), degli Stati (*Länder*), dei Comuni (*Gemeinden*) e delle Unioni di Comuni (*Gemeindeverbände*). Alle riunioni del *Finanzplanungsrat* partecipa normalmente anche un rappresentante della *Deutsche Bundesbank.*

[28] Cfr. Manzella, 'Lo Stato "comunitario"', p. 277.

Antonio M. Morone

Trapianto istituzionale e circolazione del modello parlamentare italiano nella Somalia sotto tutela internazionale

Con la firma della pace di Parigi il 10 febbraio 1947, la nuova Italia repubblicana rinunciò formalmente alle colonie africane che aveva perso durante la seconda guerra mondiale. La sistemazione degli ex possedimenti rimase tuttavia una delle questioni più controverse della politica estera italiana post-bellica fino alla dichiarazione che il ministro degli Esteri Carlo Sforza rese il 1° ottobre 1949 al Comitato politico delle Nazioni Unite, auspicando l'indipendenza immediata di Eritrea e Libia, nonché quella della Somalia dopo un'adeguata opera di preparazione politica e istituzionale.[1] L'approvazione all'Assemblea Generale delle Nazioni Unite della risoluzione n. 289 del 21 novembre 1949 dispose l'indipendenza della Libia e assegnò all'Italia l'amministrazione fiduciaria, o *trusteeship*, sulla Somalia. A distanza di quasi un anno, la risoluzione n. 390 del 2 dicembre 1950 dichiarò infine l'Eritrea unità federata autonoma dell'Etiopia. In comparazione con gli altri mandati internazionali, quello assegnato all'Italia fu l'unico caso nel quale l'ex potenza coloniale sconfitta ritornava in colonia sotto le nuove vesti di potenza fiduciaria e perciò l'Accordo di tutela pose vicoli particolarmente stringenti a carico dell'amministratore: l'impegno a predisporre l'indipendenza somala entro un decennio e il rispetto di precisi principi democratici nell'attività di amministrazione sotto il controllo di un apposito organo internazionale costituito a Mogadiscio, l'United Nation Advisory Council of Somalia (UNACS).[2]

Nonostante un fondo intrinsecamente paternalistico, l'Amministrazione Fiduciaria Italiana della Somalia (AFIS), con i suoi obiettivi di progresso politico, sociale ed economico garantiti internazionalmente, divenne una sorta di prova di recupero attraverso la quale la nuova Italia repubblicana cercava di dimostrare nei fatti la sua volontà di 'collaborazione disinteressata all'opera di pace e civiltà delle Nazioni Unite'.[3] I frutti attesi dalla nuova politica in Somalia vennero intesi al di là del mandato ONU per acquisire meriti nel generale riassetto della politica estera italiana, su un piano di parità e di sviluppo reciproco, verso i paesi dell'Africa e dell'Asia, con particolare riferimento a quelli 'arabi'.[4] Per conseguire gli obiettivi politici che la nuova Italia repubblicana cercava in Somalia, l'AFIS era chiamata a un processo di State Building, che avrebbe dovuto necessariamente correlarsi con quello di Nation Building guidato dal movimento nazionale somalo.

Lo scopo e la funzionalità dell'amministrazione fiduciaria erano rispettivamente la preparazione del territorio all'indipendenza entro il termine perentorio di un decennio e la predisposizione dell'architettura istituzionale del futuro Stato somalo. Tale funzionalità si riassunse nel trapianto istituzionale, ovvero l'esportazione nel territorio di organi, procedure e processi moderni in base al modello giuridico e all'esperienza amministrativa del paese amministratore. In parallelo la spinta a un'evoluzione in senso moderno delle istituzioni tradizionali somale intendeva incorporarle nel complesso di quelle trapiantate, centrali e locali. A tale fase sarebbe seguita una graduale riforma politica, che avrebbe trasformato da consultive in elettive le nuove istituzioni fiduciarie, dotandole di poteri deliberativi.[5] Per un verso era scontato il prestito dal modello dell'ex madrepatria, passata per la nuova stagione costituente anti-fascista, per l'altro la società somala era chiamata, non senza fratture e traumi, a passare da un diritto personale consuetudinario (*xeer*) e islamico (*sharī' a*) a un nuovo ordinamento giuridico territoriale moderno. L'efficacia e i risultati finali del trapianto sarebbero dipesi infine da diverse variabili sulle quali l'amministrazione italiana poteva incidere, ma che non controllava fino in fondo: bontà del modello originario; progettualità del trapianto; acclimatamento degli organi trapiantati e 'specificità sulle quali si innestava il nuovo modello'.[6]

La struttura amministrativa dell'AFIS fu pensata in modo che 'l'ordinamento giuridico italiano costituisse il presupposto e la fonte di quello somalo, che rimase subordinato al primo, ma con un proprio ambito autonomo'.[7] Fonti principali dell'ordinamento fiduciario furono l'Accordo di tutela con l'annesso Allegato dei principi costituzionali e l'ordinamento politico-amministrativo della Somalia che si innestarono con un'esigenza di coordinamento e di innovazione sul complesso di norme di natura personale (*sharī' a* e *xeer*) e di natura territoriale (norme coloniali italiane e British Proclamations) che formavano l'ordinamento somalo nel 1950.[8] L'unitarietà di tale ordinamento fu garantita attraverso la continuità legislativa di tutte le norme allora in vigore, se non espressamente abrogate, modificate o sospese, come fu il caso di alcuni proclami del periodo di occupazione militare britannico e di altre norme razziste di epoca fascista.[9] A regolare il rapporto tra l'ordinamento fiduciario e quello italiano era per un verso un atto recettizio del legislatore fiduciario o per l'altro un atto di estensione da parte del legislatore italiano della norma nazionale all'ordinamento fiduciario.[10] Il progressivo distacco dell'ordinamento somalo da quello italiano avrebbe portato al definitivo passaggio dall'autonomia alla vera e propria indipendenza. Gli organi fiduciari via via trapiantati potevano dunque considerarsi al tempo stesso organi

dell'AFIS e del futuro Stato somalo *in fieri* nella prospettiva del processo di State Building fiduciario.[11]

Gli organi italiani competenti in campo fiduciario erano il Parlamento in ambito legislativo; il presidente della Repubblica, che nominava, su proposta governativa, l'amministratore, il segretario generale dell'AFIS e il presidente della Corte di giustizia di Mogadiscio; il governo a cui spettava la direzione dell'AFIS, per il tramite dell'amministratore, la responsabilità delle relazioni estere somale con paesi terzi e la difesa del territorio; la Corte di cassazione, la Corte dei conti e il Consiglio di Stato, che estesero le loro competenze all'ordinamento fiduciario. La forte discontinuità nei confronti dell'ordinamento coloniale impressa dalla proiezione dell'ordinamento fiduciario verso l'indipendenza e dalla suddivisione delle competenze tra i diversi poteri coinvolti nella gestione dell'AFIS fu nella pratica fortemente ridimensionata dalla replica dello schema amministrativo di epoca coloniale con un doppio accentramento del potere: in Somalia nelle mani dell'amministratore e in Italia in quelle del Ministero degli Affari Esteri.

La preminenza del governo e in particolare del MAE nella gestione dell'AFIS si concretizzò fin da subito: la Legge 4 novembre 1951, n. 1301, che ratificava l'Accordo di tutela e disponeva le risorse finanziarie per la gestione dell' amministrazione fiduciaria delegava il governo a dare piena esecuzione entro un anno all'Accordo medesimo.[12] Il Parlamento italiano, pur mantenendo formalmente la piena competenza sull'AFIS, si limitò a questo primo provvedimento quadro, chiamandosi fuori da ogni ulteriore significativo atto legislativo in materia fiduciaria con l'eccezione delle leggi per l'approvazione dei bilanci annuali, consuntivi e preventivi.[13] L'ulteriore attività legislativa durante il decennio fiduciario venne svolta a mezzo di decreti del governo italiano, ma soprattutto attraverso i poteri dell'amministratore che fu la vera figura centrale dell'ordinamento fiduciario in stretto collegamento con il MAE. Al potere di ordinanza (atto con forza di legge) l'amministratore combinava un vasto potere regolamentare nell'esercizio della funzione di governo e di nomina dei vertici dell'amministrazione centrale e periferica (commissari e residenti delle diverse circoscrizioni territoriali), nonché del comandante del Corpo di Sicurezza, responsabile della difesa del paese.

Sotto la progettualità del MAE e la guida dell'amministratore il trapianto istituzionale si mosse dalla periferia al centro del sistema amministrativo. La Circolare n. 22809 del 27 luglio 1950 istituì in tutte le circoscrizioni rurali della Somalia i Consigli di residenza, composti da rappresentanti nominati dal residente su proposta dei partiti politici o più spesso dei notabili somali, a causa della scarsa presa dei moderni partiti politici al di fuori dei maggiori centri del paese.[14] I Consigli ave-

vano competenze consultive su materie locali in aggiunta all'importante funzione di designare i candidati che per nomina dell'amministratore avrebbero rappresentato la società tradizionale della Somalia rurale al Consiglio territoriale, l'organo consultivo centrale, che fu istituto dall' Ordinanza n. 144 del 30 dicembre 1950 e che rappresentava *in fieri* il futuro Parlamento somalo.[15] Dei 35 consiglieri territoriali complessivi erano quasi due terzi quelli nominati su proposta dei Consigli di residenza, mentre la componente espressione diretta di partiti politici era minoritaria, seppur le riforme del 1952 e del 1953 ne decretarono un progressivo incremento. L'impostazione scontava una contraddizione che rimase irrisolta durante il percorso del trapianto e della successiva democratizzazione e che consisteva nel domandare alla società somala tradizionale rappresentata nel Consiglio territoriale o nei Consigli locali di appoggiare il processo di riforma modernizzatrice, spesso contro le stesse regole e interessi delle istituzioni tradizionali e in favore del moderno nazionalismo partitico.

Al trapianto nelle circoscrizioni rurali dei Consigli di residenza seguì con l'Ordinanza n. 10 del 6 giugno 1951 quello nelle circoscrizioni urbane o semi-urbane attraverso l'istituzione di un'Amministrazione dei servizi municipali presso ogni capoluogo di residenza e vice-residenza. Ogni amministrazione venne posta sotto la guida del residente competente, coadiuvato da una Consulta municipale composta da un minimo di 6 a un massimo di 12 membri, scelti tra i notabili somali o le categorie economiche e professionali, il cui parere doveva necessariamente essere sentito per gli affari economici e i lavori pubblici.[16] Solo nel caso di Mogadiscio l'Amministrazione, retta da un commissario nominato dall'amministratore, prevedeva una Consulta composta in parte anche da rappresentati politici, ma pur sempre senza alcuna competenza in materia politica.[17]

L'elezione delle Consulte municipali segnò il passaggio dalla fase del trapianto istituzionale a quella della riforma politica.[18] La legge elettorale, disposta dal Decreto dell'amministratore n. 168 del 26 dicembre 1953, sanciva il suffragio diretto universale maschile, adottando un sistema proporzionale e fissando nel contempo le consultazioni per il 28 marzo 1954.[19] Alla riforma elettorale seguì una progressiva estensione delle competenze dei Consigli, che acquisirono potestà deliberativa in materia di bilancio, imposte, alienazione di beni, lavori pubblici e contratti. Inoltre la direzione degli affari municipali fu trasferita dal residente a un commissario che veniva nominato dall'amministratore e, dove possibile, scelto tra elementi somali. La riforma conclusiva delle municipalità arrivò con la Legge n. 9 del 30 settembre 1956, che istituì Giunta municipale e sindaco e introdusse i bilanci locali, rendendo finanziariamente indipendente le amministrazioni locali.[20]

Il processo di riforma politica iniziò in ambiente urbano dove era maggiormente sviluppato l'elemento politico e partitico che rappresentava il necessario interlocutore per le istituzioni neotrapiantate. Ben diverso, e nel complesso più difficile e parziale, si sarebbe rivelato il processo di trapianto e riforma nell'interno del territorio, abitato da popolazioni nomadi o semi-nomadi dove gli stessi partiti politici somali avevano una diffusione solo molto parziale e gli interlocutori principali rimanevano i referenti delle istituzioni tradizionali. Tuttavia il raccordo tra le due dimensioni era irrinunciabile per quel progetto democratico di cui l'AFIS si faceva portatrice nell'intento 'di creare nelle masse una coscienza cittadina che fosse artefice della vita del paese'.[21]

Alle elezioni municipali del 1954 seguì la costituzione dei Consigli distrettuali che sostituirono i Consigli di residenza. I nuovi Consigli 'coadiuvano il capo distretto nell'amministrazione della popolazione e in tutte le materie che interessano la circoscrizione territoriale ed esprimono il loro parere su tutti quegli argomenti che il capo del distretto ritiene opportuno sottoporre al loro esame', in particolare 'questioni legate all'agricoltura, alla pastorizia, alla zootecnia, alla pesca, alla caccia e allo sviluppo economico in generale; sui problemi relativi al commercio; pubblica istruzione; confini e consuetudini locali'.[22] I Consigli distrettuali ereditarono da quelli di residenza anche le funzioni di rappresentanza della periferia somala nelle istituzioni centrali che nell'ottica della riforma politica si concretizzarono nell'elezione tra il settembre e il novembre 1955 dei cosiddetti 'rappresentanti elettorali': il voto indiretto delle circoscrizioni rurali si sarebbe poi combinato con quello diretto delle circoscrizioni urbane, previsto per il 29 febbraio 1956. Il ricorso a un sistema elettorale misto, a suffragio universale maschile,[23] fu più una necessità che una scelta prima di tutto a causa della mancanza di dati statistici attendibili per la compilazione degli elenchi elettorali nelle aree rurali.[24] La Somali Youth League (SYL), il maggiore partito del paese, protestò chiedendo di rinviare il voto finché non si fosse realizzato il censimento generale della popolazione, facendone un punto irrinunciabile sulla via della modernità e del superamento delle logiche particolaristiche o claniche.[25] Il compromesso adottato dall'AFIS passò per 'l'istituzione di nuove municipalità e l'allargamento delle circoscrizioni di alcune di quelle già esistenti allo scopo di fare partecipare alla votazione diretta un numero maggiore di abitanti'.[26]

L'Assemblea legislativa, eletta con il sistema di voto diretto e indiretto, fu inaugurata il 30 aprile 1956 in sostituzione del Consiglio territoriale. Il nuovo organo acquisì una potestà legislativa concorrente a quella dell'amministratore, che manteneva un potere di veto nella promulgazione dei provvedimenti legislativi.[27] All'elezione del primo Parlamento somalo seguì la formazione del Governo, istituito con la

Legge n. 1 del 7 maggio 1956 e insediatosi ufficialmente il 17 maggio 1956, sotto la presidenza di Cabdullaahi Ciise Maxamuud.[28] Il primo ministro, *primus inter pares*, decideva la politica generale del Governo e manteneva l'unità d'indirizzo politico-amministrativo dei ministri, sotto il vincolo del legame di fiducia con l'Assemblea. Il Parlamento somalo aveva piena facoltà di delega legislativa verso il Governo, che a sua volta, nei casi di necessità e di urgenza, poteva ricorrere alla legislazione per decreto-legge, sotto condizione che poi il provvedimento venisse convertito in legge dall'Assemblea. Rimasero di competenza esclusiva dell'amministratore italiano e dunque sottratte alla potestà delle neonate istituzioni somale il bilancio fino al 1957 e gli affari esteri in aggiunta alla difesa fino all'indipendenza nel 1960. Salvo queste eccezioni, l'amministratore modificava le sue prerogative da quelle di organo legislativo ed esecutivo monocratico, come erano i governatori coloniali, a quelle di un capo di Stato in regime costituzionale puro, non avendo nessuna legittimazione popolare e nominando i membri del Governo al di fuori di un rapporto diretto di fiducia con il Parlamento.

In campo giudiziario il trapianto procedette lentamente, tanto da portare a una sostanziale commistione tra potere giudiziario e potere esecutivo, come avveniva durante il periodo coloniale: le funzioni giudiziarie vennero espletate direttamente dai commissari e residenti, in deroga a ogni principio di garanzia. All'istituzione nel 1952 della Corte d'appello e di quella d'assise d'appello a Mogadiscio, seguì l'anno successivo quella dei Tribunali distrettuali e regionali.[29] Tuttavia la scarsità di giudici portò a soluzioni contingenti per le quali le funzioni giudiziarie continuarono a essere esercitate da funzionari di governo, seppur differenti da commissari e residenti. Neppure con l'Ordinanza n. 13 del 2 agosto 1954 che istituiva il giudice regionale il problema venne definitivamente risolto sempre per la mancanza di personale qualificato.[30] La sistemazione organica della materia arrivò solo con l'Ordinanza n. 5 del 2 febbraio 1956,[31] che in particolare istituiva la Corte di giustizia al vertice dell'amministrazione giudiziaria con giurisdizione sui conflitti di attribuzione di competenze; sui ricorsi per incompetenza; sui conti; sulla regolamentazione della magistratura. Non era prevista nessuna attribuzione in materia di sindacato di costituzionalità, in ragione della specificità dell'ordinamento fiduciario. La Legge n. 10 del 19 febbraio 1958 razionalizzava infine in un unico testo legislativo la gerarchia della piramide giudiziaria.[32]

Tra il 1957 e il 1960 si realizzarono gli ulteriori passaggi istituzionali attraverso i quali si ultimò la devoluzione dei poteri fino al traguardo dell'indipendenza. Stralciando il problema dello *status* delle comunità minori (arabi, italiani e indo-pakistani),[33] la Legge n. 2 del 1° dicembre 1957 regolamentò la materia della cittadinanza origina-

ria secondo il principio dello *ius sanguinis* in un'accezione ampia che coerentemente alle istanze per l'unione di tutti i territori somalofoni si rivolgeva a ogni somalo a prescindere dalla sua effettiva residenza nella Somalia sotto tutela italiana.[34] In occasione del rinnovo delle Giunte municipali durante le consultazioni del 20 ottobre 1958 venne approvata la nuova legge elettorale che introduceva il suffragio universale diretto, maschile e femminile, in tutto il territorio, mantenendo invariato il sistema proporzionale.[35] L'adozione del voto diretto in vista delle politiche del 1959 anche nelle circoscrizioni rurali avvenne senza che il tentativo per un nuovo censimento generale nel 1957 andasse a buon fine,[36] ma sull'onda delle pressioni sia dei partiti somali, sia delle Nazioni Unite.[37] In mancanza dei registri, il riconoscimento del requisito elettorale, sceso al 18° anno di età per il voto attivo, 'è fatto dal seggio con procedimento sommario, sulla base di documenti, testimonianze o ogni altro mezzo di prova' e, al fine di evitare brogli, 'a ogni votante è apposto un segno di inchiostro indelebile sul palmo della mano'.[38]

A coronamento dell'esperimento fiduciario si aprì la fase costituente con un primo progetto promosso dall'AFIS e redatto prevalentemente da giuristi italiani, che tuttavia fu accantonato sia per la scadenza del primo mandato parlamentare, sia per le istanze di maggiore autonomia progettuale invocate in campo somalo.[39] Il nuovo Parlamento, eletto nel marzo 1959, venne integrato con alcuni rappresentanti delle categorie economiche, professionali e culturali per formare l'Assemblea Costituente, che approvò il testo finale a ritmi serrati dal 23 maggio al 21 giugno 1960. L'amministrazione italiana si astenne formalmente da ogni interferenza nel processo costituente, rinunciando con la Legge n. 6 del 8 gennaio 1960 alle sue prerogative di sanzione dell'atto fondamentale dell'ordinamento somalo.[40] Tuttavia l'influenza italiana fu amplissima sia per la partecipazione alle sedute dell'Assemblea Costituente di esperti italiani, coordinati da Mario D'Antonio,[41] sia perché la versione finale della carta somala fece propria gran parte del primo progetto che scontava una forte impronta italiana, nonostante la circolazione dei modelli costituzionali fosse stata in effetti più ampia.[42] L'innovazione di maggior peso rispetto al primo progetto fu il carattere confessionale islamico attribuito all'ordinamento e l'inclusione dei principi generali del diritto islamico tra le fonti di rango costituzionale.[43]

La devoluzione degli ultimi poteri residui mantenuti dall'AFIS seguì le linee tracciate nel cosiddetto 'Piano di trasferimento dei poteri'. L'amministratore rinunciò al potere di sanzione legislativa, detenendo solo quello di promulgazione, compatibilmente ai poteri normalmente attribuiti a un capo di Stato. Vennero inoltre trasferite le competenze relative agli Esteri e alla Difesa, esercitate ancora dal Gabi-

netto dell'amministratore. Fu infine eletto il capo di Stato provvisorio, Adaan Cabdulle Cisman, che proclamò l'indipendenza del paese il 1° luglio 1960, contestualmente alla firma dell'Atto di Unione con il British Somaliland, indipendente dal 26 giugno 1960. Dall'unione dei 90 deputati dell'ex Somalia italiana con i 30 del Somaliland nacque il primo parlamento somalo indipendente, che confermò Adaan Cabdulle Cisman alla presidenza della Repubblica.

Il parlamentarismo monocamerale somalo rappresentò un tentativo ardito di ingegneria istituzionale nel più generale orientamento di indirizzo presidenziale di molti paesi africani, ma ancora prima dell'indipendenza il sistema multipartitico che ne doveva sostenere nella pratica la funzionalità aveva dato prova di una forte tensione in senso monopolistico, relegando di fatto le diverse anime dell'opposizione a forze antisistema.[44] La Costituzione e in parte il più ampio ordinamento nato dall'esperimento fiduciario furono strutture sovrimposte alla società somala, senza radici, e che portarono a uno stacco evidente tra 'intenzione e realizzazione'.[45] L'acclimatamento che avrebbe dovuto minimizzare gli inconvenienti del trapianto e della compatibilità tra istituzioni alloctone e società autoctona fu insufficiente per il ricorso a soluzioni spesso pre-stabilite e pre-ordinate che da un lato ignorarono la persistenza delle istituzioni tradizionali e dall'altro proposero soluzioni troppo sofisticate per la società ricevente. Scollegando gli istituti dalla società tradizionale attraverso il trapianto e ricollegandoli problematicamente al nuovo contesto delle istituzioni moderne, l'effetto ultimo dell'esperimento fiduciario fu l'instabilità delle nuove istituzioni trapiantate e la destabilizzazione degli elementi coesivi della società somala tradizionale (*xeer* e *sharī' a*).

I risultati parziali che furono conseguiti nel campo della somalizzazione, ovvero nella progressiva sostituzione dei funzionari italiani con altrettanti somali appositamente formati, svelavano inoltre tutta la limitatezza di un trapianto che non si accompagnava di pari passo con una reale modernizzazione della società, prima di tutto in termini culturali. Anteporre il trapianto alla modernizzazione si rivelò complesso, ma d'altra parte i tempi ristretti nei quali agì l'AFIS, unitamente a un'attenzione decrescente che il governo italiano destinò al mandato somalo, difficilmente avrebbero potuto permettere di raggiungere risultati significativamente diversi. Nella prospettiva italiana, il decennio dell'AFIS costituì l'apice dell'italianizzazione dell'ordinamento somalo, non solo per l'impronta data alla Costituzione, ma anche per il processo di codificazione che seppur incompleto portò a risultati significativi.[46] Tuttavia l'influenza italiana era destinata a una crescente contrazione già al momento dell'indipendenza e dell'unione tra Somalia e British Somaliland con l'accoglimento nell'ordinamento somalo unificato di numerosi istituti di *common law*.

Note

[1] Il testo più completo per la ricostruzione della vicenda politico-diplomatica delle ex colonie è G. Rossi, *L'Africa italiana verso l'indipendenza. 1941-1949* (Milano, 1980). Per uno studio di sintesi si veda G. Calchi Novati, 'Mediterraneo e questione araba nella politica estera italiana', in F. Barbagallo (a cura di), *Storia dell'Italia repubblicana* (Torino, 1995), vol. II. Un approfondimento sulle complesse vicende che portarono alla liquidazione della politica e delle istituzioni coloniali italiane in A. M. Morone, 'L'eredità del colonialismo per la nuova Italia', V. F. Gironda, M. Nani e S. Petrungaro (a cura di), *Imperi coloniali. Italia, Germania e la costruzione del "mondo coloniale"*, *Novecento* (nuova serie), 1 (2009).

[2] Sul *Trusteeship System* W. Bain, *Between Anarchy and Society, Trusteeship and the Obligation of Power* (Oxford, 2003). Per un approfondimento sul caso italiano in Somalia: A. Morone, 'L'Onu e l'Amministrazione fiduciaria italiana in Somalia. Dall'idea all'istituzione del trusteeship', *Italia Contemporanea*, 242 (2006).

[3] J.-L. Miège, *L'imperialismo coloniale italiano dal 1870 ai giorni nostri* (Milano, 1976); ed. originale: *L'impérialisme colonial italien de 1870 a nos jours* (Paris, 1968), p. 285.

[4] Archivio Storico del Ministero degli Affari Esteri (d'ora in poi ASMAE), fondo della Direzione Generale dell'Amministrazione Fiduciaria Italiana in Somalia (d'ora in poi DGAFIS), b. 19, f. 28, verbale della prima riunione dei Commissari regionali, Mogadiscio, 25-27 luglio 1950. La citazione è dell'amministratore Giovanni Fornari. In letteratura la medesima tesi è sostenuta da S. Touval, *Somali Nationalism* (Cambridge, 1963), pp. 170-171.

[5] A. A. Castagno, 'Somalia', *International Conciliation*, March (1959), p. 350.

[6] M. Guadagni, 'Trapianto e rigetto dei modelli giuridici', in E. Grande (ed.), *Transplants Innovation and Legal Tradition in the Horn of Africa* (Torino, 1995), p. 20.

[7] Archivio Storico di Casale Monferrato (d'ora in poi ASCM), fondo personale dell'on. Giuseppe Brusasca (d'ora in poi GB), b. 32, f. 10, promemoria sui provvedimenti legislativi per l'attuazione dell'amministrazione fiduciaria della Somalia, Roma, 16 marzo 1950.

[8] Ordinanza n. 47 del 22 luglio 1950, *Bollettino Ufficiale dell'Amministrazione Fiduciaria Italiana in Somalia* (d'ora in poi *BUAFIS*), 5 (1950).

[9] Ordinanza n. 5 del 12 aprile 1950, *BUAFIS*, sup. 1 al 4 (1950).

[10] Sull'ordinamento coloniale italiano rimane fondamentale G. Mondaini, *La legislazione coloniale italiana nel suo sviluppo storico e nel suo stato attuale. 1881-1940* (Milano, 1941), vol. I, pp. 227-364.

[11] R. Meregazzi, *L'amministrazione fiduciaria italiana della Somalia* (Milano, 1954), pp. 11-41.

[12] *BUAFIS*, 1 (1951).

[13] La delega fu esaurita con l'emanazione dell'ordinamento territoriale dell'AFIS, che fissava le attribuzioni dell'amministratore e degli altri organi fiduciari; dell'ordinamento amministrativo-contabile e dell'ordinamento del personale italiano, rispettivamente con i tre DPR nn. 2357, 2358, 2359 del 9 dicembre 1952, *BUAFIS*, 1 (1953).

[14] L'affiliazione clanica su base agnatica costituisce il fondamento della società acefala dei somali, attraverso un complicato schema che a partire dai due gruppi principali si dirama in diversi sotto-gruppi (*tol*), divisi a loro volta in molte famiglie (*reer*). Ai sab appartengono i dighil e rahanweyn, mentre dai samaale discendono gli hawiye, i daarood, i dir e, a un livello subordinato, gli issaq. I sab e parte degli hawiye condividono una tradizione di coltivazione della terra lungo le valli dei fiumi Juba e Shabelle, mentre gli altri clan sono storicamente dediti alla pastorizia nomade o semi-nomade e si considerano superiori agli agricoltori. I. M. Lewis, *Understanding Somalia* (London, 1993), pp. 48-49; per una trattazione più approfondita si veda Id., *Una democrazia pastorale* (Milano, 1983). Inoltre M. Guadagni, *Xeerka Beeraha. Diritto fondiario somalo:*

le terre agricole dal regime consuetudinario e coloniale verso la riforma socialista (Milano, 1981).

[15] *BUAFIS*, 12 (1950).

[16] *BUAFIS*, sup. 1 al 6 (1951).

[17] L'amministrazione di Mogadiscio fu stabilita in modo autonomo dall'Ordinanza n. 9 del 6 giugno 1951, Ibidem.

[18] Ordinanza n. 18 del 20 dicembre 1953, *BUAFIS*, sup. 2 al 12 (1953).

[19] Il diritto di voto attivo fu riconosciuto ai maggiori di 21 anni residenti nella stessa circoscrizione da almeno un anno. Per godere del diritto di voto passivo occorreva avere almeno 25 anni, saper leggere e scrivere in italiano o arabo, essere incensurati e non essere impiegati nella medesima municipalità per la quale si concorreva. *BUAFIS*, sup. 3 al 12 (1953).

[20] *BUAFIS*, 9 (1956).

[21] La citazione è tratta dal discorso inaugurale tenuto dall'amministratore Fornari alla prima sessione del Consiglio territoriale, 29 gennaio 1951. ASCM, GB, b. 46, f. 278, schema del parere espresso dal Consiglio territoriale sull'istituzione dei Consigli municipali del 28 aprile 1951, allegato al verbale della riunione n. 18 del Consiglio territoriale, 16 maggio 1951.

[22] Art. 18 dell'Ordinanza n. 5 del 30 marzo 1955, *BUAFIS*, sup. 1 al 4 (1955).

[23] Ordinanza n. 6 del 31 marzo 1955, *BUAFIS*, sup. 2 al 4 (1955).

[24] I dati del censimento effettuato nel 1931 erano 'sommari e di scarsissima attendibilità'. Archivio Storico del Ministero dell'Africa Italiana, fondo Statistica, b. 1, f. 3, missione del Prof. Morgantini nel Mudugh e nella Migiurtinia 22 novembre – 22 dicembre 1950, Mogadiscio, n. prot. 439509, 9 gennaio 1951. Un nuovo censimento generale non fu neppure intrapreso per le difficoltà tecniche o forse per precisi disegni politici: P. Tripodi, *The Colonial Legacy in Somalia* (London, 1999), p. 79. Furono così censite solo le aree urbane, come disposto dall'Ordinanza n. 17 del 30 ottobre 1952, *BUAFIS*, 11 (1952).

[25] ASMAE, DGAFIS, b. 4, f. 24, verbale della riunione n. 12 del Consiglio territoriale, 24 marzo 1955.

[26] ASMAE, AFIS, b. 9, f. 9, breve cronistoria di come si è giunti alla tenuta degli *scir* per l'elezione dei capi (istituzione dei Consigli distrettuali) e per l'elezione del Consiglio territoriale, a firma di Guido Natali, s. d.

[27] Sulla base del regolamento approvato con l'Ordinanza n. 1 del 5 gennaio 1955, *BUAFIS*, sup. 1 al 1 (1956), la funzione legislativa veniva esercitata dall'Assemblea attraverso la costituzione di commissioni parlamentari, che però non avevano potere deliberativo: questa fu la principale differenza nei confronti dell'ordinamento italiano di riferimento, giustificata 'dall'inesperienza dei rappresentanti somali' nell'esercizio della pratica parlamentare. ASMAE, DGAFIS, b. 9, f. 6, telespr.so n. 90/6622 dalla DGAFIS a Mogadiscio, 15 dicembre 1955.

[28] *Bollettino Ufficiale della Somalia* (d'ora in poi *BUS*), 5 (1956).

[29] Ordinanza n. 7 del 22 maggio 1953, *BUAFIS*, sup. 2 al 6 (1953).

[30] *BUAFIS*, sup. 1 al 8 (1954).

[31] *BUAFIS*, 2 (1956).

[32] *BUS*, 2 (1958): *Qādi*, Tribunale del *qādi*, Giudice distrettuale, Giudice regionale, Giudice d'appello, Corte d'assise, Corte d'assise d'appello e Corte di giustizia.

[33] La questione venne regolata successivamente dalla Legge n. 9 del 12 febbraio 1960, *BUS*, sup. 4 al 2 (1960).

[34] 'Ogni persona di lingua e nazionalità somala, anche se non originario del territorio, può, a domanda, acquistare la cittadinanza somala, purché dimostri di aver trasferito definitivamente il proprio domicilio e la propria residenza nel territorio e di aver rinunciato a un'eventuale cittadinanza diversa': art. 5, Legge n. 2 del 1° dicembre 1957, *BUS*, 2 (1958).

[35] Legge n. 26 del 12 dicembre 1958, *BUS*, sup. 2 al 12 (1958).

[36] Per il segretario generale dell'AFIS, 'un censimento vero e proprio non si può fare

neppure da qui a tre anni'. ASMAE, DGAFIS, b. 9, f. 6, verbale della riunione n. 25 dell'Assemblea legislativa, 15 luglio 1958.

[37] ASMAE, DGAFIS, b. 9, f. 4, telespr.so n. 6188 dal Gabinetto dell'AFIS al MAE, 24 marzo 1958.

[38] ASMAE, DGAFIS, 9/4, Circolare n. 1 da Xaaji Muuse Boqor a tutti i funzionari dell'amministrazione periferica, 12 dicembre 1958. Xaaji Muuse Boqor era il ministro degli Interni.

[39] Tra gli estensori ricordo in particolare Giuseppe Aurelio Costanzo docente alla Sapienza e presidente dell'Istituto Superiore di Mogadiscio; Dino Fiorot docente all'Università di Padova e all'Istituto Superiore; Giuseppe Finocchiaro, giudice dalla Corte di cassazione e presidente della Corte di giustizia di Mogadiscio; Renato Angeloni e Carlo Gentilucci, magistrati di Corte d'appello italiana e consiglieri della Corte di Giustizia somala; Carlo Prisco, magistrato di tribunale italiano e pubblico ministero in Somalia; Vincenzo Mellana, magistrato italiano e giudice d'appello della Somalia; Salvatore Spadaro, magistrato della Corte dei conti italiana e di quella somala. Comitato tecnico per studi e lavori preparatori per la Costituzione della Somalia, *Proposte per un progetto approvate dal C. T. nella seduta del 1° novembre 1958*, (Mogadiscio, 1958), pp. 2-3. Si veda anche G. A. Costanzo, *Problemi costituzionali della Somalia nella preparazione all'indipendenza. 1957-1960* (Milano, 1962).

[40] *BUS*, sup. 1 al 1 (1960).

[41] M. D'Antonio, vice direttore dell'ufficio Commissioni permanenti al parlamento italiano, venne distaccato nel 1960 al MAE 'per essere inviato a Mogadiscio in qualità di coordinatore e consulente per l'elaborazione della Costituzione'. ASMAE, DGAFIS, b. 9, f. 21, appunto n. 500954 del 3 febbraio 1960.

[42] Furono esaminate in particolare la Costituzione francese dell'ottobre 1946 e quella della Germania Occidentale del maggio 1949. In via secondaria la Costituzione libica del 1951; quella egiziana del 1956; le due costituzioni siriane del settembre 1950 e del luglio 1953; quella libanese del 1926 e quella irachena del 1925. Mario D'Antonio, *La Costituzione somala. Precedenti storici e documenti costituzionali* (Roma, 1962).

[43] Rispetto al progetto iniziale fu inoltre aggiunto: il preambolo; l'art. 34 che stabiliva il dovere da parte dello Stato di salvaguardare la moralità pubblica; l'art. 93 che sanciva il principio dell'indipendenza della magistratura.

[44] Castagno, 'Somalia', p. 362 e Touval, *Somali Nationalism*, pp. 90-93.

[45] Castagno, 'Somalia', p. 361.

[46] Nel 1958 fu promulgato il Codice del lavoro e l'anno successivo quello marittimo. Rimasero allo stadio di progetti i codici civile, penale e penale militare, nonché i relativi codici di procedura. Si veda F. Pergolesi, 'Codice del Lavoro della Somalia', *Rivista di Diritto del Lavoro*, 1 (1960). Il testo del Codice del lavoro si trova in allegato al Decreto Legislativo n. 25 del 15 novembre 1958, *BUS*, sup. 2 al 11 (1958), quello del Codice marittimo al Decreto Legislativo n. 1 del 21 febbraio 1959, *BUS*, sup. 1 al 4 (1959).

Pascal Touhari

Le déclin du Parlement sous la Cinquième République[1]

Il y a quelques années, en 1999, à l'occasion d'un litige mineur opposant l'Assemblée nationale à une entreprise à propos de marchés publics, le Conseil d'Etat[2] a, selon les mots de Madame Catherine Bergeal, alors Commissaire du Gouvernement, '*secoué les colonnes du Temple'* de la représentation nationale en revenant sur une jurisprudence plus que centenaire. Celle-ci consacrait l'immunité juridictionnelle des actes administratifs des Assemblées parlementaires. Le Conseil d'Etat est revenu dessus au motif que celle-ci ne se justifiait '*que dans un contexte historique disparu*', celui des Troisième et Quatrième Républiques, lorsque '*le Parlement était le seul à exprimer la volonté générale et avait acquis, du fait de la souveraineté qu'il incarnait seul, un caractère sacré*'.

Outre cette illustration relativement récente et dans un domaine pour le moins inhabituel, il nous faut remarquer que le thème du déclin du Parlement ne brille pas par sa nouveauté. Déjà en 1959, le Professeur Maurice Duverger, dans l'analyse qu'il effectuait des toutes récentes institutions de la nouvelle République, remarquait, il est vrai parmi de nombreux autres éléments, que *'l'abaissement du Parlement est le second trait saillant de la nouvelle Constitution*'.[3]

En 1962 encore, alors que Charles De Gaulle, pour imposer le suffrage universel à l'élection du Président de la République, avait entrepris de contourner la procédure de revision constitutionnelle prévue à l'article 89 et avait donc ouvertement ignoré les parlementaires en utilisant l'article 11, ces derniers, pour manifester leur mécontentement et leur hostilité face à un tel comportement méprisant la démocratie, avaient décidé de censurer le gouvernement Pompidou. Paul Reynaud, dans les débats qui précédèrent le vote de la motion de censure,[4] réaffirmait la primauté du Parlement dans la détermination et la conduite de la politique du pays. Selon lui, '*dans tous les pays civilisés, le Parlement est considéré comme représentatif de la nation, avec ses qualités et ses défauts, avec ses diversités, ses contradictions même. Mais lorsque les élus assemblés délibèrent et votent, ils sont investis de cette qualité éminente de représentants de la nation.*

Pour nous, républicains, la France est ici et non ailleurs. […]Depuis 1789, les représentants du peuple, si décriés aujourd'hui, savent bien qu'ils ne sont, pris isolément, que des porte-parole modestes, précaires,

faillibles, vilipendés souvent. Mais ils savent aussi qu'ensemble ils sont la nation et qu'il n'y a pas d'expression plus haute de la volonté du peuple que le vote qu'ils émettent après une délibération publique'.[5]

La place du Parlement, on le voit est donc largement discutée. Mais une question sous-jacente se pose en France depuis 1958 et celle-ci ne cesse de faire débat. En effet, et le discours de Paul Reynaud en constitue l'illustration, se pose la question de savoir où se situe la souveraineté, quel en est le titulaire ? Appartient-elle au Parlement ou Peuple ? Cette question, traditionnelle en droit constitutionnel, qui signifie simplement *au nom de qui* est exercé le pouvoir suprême, appelle deux réponses juridiques possibles: soit la souveraineté est populaire, soit elle est nationale.

En deux mots, nous pouvons dire succinctement que dans les théories du droit constitutionnel, le peuple est envisagé comme l'ensemble des citoyens. C'est donc un groupe d'individus bien réels, que l'on peut dénombrer, identifier, nommer. La notion de peuple correspond donc à une réalité observable. Dire que la souveraineté appartient au peuple, c'est donc dire que le pouvoir s'exerce au nom d'individus vivants, qui ont une existence physique.

La nation, quant à elle, est au contraire une entité abstraite, elle est un concept. Comme telle, la nation est intemporelle, dégagée de tout support physique: on dit d'ailleurs parfois que c'est l'ensemble des générations passées, présentes et futures, pour exprimer l'idée qu'elle ne se confond pas avec les individus concrets qui composent le peuple d'aujourd'hui.

Nous le savons, cette distinction théorique est insuffisante pour appréhender complètement la réalité politique mais elle présente toutefois l'intérêt de permettre une remise en perspective du discours politique concernant la place du Parlement. En effet, elle permet de comprendre les justifications théoriques de l'organisation politique et constitutionnelle, ce qui en d'autres termes, permet de comprendre les fondements du discours politique parlementaire stigmatisant le déclin du Parlement. Dis plus simplement, en réaffirmant la souveraineté nationale, Paul Reynaud, en 1962, ne fait rien d'autre que recentrer l'expression de la volonté générale au Parlement. Nous reviendrons plus loin sur ce point.

Finalement, nous le voyons, la question de la place du Parlement, et particulièrement de son déclin, est une question importante question appelant des réponses relevant à la fois de la théorie constitutionnelle et de l'analyse politique.

De plus, il nous faut remarquer que ce thème ne constitue pas une problématique purement française. La thèse de l'affaiblissement des assemblées est un lieu commun dans de nombreux pays. Par exemple, en Allemagne,[6] le thème de la réforme du *Bundestag* est aussi ancien

que le *Bundestag* lui-même, et fait l'objet de débats approfondis.[7] On lui reproche d'être une assemblée de partis et non de députés, de tenir des délibérations ennuyeuses et dans un style bureaucratique que seuls les spécialistes, et non les citoyens, peuvent comprendre. Au Québec, il existe même un ministre de la réforme parlementaire chargé de faire des propositions pour '*rapprocher le Parlement des citoyens, accroître et valoriser le rôle du député et rendre le Parlement plus efficace*'.[8]

Enfin, il nous faut faire quelques dernières précisions avant de poursuivre notre propos. En effet, même si la question de la place du Parlement dans le système politique actuel relève d'un certain classicisme, elle trouve pourtant à se renouveler aujourd'hui alors même que la France célèbre les cinquante ans du texte constitutionnel. Suite à l'élection, en 2007, du nouveau Chef de l'Etat français, le thème de la modernistation des institutions est revenu au centre du débat politique. Avec lui, la question du déclin du Parlement est également réapparue et les discours proposant des remèdes se sont multipliés. Outre les travaux de la Commission présidée par l'ancien Premier ministre Edouard Balladur,[9] les hommes politiques, mais aussi les constitutionnalistes français, se sont emparés de la question.

Finalement, sans vouloir prétendre renouveler complètement la question, il nous semble quand même possible d'apporter aujourd'hui quelques éléments nouveaux de reflexion. Pour ce faire, nous verrons qu'avant de s'interroger sur les discours de la revalorisation du Parlement et notamment à la lumière du projet de loi constitutionnelle portant modernisation des institutions de la Cinquième République, il convient d'abord d'analyser la place constitutionnelle du Parlement.

1. *Analyse critique de la place constitutionnelle du Parlement.*

Envisager de mener une analyse critique d'un texte constitutionnel ne relève pas de la simplicité la plus évidente. Cela ne suppose-t-il pas de réinterpréter le texte à la lumière d'un jugement, même le plus objectif, et donc d'une certaine manière de le dénaturer ou, pour le moins, de le comprendre dans un sens différent de celui que voulait lui donner les rédacteurs ? En d'autres termes, '*en faisant son métier sur le mode le plus authentiquement juridique le juriste n'est-il pas condamné, parfois à son insu ou malgré lui, à prendre parti pour tout autre chose que du droit?*'.[10] D'une certaine manière, oui. Pourtant, c'est à cet exercice que nous allons nous risquer.

Traditionnellement, la Constitution est présentée comme un texte qui n'attribue qu'un rôle limité au Parlement, celui-ci se trouvant désormais concurrencé par le pouvoir exécutif. Cette présentation classique rend-elle vraiment compte de la réalité ? Nous verrons que l'analyse juridique permet d'éclairer différemment cette idée reçue.

1.2. *Une place concurencée et limitée : un discours classique et récurrent*.

La doctrine française est largment unanime sur ce point: la Constitution de 1958 encadre les vélléités parlementaires. D'aucuns considèrent d'ailleurs que '*pour assurer la force et la stabilité du Gouvernement, et pour détruire l'hégémonie parlementaire brouillonne qui avait caractérisé les régimes précédents, Michel Debre et les experts dont il s'est entouré déploient des trésors d'imagination […] de telle sorte que la Constitution de 1958 constituera un florilège de l'antiparlementarisme*'.[11]

Cet encadrement du Parlement procède d'une rationalisation du parlementarisme[12] ainsi que de la limitation du domaine d'intervention de la loi par l'article 34 de la Constitution.

S'agissant en premier lieu de la rationalisation du parlementarisme, elle est le corollaire de la volonté affichée de réhabiliter le pouvoir exécutif dans l'édifice constitutionnel. Déjà, De Gaulle, dans le célèbre discours qu'il tint à Bayeux le 16 juin 1946, affichait sa volonté de restaurer la fonction présidentielle afin d'en faire la '*clef de voûte*'[13] des nouvelles institutions. Cette revalorisation du pouvoir exécutif se traduit également par la grande place qu'occupe le Gouvernement dans le système constitutionnel, et en particulier dans la procédure législative. De ce rééquilibrage des pouvoirs, comparativement aux périodes antérieures, résulte une certaine emprise du Gouvernement sur le Parlement.

Ainsi, sous la Cinquième République, les Assemblées ne sont plus maîtresses, ni de leur règlement intérieur, ni de leur procédure d'adoption des lois. '*Instrument redoutables ayant souvent plus d'influence que la Constitution elle-même sur la marche des affaires publiques*',[14] les règlements intérieurs des Assemblées sont désormais soumis au contrôle obligatoire du Conseil constitutionnel lors de leur élaboration et de chacune de leurs modifications. De plus, toutes les règles de la procédure législative confèrent au gouvernement un indéniable avantage. Il en va d'abord ainsi de l'initiative des lois dont on sait que, juridiquement et conformément à l'article 39-1 de la Constitution, elle '*appartient concurremment au Premier ministre et aux membres du Parlement*' alors qu'en réalité, plus de 90% des lois promulguées émanent des projets gouvernementaux. Cela tient notamment à ce que *'l'ordre du jour des Assemblées comporte, par priorité et dans l'ordre que le Gouvernement a fixé, la discussion des projets de loi déposés par le Gouvernement et des propositions de loi acceptées par lui*'.[15] On sait aussi que le Gouvernement bénéficie de procédés d'accélération efficaces[16] pour surmonter les obstructions parlementaires. Certains parlent alors '*d'empire du gouvernement sur le Parlement*'.[17]

S'agissant en second lieu de la limitation du domaine de la loi[18] et par conséquent du domaine d'intervention du Parlement, nous le disions, celle-ci résulte de la lecture combinée des articles 34[19] et 37[20] de la Constitution. Avant 1958, le Parlement pouvait légiférer dans tous les domaines. En faisant une loi, il posait des bornes à l'action gouvernementale, puisque le principe de légalité oblige toutes les décisions du gouvernement et de l'administration à demeurer à l'intérieur des limites fixées par la loi. La subordination des décrets aux lois impliquait une subordination du gouvernement au Parlement. La Constitution de 1958 supprime cette règle fondamentale ou plus exactement, en restreint étroitement la portée. Désormais, la loi ne peut intervenir que pour certaines matières énumérées par la Constitution : en dehors de ce domaine, le Parlement n'a pas le droit de légiférer, et le gouvernement est totalement libre d'agir par voie réglementaire. En somme, '*le Parlement est confiné désormais dans une zone réservée, très restreinte ; le gouvernement peut s'ébattre librement partout, au contraire*'.[21] En d'autres termes, le domaine réglementaire est la règle, et le domaine législatif l'exception. Enfin, il nous faut remarquer que c'est la Constitution qui détermine ainsi les limites respectives du règlement et de la loi; et un contrôle très strict de la constitutionnalité des lois est établi, qui empêche le Parlement de passer outre.

Voilà succinctement les arguments juridiques utilisés pour tenter de justifier le déclin du Parlement. Toutefois, il nous semble que la réalité est quelque peu différente de cette présentation. En effet, une analyse méthodique permet de tempérer ce constat quelque peu pessimiste.

1.3. *Le rôle fondamental du Parlement : l'importance de l'analyse juridique.*

Les arguments que nous venons de voir relèvent pour la plupart de '*considérations ignorant le statut juridique du Parlement*'.[22] Comme le rappelle d'ailleurs très justement Pierre Esplugas à propos des '*lancinantes litanies sur la dévalorisation du Parlement et la suprématie écrasante de l'exécutif*',[23] il faut remarquer que le domaine de compétence de la loi est, de nos jours, sans égal à celui existant sous les IIIe et IVe Républiques, temps supposé béni du parlementarisme.[24]

De plus, comme le précise Vanessa Barbé, '*la thèse de la domination du Parlement par le gouvernement voire par le Président ne signifie pas pour autant une atteinte à la fonction législative du Parlement*'.[25]

Qui exerce alors la fonction législative ? A cette question, on pourrait d'abord être tenté de répondre : c'est le Gouvernement, le Parlement n'étant qu' '*une machine à voter*'.[26]

Pourtant, même si l'essentiel de la production législative est d'origine gouvernementale, le Parlement reste maître d'approuver ou de

rejeter les projets qui lui sont présentés. L'initiative parlementaire est sans doute limitée et peut même être totalement écartée mais il n'en demeure pas moins que l'accord parlementaire reste indispensable à la naissance de la loi. L'existence d'une majorité parlementaire ne change rien à cet état de fait même si elle facilite l'approbation des textes voulus par le Gouvernement qui en est issu.

Faut-il alors en conclure que c'est le Parlement qui, en droit, reste l'organe législatif, comme il l'était sous la IIIe ou la IVe République ? Cette conclusion n'est pas non plus satisfaisante, car sous la Ve République, à la différence des périodes précédentes, le Parlement ne peut pas, seul, faire la loi, puisque, nous le disions, le Gouvernement peut bloquer les initiatives parlementaires.

Finalement le système constitutionnel organisé par la Constitution de 1958 ressemble à la vieille technique de la balance des pouvoirs: la fonction législative est exercée en collaboration par le Parlement et le Gouvernement.

La balance des pouvoirs est un mode d'organisation du pouvoir politique théorisé au XVIIIe siècle. Elle se caractérise par une distribution des fonctions étatiques propre à éviter les inconvénients d'une trop étroite spécialisation des organes. La fonction législative est ainsi répartie entre deux autorités: l'une qui conçoit et propose la loi et ne fait que cela; l'autre qui l'exécute, mais seulement après l'avoir acceptée et qui, en l'acceptant, collabore donc à sa création. C'est exactement ce qu'on observe sous la Ve République : le Parlement vote la loi et le Gouvernement l'exécute; mais les lois qu'il exécute sont des lois à l'élaboration desquelles il est associé. Cette distribution des pouvoirs correspond au schéma suggéré par Montesquieu. Simplement, par rapport à ce que préconisait Montesquieu, il y a une inversion du mode de participation de l'organe exécutif à la fonction législative.

Pour Montesquieu, l'exécutif devait disposer d'un droit de veto sur les textes adoptés par le corps législatif: cela donnera par exemple le système américain de 1787 ou le système français de 1791; la loi n'existe que lorsqu'une proposition a été votée par la ou les assemblées et approuvée par le Président (dans le cas américain) ou le Roi (dans le cas français).

Dans le système de 1958, le Gouvernement détient non pas un droit de veto, mais un certain monopole de l'initiative législative. Pourtant le résultat est le même : ne deviennent des lois que les textes qu'il approuve. Il les approuve, d'abord, évidemment, lorsqu'il est lui-même l'auteur des projets et que ceux-ci ont été votés par le Parlement sans modification. Mais ils lui conviennent aussi, nécessairement, lorsqu'il s'agit de propositions de lois ou lorsque ses projets ont été modifiés par des amendements parlementaires: dans les deux cas, il avait les

moyens d'empêcher que ces textes soient discutés (ordre du jour) ou modifiés (vote bloqué).

Cette analyse appelle deux remarques pour terminer sur ce point:

En premier lieu, elle ne contredit nullement les termes mêmes de la Constitution: 'La loi est votée par le Parlement' (Art. 34). En effet, il n'est pas nécessaire de lire cette disposition comme confiant au Parlement le pouvoir de faire la loi tout seul. On peut très bien la comprendre comme signifiant qu'il ne saurait exister de loi sans un vote du Parlement ; que seul un tel vote est susceptible de donner à une norme la qualité de loi.

Ensuite, elle permet aussi de considérer que la Constitution de 1958 met en oeuvre le principe de la séparation des pouvoirs. Simplement elle renoue avec le sens qu'il avait au XVIIIe siècle: le non-cumul des fonctions.

Le Parlement n'est donc peut-être pas tant la victime de la Constitution de 1958 comme on nous le présente si souvent. D'une certaine manière, on peut même parler d'équilibre des pouvoirs car si sous la IIIe et la IVe, le Gouvernement était entièrement dominé par le Parlement; sous la Ve, au contraire, l'objectif de la séparation des pouvoirs est atteint : le Gouvernement est soumis à la loi mais n'est pas soumis au Parlement.

Pourtant, un discours récurent parle de la nécessité de revaloriser le Parlement.

2. *L'incessant discours de revalorisation de l'institution parlementaire.*

Nous le disions, la revalorisation du Parlement est un élément perpétuellement présent dans le discours politique de la Cinquième République. Dans une certaine mesure, on le retrouve également dans le discours de la doctrine juridique. En effet, comment comprendre ces revendications incessantes alors que, et nous l'avons montré, le Parlement dispose d'une assise constitutionnelle non négligeable, qui, si elle n'est peut être pas complètement exploitée, présente malgré tout le mérite d'exister et de garantir un fonctionnement démocratique des institutions et plus largement du régime républicain français.

La réponse réside, au moins pour partie, dans la stratégie politique des partis politiques, qui, en fonction des circonstances, allèguent d'un déclin du Parlement et le critique en réclamant une revalorisation de celui-ci.

La réponse réside également, même si elle n'est que partielle, dans l'insuffisance des solutions préconisées par les différentes réformes constitutionnelles, ou projets de réforme, et en particulier par celle du Comité Balladur, dont le projet de loi constitutionnelle portant modernisation des institutions de la Ve République est issu.

2.1. *Des arguments de circonstances.*

Comme le souligne Pierre Avril, '*le discours de crise aujourd'hui omniprésent ne doit pas être imputé aux institutions elles-mêmes, puisqu'elles n'ont pas changé, mais plutôt à une pratique liée à leur environnement politique*'.[27] Par ailleurs, la doctrine s'accorde à reconnaître que ce déclin s'est produit alors que les Parlements modernes sont mieux organisés qu'auparavant mais surtout en raison d'un phénomène extérieur : la montée en puissance de partis politiques disciplinés qui fixent le programme législatif et imposent aux parlementaires de voter selon la ligne du parti.

S'agissant de la conjoncture politique, l'analyse que faisait Pierre Avril en 1992 reste valable aujourd'hui. En effet, à l'heure actuelle, pour que la révision constitutionnelle puisse être entérinée par le Congrès, il faut une majorité des 3/5. Sans le soutien du Parti socialiste, la majorité présidentielle ne peut espérer voir valider la réforme des institutions. Ce qui, en d'autres termes, signifie clairement que le Parlement dispose d'un véritable pouvoir. Naturellement, il lui appartient de l'utiliser, ce qui, encore une fois, est loin d'être une certitude. Pour quelle raison ? Nous le disions, le phénomène partisan y est pour beaucoup.

De plus, le discours politique stigmatise les contraintes qui pèsent sur le Parlement pour demander une revalorisation de celui-ci. Au nombre des contraintes invoquées, on peut citer l'influence de plus en plus marquante du droit international, et notamment du droit communautaire, mais on peut également citer le rôle joué par le Conseil constitutionnel.

Ces deux arguments montrent, comme nous l'annoncions en introduction, l'intérêt que portent les parlementaires à la question de la souveraineté. Ils refusent de voir la souveraineté parlementaire contestée, que ce soit par les institutions européennes ou par une autorité *quasi* juridictionnelle, le Conseil constitutionnel. La lecture des débats parlementaires est significative à cet égard mais par faute de temps, nous ne pouvons vous en donner des exemples.

Bref, les hommes politiques, en particulier ceux de l'opposition, réinvestissent la question des compétences parlementaires en cas de conjoncture politique qui leur est défavorable ainsi qu'en cas de concurrence manifeste d'un autre organe, international ou juridictionnel.

Enfin, la dernière série d'argument demandant une revalorisation du Parlement repose sur l'idée selon laquelle le déclin du Parlement se traduirait par l'affaiblissement de l'autorité de la loi. Cette réalité est dénoncée par le président de l'Assemblée nationale lui-même en 2004. M. Debré dénonçait l'inflation législative et la multiplication des dispositions sans valeur juridique, et a déposé une proposition de

loi constitutionnelle '*tendant à renforcer l'autorité de la loi*'.[28]

Cette dévalorisation serait également la conséquence de l'inflation du nombre de lois. Ainsi en France, entre 100 et 200 lois environ sont promulguées chaque année. Plus encore que le nombre des lois, leur contenu augmenterait de manière démesurée. Le Conseil d'État dénonce notamment la longueur et la complexité des textes de loi dans son rapport pour 2006 : '*Le recueil des lois de l'Assemblée nationale est passé de 433 pages en 1973, à 1 067 pages en 1983, 1 274 pages en 1993, 2 400 pages en 2003 et 3 721 pages en 2004*'.[29]

Cette inflation ne nuirait pas seulement à l'intelligibilité et à la clarté du droit : elle porterait également atteinte à la valeur symbolique de la loi, qui doit être suffisamment consensuelle pour survivre aux alternances. La relativité[30] et l'instabilité des lois sont dénoncées, en prenant l'exemple notamment des lois sur le droit de séjour des étrangers, réécrites à chaque changement de gouvernement. En outre, la loi ne serait pas toujours claire.[31] Rédigée par des spécialistes, elle devient vite incompréhensible dans des domaines techniques.

On le voit, les arguments sont multiples pour rendre compte d'une éventuelle dévalorisation du Parlement. Face à cela, plusieurs réformes ont été entreprises.

2.2. *Les réponses partielles données par le projet de réforme.*

Avant d'envisager les apports éventuels de la réforme en cours de discussion, il nous faut dire un mot des précédentes réformes du Parlement.

La première réforme date de 1974 et avait pour but de renforcer les droits de l'opposition. Elle donnait à soixante parlementaires le droit de saisir le Conseil constitutionnel afin de faire respecter la conformité des lois par rapport à la Constitution et aux principes constitutionnels.

En 1995, une seconde révision a institué une session[32] unique de neuf mois en lieu et place des deux sessions de trois mois qui existaient précédemment. Elle a également accrû le droit d'initiative des parlementaires en réservant une séance par mois à l'examen des propositions de loi qu'ils ont déposées.

Enfin, les révisions opérées en 1992 et 1999, avant la ratification respective des traités de Maastricht et d'Amsterdam, ont accrû le droit de regard des assemblées sur les projets d'actes communautaires. Elles prévoient leur consultation systématique sur les projets qui relèvent du domaine législatif. Les assemblées ont ainsi la possibilité d'adopter des résolutions, sur lesquelles le Gouvernement peut s'appuyer, dans le cadre des négociations communautaires pour faire valoir le point de vue exprimé par les parlementaires.

Malgré cela, le Président de la République a tenu à réformer les institutions et notamment le Parlement.

La lettre de mission[33] de M. Nicolas Sarkozy au Comité Balladur était très claire, il fallait faire des propositions en vue de rééquilibrer les institutions. Cela devait donc se traduire par une revalorisation du Parlement.

Des travaux de ce Comité est né le projet de révision de la Constitution, dont le but est de revaloriser le Parlement, de le '*réhabiliter*'.[34] Dans l'idée des auteurs du rapport Balladur, il s'agit de lui donner davantage de compétences, en le 'renforçant', même si, nous l'avons vu, le Parlement dispose de réelles compétences.

Souhaitant 'rééquilibrer' les institutions, le rapport du comité Balladur ne revient pas sur la rationalisation du parlementarisme, dont il préserve les principaux fondements (notamment l'article 49-3,[35] le vote bloqué, les irrecevabilités affectant les propositions et amendements parlementaires).[36] Au mieux peut-on observer un léger desserrement ou relâchement des contraintes qui étouffent le Parlement. La majorité des propositions confondent en outre la restauration du rôle du Parlement avec d'autres objectifs qui peuvent être louables, mais qui ne permettent pas au Parlement de disposer de compétences accrues par rapport à l'exécutif.

Ainsi, certaines propositions du rapport Balladur lient **renforcement du Parlement et accélération de la procédure législative**. Or il apparaît que ces deux notions ne vont pas forcément de pair, bien au contraire. L'examen approfondi des textes est l'un des moyens dont dispose le Parlement pour influencer l'élaboration des dispositions législatives. Par exemple, la proposition n°36 vise à autoriser la procédure simplifiée d'examen en commission, et limite la séance publique aux explications de vote et au vote lui-même. Selon le rapport, '*il n'y aurait que des avantages à ce que le Parlement puisse adopter certaines lois selon une procédure simplifiée*'.

Certaines propositions lient également **renforcement du Parlement et limitation du nombre de lois ou amélioration de la qualité de la loi**. Par exemple, la loi pourrait gagner en qualité si les commissions permanentes étaient plus nombreuses (proposition n°34) ou si les avis du Conseil d'État étaient publiés (proposition n°27), ce qui serait étendu aux propositions de loi inscrites à l'ordre du jour (proposition n°28). De même, des mesures tendant à améliorer l'accessibilité et l'intelligibilité de la loi renforcerait-elles le rôle du Parlement ? C'est ce que semblent signifier la proposition n°48 (autorisation des résolutions, et évitant ainsi les lois non normatives ou 'mémorielles').[37] Il en est de même de la proposition n°25 soumettant l'introduction d'un projet de loi à la présentation d'une étude d'impact. Il s'agit ici de légiférer en toute connaissance de cause,

c'est-à-dire en évaluant l'état du droit et les conséquences d'une nouvelle législation.

Ici encore, on retrouve l'argument classique selon lequel la loi est dévalorisée parce que trop abondante et mal appliquée. Mais l'inconsistance de ces arguments pour démontrer le besoin de renforcement du Parlement n'est pas difficile à prouver. Les décrets du gouvernement ne sont pas davantage mieux écrits, plus clairs ou moins nombreux, et pourtant, les défauts des normes réglementaires ne traduisent pas un besoin de réforme du pouvoir exécutif.

D'autres propositions du rapport Balladur lient **renforcement du Parlement et revalorisation de l'opposition**. En témoignent les propositions n°35 (répartition de la présidence des commissions à la proportionnelle des groupes), n°44 (extension du temps de parole lors des questions), n°57 (le président ou le rapporteur d'une commission d'enquête devrait faire partie de l'opposition) ou n°58 (tous les groupes parlementaires peuvent obtenir la création d'une commission d'enquête par an).

Enfin, certaines propositions lient **renforcement du Parlement et exercice d'une fonction de contrôle**, sans donner de compétence supplémentaire aux assemblées. Par exemple, la consécration du contrôle dans l'article 24 n'a que peu d'incidence pratique, tout comme celle de la fonction d'évaluation des politiques publiques (proposition n°41). L'inscription dans la Constitution du rôle d'assistance du Parlement dont est chargée la Cour des comptes n'est pas non plus une innovation juridique car cette mission était déjà exercée par la Haute juridiction (proposition n°42). La création d'un comité d'audit parlementaire chargé de coordonner et suivre les activités de contrôle (proposition n°43) représente un progrès organisationnel, mais non dans les compétences parlementaires. La levée de l'interdiction faite aux commission d'enquête de mener une investigation sur des faits examinés par la justice (proposition n°40) est également louable, mais cette limite était déjà contournée grâce à la création de missions d'information.

Bref, nombreuses sont les solutions proposées. Mais comme nous venons de le voir, elles ne représentent qu'une avancée partielle dans la mesure où bon nombre d'entre elles existent déjà. Comme le dit d'ailleurs très justement Vanessa Barbe, '*les propositions Balladur ne représentent finalement pas de véritable révolution et ne produiront pas de changement de nature de nos institutions*'.[38]

En guise de conclusion, nous ne pouvons que constater que le thème du déclin du Parlement ne semble pas épuisé. Même si le discours politique, pour des raisons aisément perceptibles, ne se satisfera certainement jamais de l'édifice institutionnel tel qu'il est juridiquement prescrit, il semble qu'il faille garder à l'esprit la citation du Pr. Maurice Duverger qui, en 1961, remarquait avec une certaine acuité que

'*si l'on néglige les plans mirifiques ou naïfs qui correspondent à la science politique-fiction ou aux inventions du concours Lépine, pour s'en tenir aux seules solutions sérieuses, il faut bien constater que celles-ci sont rares*'.[39]

Notes

[1] Nous tenons à remercier M. Hervé Suxe, M. Simon Blanchet ainsi que Mlle Hilème Kombila pour leurs corrections et leurs conseils.

[2] Conseil d'Etat, Assemblée, 5 mars 1999, *Assemblée nationale c/ Société Gilaudy électronique*, Req n° 163328, Publié au Recueil Lebon

[3] M. Duverger, 'Les institutions de la Cinquième République', *RFSP*, 1959, Volume 9, n° 1, p. 115.

[4] Il s'agit de la procédure prévue à l'article 49-2 de la Constitution de 1958.

[5] Cité par P. Avril, *La Cinquième République, Histoire politique et constitutionnelle* (Paris, 2e éd., 1994), p. 65.

[6] Voir : M. Hereth. *Die Reform des Deutschen Bundestages* (Opladen, 1971).

[7] Voir par exemple : U. Thaysen. *Parlamentsreform in Theorie und Praxis* (Opladen, 1972).

[8] *La réforme parlementaire*, document de travail, novembre 2007.

[9] Pour la composition complète de ce Comité de réflexion et de proposition sur la modernisation et le rééquilibrage des institutions de la Ve République, consulter le décret n° 2007-1108 du 18 juillet 2007 publié au *JO*, n° 165, 19 juillet 2007, p. 12158.

[10] J. Caillosse, 'Droit et politique : veillies lunes, nouveaux champs', *Droit et Société*, n° 26, 1994, p. 137.

[11] B. Chantebout, *Droit constitutionnel* (Paris, 19e éd., 2002), p. 372.

[12] Cette expression, empruntée à Boris Mirkine-Guetzévitch - in *Les nouvelles tendances du droit constitutionnel* (Paris, 1931); et *Les Constitutions européennes*, Tome 1 (Paris, 1951) -, est détournée de son sens originel Mirkine- Guetzévitch l'emploie en effet pour caractériser la réglementation de la procédure parlementaire dans les Constitutions d'Europe centrale et orientale après la première Guerre mondiale. Mirkine-Guetzévitch prend l'exemple de la Constitution de Weimar, qui, dans son article 54, dispose que '*le Chancelier du* Reich *et les ministres du* Reich *doivent, pour l'accomplissement de leurs fonctions, jouir de la confiance du* Reichstag. *Chacun doit démissionner si le* Reichstag *lui retire sa confiance par un vote exprès*'. Des mécanismes analogues se retrouvent dans l'article 6 de la loi constitutionnelle du 24 février 1875 en France. Dans l'esprit des constitutionnalistes contemporains, il s'agit plutôt des méthodes destinées à assurer la stabilité du régime parlementaire, et à empêcher les Chambres d'élaborer des pratiques pouvant conduire au régime d'assemblée.

[13] Selon la célèbre expression de Michel Debre dans son discours devant le Conseil d'Etat, le 27 août 1958, cité dans A.Viala et D. Rousseau, *Droit constitutionnel* (Paris, 2004), p. 172.

[14] Selon la formule d'Eugène Pierre, *Traité de droit politique, électoral et parlementaire* (Paris, 1919), p. 1439.

[15] Article 48-1 de la Constitution

[16] Par exemple la procédure du vote bloqué (article 44-3), la déclaration d'urgence ou la procédure de l'adoption sans vote prévue par l'article 49-3

[17] Par exemple Bertrand Mathieu, *La loi* (Paris, 2004), p. 87 mais il est vrai pour le dénoncer.

[18] Voir sur cette question, par exemple, le colloque d'Aix-en-Provence: *Le domaine de la loi et du règlement* (Aix-en-Provence, 1978), et Jean-Louis Pezant, 'Contribution à l'étude du pouvoir législatif selon la Constitution de 1958', in *Mélanges offerts à Georges Burdeau* (Paris, 1977), p. 455-480.

[19] Qui précise dans son premier aliné que '*La loi est votée par le Parlement*' et qui ensuite ennumère les matières dans lesquelles la loi peut intervenir.

[20] Dont l'alinéa premier précise que '*Les matières autres que celles qui sont du domaine de la loi ont un caractère réglementaire'.*

[21] Duverger, 'Les institutions de la Cinquième République', p. 119.

[22] V. Barbe, 'La rénovation des pouvoirs du Parlement sous la Vème République: une réforme impossible?', Actes du Colloque international de Bari (Italie), 22-23 mai 2008, *La Costituzione francese, La Constitution française*, vol. II, à paraître premier semestre 2009, p. 3.

[23] P.Esplugas, 'La Cinquième République : une pratique renversée de la Constitution de 1958', *LesPetites Affiches*, 06 mai 1999, n° 90, p. 13.

[24] L. Favoreu avec P. Gaïa, R. Ghévontian, J.L. Mestre, A. Roux, O. Pfersmann, et G. Scoffoni *Droit constitutionnel* (Paris, 1998), pp. 719-740, 771-774.

[25] Barbe, 'La rénovation des pouvoirs du Parlement ...', p. 3.

[26] P. Avril, 'Le parlementarisme rationalisé', *RDP*, 1998, p. 1515.

[27] P. Avril, 'Le dévoiement', *Pouvoirs*, 1992, n° 64, p. 137.

[28] Proposition n°1832, déposée le 5 octobre 2004. Voir également le discours du président du Conseil constitutionnel M. Mazeaud à l'occasion de la cérémonie des voeux du Conseil le 3 janvier 2005. La dernière modification du règlement de l'Assemblée nationale ne prend que partiellement en compte les idées de son président (Résolution n°582 du 7 juin 2006, et décision du Conseil constitutionnel n°2006-537 DC du 22 juin 2006. Voir: L. Gauthier-Lescop, 'Une résolution du Parlement pour lutter contre l'inflation normative', *RDP*, 2007, pp. 111-129).

[29] *Sécurité juridique et complexité du droit*, La Documentation française, 2006, page 266.

[30] E. Grass, 'L'inflation législative a-t-elle un sens?', *RDP*, 2003, pp. 139-162.

[31] Sur ce sujet : P. Malaurie, 'L'intelligibilité des lois', *Pouvoirs*, 2005, n°114, pp. 131-137.

[32] Période pendant laqulle le Parlement se réunit pour délibérer.

[33] H. Suxe, 'Les lettres de mission du Président de la République française', *Entrée Libre*, n°5, Automne 2007, p. 51.

[34] G. Carcassonne, 'Réhabiliter le Parlement', *Pouvoirs*, 1989, n° 49, pp. 37-45.

[35] Proposition n° 23.

[36] Propositions n° 30 et 32.

[37] Voir la décision n° 2005-512 DC du 21 avril 2005, *Loi d'orientation et de programme pour l'avenir de l'école*, qui est une décision très commentée, voir par exemple: J.P. Camby, 'La loi et la norme', *RDP*, 2005, pp. 849-654 ou M. Verpeaux, 'Neutrons législatifs et dispositions réglementaires, la remise en ordre imparfaite', *Recueil Dalloz*, 2005, n° 28, pp. 1886- 1890.

[38] Barbe, 'La rénovation des pouvoirs du Parlement ...', p. 10.

[39] M. Duverger, *La VIe République et le régime présidentiel (*Paris, 1961), pp. 106-107.

Sandro Guerrieri

Il Parlamento europeo e la crisi della sedia vuota (1965-1966)

La crisi della sedia vuota rappresenta uno dei momenti più critici della storia della costruzione europea. Essa fu causata dal rifiuto della Francia gollista di accogliere le proposte presentate nel marzo 1965 dalla Commissione Cee presieduta da Walter Hallstein riguardo all'introduzione di un nuovo sistema di finanziamento della Comunità economica europea, nell'ambito del quale il passaggio a un regime di 'risorse proprie', fondato su prelievi e dazi sulle importazioni agricole e industriali da paesi terzi, sarebbe stato accompagnato dall'attribuzione al Parlamento europeo di un potere di controllo sul bilancio. L'ostilità della Francia, che dal problema finanziario si estese fino a mettere in discussione, su un piano più vasto, l'equilibrio generale tra la dimensione intergovernativa e quella sovranazionale all'interno della Comunità, si tradusse nel richiamo del proprio rappresentante permanente a Bruxelles e nel rifiuto di partecipare a gran parte delle riunioni del Consiglio dei ministri e dei vari Comitati in cui sedevano esponenti governativi. Questa grave crisi, che scosse le fondamenta dell'edificio comunitario, fu superata dal compromesso di Lussemburgo del gennaio 1966, in virtù del quale la Francia, ottenute alcune rilevanti concessioni, riprendeva il suo posto nel sistema istituzionale.[1]

Il Parlamento europeo seguì con grande apprensione lo svolgersi della crisi. Sia perché ne temeva le conseguenze sulla prosecuzione del processo di integrazione europea, sia perché l'attacco gollista alla dimensione sovranazionale della Comunità era volto anche a bloccare lo sviluppo delle prerogative parlamentari: nella visione di Charles de Gaulle, il Parlamento europeo non era legittimato ad assumere compiti di rilievo. Come si sviluppò all'interno del Parlamento il confronto politico sull'escalation gollista? Quali posizioni emersero sulle modalità di risoluzione della crisi? E quale valutazione fu espressa sul compromesso di Lussemburgo?

1. *Un Parlamento in cerca di poteri.*

Non si può certo dire che i Trattati comunitari fossero stati generosi con l'Assemblea parlamentare sovranazionale. Il Trattato di Parigi del 1951, istitutivo della Ceca, le aveva attribuito la funzione di controllo politico sull'esecutivo comunitario, l'Alta Autorità, ma non le aveva concesso poteri legislativi. I Trattati di Roma del 1957, con i quali erano stati fondati la Cee e l'Euratom, l'avevano chiamata a partecipare al-

l'esercizio della funzione legislativa, ma solo in alcuni ambiti e in modo consultivo: il consiglio dei ministri, supremo organo decisionale delle due nuove Comunità, era obbligato a consultare l'Assemblea in alcune materie, ma non ad accogliere poi le sue opinioni e proposte. Sin dall'epoca della Ceca, l'Assemblea comunitaria aveva cercato tuttavia di compensare la laconicità delle norme che la riguardavano con un'interpretazione estensiva delle stesse. La funzione di controllo politico sull'organo esecutivo della Comunità era stata esercitata in maniera costante in virtù del dialogo che si era venuto a instaurare nell'ambito delle commissioni dell'Assemblea, alle cui riunioni i membri dell'esecutivo (a cominciare dall'ideatore dell''invenzione comunitaria', Jean Monnet, presidente dell'Alta Autorità della Ceca dal 1952 al 1955) avevano partecipato con grande frequenza. Il controllo *a posteriori*, previsto dal Trattato del 1951, era così stato integrato da una sorta di controllo preliminare, per l'esercizio del quale era diventato sempre più rilevante l'apporto dei gruppi politici, formalmente riconosciuti nel 1953: il gruppo socialista, il gruppo democristiano e quello liberale e apparentati. In occasione del passaggio, nel marzo 1958, dall'Assemblea della Ceca a quella delle tre Comunità, l'importanza dei gruppi fu attestata dalla decisione di ripartire i posti all'interno dell'emiciclo non più in ordine alfabetico, come era avvenuto fino a quel momento, bensì in base ad essi[2]. Applicato per la prima volta nel maggio 1958, il nuovo criterio evidenziò in maniera netta il maggior rilievo assunto dall'appartenenza politica rispetto a quella nazionale. 'Per la prima volta nella storia delle Assemblee internazionali, i membri iscritti ad uno stesso Gruppo politico seggono insieme nell'emiciclo', sottolineò il 13 maggio 1958 il presidente dell'Assemblea Robert Schuman, aggiungendo: 'Il provvedimento preso riafferma così il carattere parlamentare della nostra Assemblea, ed io posso solo rallegrarmene'.[3]

Grazie anche all'azione dei gruppi, l'Assemblea delle tre Comunità cercò di estendere la sua influenza agendo su diversi piani. In ambito legislativo, chiese e ottenne di essere consultata dal Consiglio dei ministri anche su materie per le quali non vi era un obbligo in tal senso. Riguardo al sistema di governo delle Comunità, propose di razionalizzarne la struttura tramite la fusione dei rispettivi organi esecutivi, il che fu attuato con il Trattato dell'8 aprile 1965, in virtù del quale furono istituiti nel 1967 una Commissione e un Consiglio unici. In merito alle prospettive di una cooperazione politica, cercò di offrire un contributo costruttivo alla discussione sviluppatasi negli anni 1960-1962 sul Piano Fouchet proposto dai francesi. Sulla questione di un futuro passaggio all'elezione diretta, mise a punto un progetto nel maggio 1960.[4] Una dimostrazione significativa di questa volontà di pesare maggiormente nel circuito istituzionale comunitario si ebbe nel marzo 1962 con la decisione di introdurre un cambiamento nella denomina-

zione dell'Assemblea. Nel marzo del 1958, l'Assemblea rappresentativa aveva ritenuto inadeguato il semplice termine 'Assemblea', usato nei Trattati Cee ed Euratom, e si era interrogata su quale fosse il nome più consono da attribuirsi. Nell'intento di trovarne uno sufficientemente evocativo del carattere parlamentare dell'istituzione, i tre gruppi politici si erano accordati sulla denominazione 'Assemblea parlamentare europea'. Siccome, però, da parte tedesca e olandese si era affermato che nelle rispettive lingue essa risultava troppo generica e si era chiesto di poter utilizzare l'espressione 'Parlamento europeo', l'Assemblea aveva stabilito che il nome 'Assemblea parlamentare europea', da utilizzare in francese e in italiano, fosse tradotto nelle altre due lingue ufficiali della Comunità con 'Europäisches Parlament' e 'Europees Parlement'.[5] Il risultato di ciò era che la nuova Assemblea veniva denominata in almeno tre modi diversi: 'Assemblea' nei Trattati di Roma, 'Assemblea parlamentare europea' o 'Parlamento europeo', a seconda delle lingue, nei documenti da essa emanati. Per di più, alcuni parlamenti nazionali usavano, nel rivolgersi ad essa, una quarta espressione: 'Assemblea unica delle tre Comunità europee'. Per metter fine, o almeno per porre un limite (la semplice denominazione 'Assemblea' continuò infatti a figurare nei Trattati fino all'Atto unico del 1986) a questa varietà terminologica, che certo non contribuiva a rendere più chiara agli occhi dell'opinione pubblica la natura dell'istituzione, l'Assemblea decise il 30 marzo 1962 di adottare, nei propri atti, il termine 'Parlamento europeo' in tutte e quattro le lingue ufficiali della Comunità. Il valore politico della decisione fu sottolineato dai rappresentanti dei tre gruppi politici: a detta del francese Alain Poher, figura storica del Mouvement républicain populaire e presidente del gruppo democristiano, si trattava di mostrare che l'Assemblea costituiva, 'in modo molto modesto, forse, ma sicuro, un inizio di vero e proprio Parlamento europeo'.[6] Secondo il socialista belga Fernand Dehousse, se era vero che i Trattati usavano un termine meno altisonante, l'Assemblea aveva però tutto il diritto di darsi, chiamandosi Parlamento europeo, uno 'pseudonimo' di alta valenza politica:

> 'In diritto interno, la giurisprudenza riconosce da molto tempo il diritto allo pseudonimo. Ebbene, noi possiamo, come i grandi attori *(si ride)* darcene uno che utilizzeremo nelle manifestazioni della vita corrente! Questo pseudonimo è certamente molto più parlante e […] ha una sonorità psicologica molto più profonda del nome complesso di Assemblea parlamentare europea'.[7]

E l'esponente che parlò a nome del gruppo liberale, il belga Charles Janssens, terminò il suo intervento dichiarando che la modifica della denominazione avrebbe avuto 'un'ottima influenza sull'ambizione' di far sì che 'le nostre attribuzioni, che le nostre competenze e i nostri poteri' venissero 'ampliati al più presto'.[8]

Tali ambizioni trovarono espressione nella relazione presentata nel giugno 1963 dal cristiano-democratico tedesco Hans Furler, già presidente dell'Assemblea, in cui si chiedeva il rafforzamento delle competenze parlamentari nel campo delle relazioni con gli esecutivi, della partecipazione alla funzione legislativa e delle procedure relative al bilancio della Comunità. L'idea di fondo era infatti che 'il trasferimento delle competenze legislative dal piano nazionale a quello comunitario' dovesse 'accompagnarsi a un corrispondente rafforzamento dei poteri parlamentari all'interno della Comunità'.[9]

Le aspirazioni del Parlamento incontravano però vive resistenze, le maggiori delle quali provenienti dalla Francia gollista che, anche sul piano interno, non si distingueva certo per una particolare sensibilità nei confronti dei diritti dell'istituzione parlamentare. Il progetto di elezione diretta adottato nel maggio 1960 era stato ben presto messo da parte dai governi. Quanto all'esercizio della funzione consultiva in ambito legislativo, se da una parte il Parlamento era consultato in diverse occasioni anche quando non vi era l'obbligo di farlo, dall'altra poteva accadere che il Consiglio dei ministri non prestasse adeguata attenzione al suo parere, o che procedesse a una trattativa diretta con la Commissione introducendo modifiche su cui l'organo parlamentare non aveva la possibilità di pronunciarsi.[10]

2. *Il dibattito sulle proposte della Commissione Hallstein.*

Il 24 marzo 1965 il Parlamento europeo discuteva una relazione presentata dal democristiano Edoardo Martino, presidente della sua Commissione politica, sulla possibilità di rilanciare il tema dell'unione politica dopo il fallimento cui era andato incontro, tre anni prima, il tentativo gollista di dar vita a una forma di cooperazione tra i Sei Stati in materia di politica estera. In quei giorni, la Commissione Cee andava elaborando le proposte relative alle nuove modalità di finanziamento della politica agricola comune, che sarebbero state presentate ufficialmente ai governi dei Sei entro la fine del mese. Grazie all'impulso di Hallstein, l'esecutivo comunitario aveva operato uno stretto collegamento tra il problema agricolo e l'avvento di un sistema di bilancio della Comunità fondato non più sui contributi versati dagli Stati, bensì sulla riscossione di tariffe sulle importazioni il cui gettito sarebbe automaticamente finito nelle casse comunitarie. Per evitare che questo trasferimento di risorse avvenisse senza l'instaurazione di un adeguato meccanismo di controllo democratico, la Commissione si era orientata a proporre un maggior coinvolgimento del Parlamento europeo nelle procedure di bilancio, attribuendo un peso consistente alle sue proposte di emendamento.[11]

Il Parlamento avrebbe dovuto essere ufficialmente informato delle proposte della Commissione Hallstein solo dopo che queste fossero sta-

te trasmesse al Consiglio dei ministri. Ma, intervenendo nel dibattito parlamentare del 24 marzo, il presidente Hallstein intese compiere un gesto di riguardo nei confronti dell'istituzione parlamentare comunitaria esponendo le grandi linee del progetto che la Commissione stava mettendo a punto. Una volta illustrato il meccanismo di passaggio dai contributi degli Stati al sistema delle risorse proprie, egli sottolineò che l'amministrazione di questi fondi a livello comunitario non poteva prescindere dal controllo parlamentare, da potenziare gradualmente, e richiamò a questo proposito il celeberrimo principio del costituzionalismo anglosassone, 'no taxation without representation'.[12]

La decisione di Hallstein di anticipare il contenuto delle proposte della Commissione nel corso del dibattito del 24 marzo sull'unione politica suscitò una certa sorpresa tra i parlamentari: alcuni di loro, intervenendo dopo di lui, continuarono ad attenersi strettamente al tema all'ordine del giorno; altri gli rimproverarono invece di aver utilizzato una forma di comunicazione troppo estemporanea. Comunque, su iniziativa del democristiano italiano Armando Sabatini, del socialista olandese Hendrikus Vredeling e del cristiano-sociale tedesco Hans Lücker, il Parlamento approvò alla fine della seduta una risoluzione nella quale si approvava la creazione di un sistema risorse comunitarie 'solo a condizione che al Parlamento europeo' fossero 'trasmessi quei poteri di stabilire le entrate e le uscite fondate su risorse proprie' che non appartenevano più agli organi legislativi nazionali.[13]

La discussione sulle proposte della Commissione riprese nella sessione di maggio, quando il Parlamento fu chiamato formalmente a pronunciarsi. Com'era prevedibile, esse suscitarono forti riserve da parte del gruppo gollista, che, venutosi a costituire nel gennaio 1965 con il nome di Gruppo per l'Unione democratica europea, aveva introdotto una vistosa eccezione nel carattere sovranazionale dell'aggregazione politica. Gli altri gruppi aderirono a tali proposte ma chiesero che il ruolo del Parlamento ne uscisse ulteriormente valorizzato. Questa richiesta fu sostenuta con particolare decisione del gruppo socialista: lasciatosi da tempo alle spalle le valutazioni negative sull'integrazione comunitaria formulate all'atto della fondazione della Ceca da partiti come la Spd,[14] esso aveva assunto un indirizzo molto più propositivo che, sul piano istituzionale, puntava a una considerevole crescita delle prerogative parlamentari.

Incaricata di preparare una relazione sulla questione, la Commissione di bilancio del Parlamento aveva approvato il 29 aprile il testo presentato dal suo presidente, il socialista francese Francis Vals. Nel corso della riunione, il presidente della Commissione Cee, invitato a precisare il contenuto delle proposte, aveva sottolineato che il passaggio alle risorse proprie avrebbe conferito all'esecutivo comunitario 'fondi notevoli', sui quali era necessario introdurre un controllo parlamen-

tare.[15] La relazione adottata sottolineava la grande importanza politica delle proposte della Commissione Cee ma chiedeva di spingersi ancora più avanti nella valorizzazione della funzione del Parlamento. Ad esempio, si proponeva di stabilire che occorressero cinque voti su sei, e non quattro, per consentire al Consiglio di respingere un emendamento del Parlamento che non fosse stato approvato dalla Commissione.[16] Il 12 maggio 1965 il Parlamento approvò tale relazione con 76 voti favorevoli e 10 astensioni (i gollisti e due esponenti cristiano-democratici tedeschi): una maggioranza considerevole che confermava la volontà dell'organo parlamentare di estendere la propria influenza nel circuito decisionale, al fine di accrescere la legittimazione democratica della Comunità parallelamente alla rinuncia da parte degli Stati nazionali ad alcune importanti prerogative. Come sottolineò la presidente del gruppo socialista, la socialdemocratica tedesca Käte Strobel, il Parlamento non seguiva, chiedendo maggiori poteri in materia di bilancio, una logica di tipo corporativo, bensì lottava 'a favore della democrazia parlamentare, e, quindi, in ultima analisi, per ottenere che i cittadini' potessero 'esercitare il loro influsso sulla politica della Comunità'.[17] Agli occhi della maggioranza dei parlamentari, la Commissione Hallstein appariva a questo fine come un potente alleato, da sostenere e stimolare per renderlo ancora più sensibile alle loro rivendicazioni. L'appoggio del Parlamento alla Commissione e l'invito ad essa a mostrarsi ancora più audace su alcuni punti, tuttavia, non potevano certo compensare le accese critiche mosse dalla Francia di de Gaulle. Hallstein aveva sperato che il governo francese, essendo estremamente interessato al finanziamento della politica agricola comune, avrebbe finito per accettare la riforma proposta.[18] Ma l'intransigenza gollista nel rifiutare i nuovi meccanismi di bilancio ad esso connessi e le preoccupazioni espresse su questo o quell'aspetto dagli altri governi condussero la trattativa ad un punto morto: nella notte tra il 30 giugno e il 1 luglio 1965 il presidente di turno del Consiglio, il ministro degli Esteri francese Maurice Couve de Murville, sospese la discussione in corso senza fissare una data per riprenderla. Il 5 luglio Parigi annunciava che avrebbe disertato le future riunioni del Consiglio dei ministri e il giorno successivo richiamava il proprio rappresentante permanente presso la Comunità. Invece di recare un contributo al processo di sviluppo dell'integrazione europea, le proposte della Commissione avevano condotto a uno scontro politico-istituzionale senza precedenti nei tredici anni di vita comunitaria.

3. *La reazione di fronte alla crisi.*

Se il Parlamento aveva creduto di poter finalmente essere scritturato per recitare una parte di rilievo sulla scena comunitaria, si dovette ricredere sin dal momento in cui la Commissione, orientandosi

a compiere un passo indietro rispetto al progetto iniziale, presentò una proposta di compromesso nella quale si teneva ampiamente conto dell'ostilità francese verso lo sviluppo della dimensione sovranazionale della Comunità. Il memorandum presentato dalla Commissione il 22 luglio definiva le modalità di finanziamento della politica agricola comune, il punto che stava a cuore a Parigi, rinviando però l'esame del passaggio al regime di risorse proprie, su cui il governo francese aveva espresso pesanti riserve, e rinunciando di fatto all'obiettivo, che alla Francia gollista risultava particolarmente inviso, di infondere una nuova vitalità al Parlamento.

Questo ripiegamento della Commissione non servì, però, a far sì che il governo francese riprendesse il suo posto nelle strutture comunitarie. Non solo la Francia gollista non si accontentò delle concessioni che le venivano fatte, ma irrigidì ulteriormente la sua posizione mettendo in discussione, a quel punto, anche lo spazio di manovra della Commissione nel sistema istituzionale e il passaggio in diversi ambiti, previsto per il 1 gennaio 1966, al voto a maggioranza all'interno del Consiglio dei ministri. La posta in gioco si era quindi notevolmente alzata. Per Parigi, non si trattava più semplicemente di ottenere il ritiro del progetto iniziale della Commissione, bensì di considerare questa vicenda come un'occasione d'oro per riorientare la dinamica istituzionale complessiva della Comunità sancendo il primato del metodo intergovernativo.

La conferenza stampa di Charles de Gaulle del 9 settembre 1965 illustrò con grande enfasi quali erano i bersagli dell'attacco gollista. Il Generale stigmatizzò la concezione federalista di un'integrazione politico-istituzionale in cui 'les pays perdraient leurs personnalité nationale, et où, faute d'un fédérateur, tel qu'à l'Ouest tentèrent de l'être - chacun d'ailleurs à sa façon - César et ses successeurs, Charlemagne, Othon, Charles Quint, Napoléon, Hitler, et tel qu'à l'Est s'y essaya Staline, ils seraient régis par quelque aréopage technocratique, apatride et irresponsable'. L' 'areopago' paventato da de Gaulle era evidentemente la Commissione, che con la proposta del passaggio alle risorse proprie avrebbe voluto trasformarsi in una 'grande puissance financière indépendante'. E se era vero che il bilancio comunitario sarebbe stato sottoposto all'esame dell'Assemblea parlamentare europea, ciò, secondo il severo giudizio del Generale, andava considerato non come un'attenuante, bensì come un'aggravante: l'intervento dell'Assemblea comunitaria, 'qui est essentiellement consultative et dont les membres n'ont jamais, nulle part, été élus pour cela, ne ferait qu'aggraver le caractère d'usurpation de ce qui était réclamé'.[19] La temeraria iniziativa della Commissione Hallstein aveva consentito alla Francia, proseguiva de Gaulle, di aprire gli occhi sui rischi cui sarebbe andata incontro la sovranità del paese se non vi fos-

se stata una correzione dell'evoluzione istituzionale in corso. Il governo francese, come fu precisato dal ministro Couve de Murville in intervento pronunciato il 20 ottobre di fronte all'Assemblea nazionale, era intenzionato ad ottenere adeguate garanzie in questo senso: la Commissione avrebbe dovuto sottostare a una forma di controllo da parte del Consiglio dei ministri, mentre all'interno di questo consesso si sarebbe dovuto continuare a ricorrere al voto all'unanimità anche nei casi in cui era prevista l'introduzione di quello a maggioranza.

Come reagì il Parlamento europeo di fronte all'escalation gollista?

Una prima risposta si ebbe il 24 settembre 1965 quando esso fu convocato per l'elezione del suo presidente. Si trattò però di una seduta breve e molto tesa, dato che il nuovo presidente, il cristiano-sociale belga Victor Leemans, fu eletto senza il voto dei socialisti, i quali si astennero con la motivazione che sulla sua persona pesavano le ombre delle condotta politica assunta durante gli anni della seconda guerra mondiale.[20] Nel discorso di congratulazione pronunciato dopo l'elezione, il presidente della Commissione Cee Walter Hallstein non mancò comunque di difendere la validità dell'integrazione comunitaria, la nuova via che 'nella storia dell'evoluzione europea' aveva 'il valore rivoluzionario delle teorie di Copernico', e che aveva consentito di raggiungere risultati fondamentali: 'Non è esagerato dichiarare che quanto da noi realizzato costituisce il massimo successo conseguito dal mondo libero dopo la fine della seconda guerra mondiale'.[21] Al termine della seduta, il Parlamento approvò (con l'opposizione del gruppo gollista secondo il quale il problema della crisi istituzionale doveva essere considerato di esclusiva competenza dei governi) un breve testo in cui, definendosi garante dei Trattati comunitari e 'interprete della volontà popolare', da cui derivava 'la propria autorità', sottolineava che nessun paese poteva sottrarsi agli impegni assunti e che i Trattati dovevano essere 'integralmente rispettati ed applicati nei termini previsti'.[22]

Più intenso e acceso fu il confronto che ebbe luogo il 20 e il 21 ottobre 1965, nel corso della discussione di una relazione sull'attività della Cee.[23] La grande maggioranza dell'Assemblea prese posizione contro le richieste e il comportamento della Francia, che furono invece difesi dal gruppo gollista, il quale cercò di far ricadere le responsabilità della crisi sugli attori istituzionali comunitari e sugli altri governi nazionali, tra cui quello italiano. È interessante notare che nel dibattito intervennero diversi rappresentanti francesi: coloro si opponevano alla politica gollista volevano infatti cogliere l'occasione per esprimere un'altra visione francese dell'Europa, fedele al disegno alla base della Dichiarazione Schuman del 9 maggio 1950.

Il relatore René Charpentier, membro del Mrp, aprì l'offensiva contro l'indirizzo gollista dichiarando che non si poteva che 'biasimare la

politica giuridicamente e moralmente riprovevole della sedia vuota'.[24] Egli difese l'operato della Commissione Cee e, in chiara chiave polemica rispetto alle dichiarazioni del Generale del 9 settembre, espresse il suo attaccamento all'idea di un'Europa federata. L'ideale di una 'federazione europea potente e viva' fu ribadito anche da Julien Bruhnes, a nome del gruppo liberale, per il quale era quanto mai ingeneroso presentare i membri della Commissione come dei 'tecnocrati apatridi'.[25] Il presidente del gruppo democristiano, Alain Poher, affermò che il suo gruppo confermava la scelta a favore dell' 'Europa unita in Comunità, contro gli assi e le alleanze intercambiabili e revocabili del passato'.[26] E il presidente del gruppo liberale, René Pleven, invitò i colleghi, sottolineando come nel suo paese vi fosse una tenace corrente a favore della prosecuzione dell'integrazione, a non parlare, quando criticavano la politica gollista, della posizione della Francia, bensì di quella del 'governo francese'.[27]

Nella discussione presero la parola anche diversi rappresentanti italiani, tutti appartenenti alla Democrazia cristiana: Giovanni Bersani, Mario Pedini, Armando Sabatini, Natale Santero, Mario Scelba. Particolarmente duro fu l'intervento pronunciato da Armando Sabatini, il quale svolse una pesante requisitoria contro l'atteggiamento francese e respinse l'accusa, mossa dal gruppo gollista, secondo cui l'Italia avrebbe avuto grandi responsabilità nella genesi della crisi.[28]

Gli esponenti del gruppo gollista giustificarono le scelte compiute dalla Francia presentandole come l'inevitabile reazione alle esorbitanti pretese altrui e, riguardo alle istituzioni comuni, oltre ad attribuire alla Commissione il disegno di condurre la Comunità a violare la legittima sovranità degli Stati, rimproverarono al Parlamento le sue eccessive ambizioni: l'insufficiente considerazione mostratagli dal Consiglio dei ministri derivava innanzitutto, a loro avviso, dal massimalismo astratto di cui l'Assemblea amava dar prova.

Tra i tre gruppi storici dell'assemblea, fu quello socialista ad assumere ancora una volta la posizione più intransigente. Intervenendo a nome del gruppo, il socialista olandese Paul Kapteyn affermò esplicitamente che, pur di non rimettere in discussione l'impianto comunitario cedendo alle pretese francesi, le cinque nazioni rimaste fedeli alla struttura dei Trattati avrebbero dovuto orientarsi, come *ultima ratio*, a proseguire nel percorso dell'integrazione senza la Francia e riaprendo le trattative per l'ingresso della Gran Bretagna, bloccatesi nel 1963 a causa del veto del Generale.

Nella risoluzione approvata al termine della discussione il Parlamento auspicò la rapida ripresa dei negoziati tra i Sei, sottolineò che occorreva continuare 'la via tracciata dai Trattati al fine di giungere ad un'Europa economicamente e politicamente integrata' e ribadì la necessità di un rafforzamento delle proprie prerogative.[29] Un breve

scambio di opinioni ebbe poi luogo il 25 novembre a commento della dichiarazione emessa dai governi dei Cinque al termine della riunione del Consiglio dei ministri svoltasi il 25 e il 26 ottobre. In tale dichiarazione era contenuto l'invito al governo francese a partecipare, per affrontare i problemi da esso sollevati, a una riunione straordinaria del Consiglio da svolgersi senza la presenza della Commissione. L'idea di escludere la Commissione costituiva una significativa concessione alle posizioni francesi. E nella seduta del 25 novembre, Paul Kapteyn, parlando a nome del proprio gruppo, osservò con amara ironia che dopo aver abbandonato, con il memorandum del luglio 1965, l'iniziale proposito di rafforzare le competenze del Parlamento europeo, la Commissione veniva a sua volta sacrificata sull'altare della ricerca di un'intesa con la Francia: 'Forse questa è una giusta vendetta per il fatto che nel suo Memorandum la Commissione non ha menzionato i poteri del Parlamento europeo – e noi socialisti ce ne siamo rammaricati profondamente. Come la Commissione ha tradito il Parlamento, così ora il Consiglio tradisce la Commissione'.[30] In effetti, emergeva ormai con chiarezza che la dinamica della crisi produceva pesanti conseguenze sul ruolo delle istituzioni comuni. Messa da parte nelle trattative con la Francia, la Commissione subiva un'evidente perdita di prestigio. Quanto al Parlamento, la sua tradizionale condizione di debolezza ne usciva ampiamente confermata. Non solo perché la crescita delle sue prerogative era rinviata *sine die*, ma anche perché se, nella primavera di quell'anno, gli era stato chiesto un parere sulle proposte della Commissione (presentategli, nelle loro linee generali, addirittura prima della trasmissione al Consiglio dei ministri), i governi non sembravano ora mostrare particolare interesse a conoscere la sua opinione sul modo di risolvere la crisi scaturita da tale proposte. Eppure non era affatto irrilevante che mentre i rappresentanti del governo francese si astenevano dal partecipare a gran parte dell'attività comunitaria, i delegati francesi all'interno dell'assemblea, tra cui gli stessi gollisti, continuassero a dialogare, confrontarsi o anche a scontrarsi con i membri delle altre cinque nazioni. Confermandosi un prezioso luogo di confronto politico, il Parlamento forniva il suo contributo al mantenimento di un canale di comunicazione tra i Sei.

4. *Il giudizio sul compromesso di Lussemburgo.*

Il risultato non esaltante conseguito dal Generale alle elezioni presidenziali del dicembre 1965, nelle quali fu costretto al ballottaggio con il candidato della sinistra François Mitterrand, indusse la Francia, tenuto conto che la politica della sedia vuota aveva provocato crescenti malumori anche tra i suoi agricoltori (i quali rappresentavano un importante elemento nella base elettorale del gollismo), a ricercare un ac-

cordo con i cinque partner, accettando l'idea della riunione straordinaria a livello ministeriale senza la presenza della Commissione. Il compromesso tra le rispettive posizioni fu raggiunto nel corso dei due incontri che ebbero luogo a Lussemburgo, il primo il 17 e il 18 gennaio 1966, il secondo il 28 e il 29 dello stesso mese. Tra l'uno e l'altro, il Parlamento ebbe finalmente modo di far ascoltare la sua voce ai rappresentanti dei governi, che presero parte alla seduta del 20 gennaio 1966. L'importante seduta si aprì con il discorso del presidente in carica del Consiglio, il tedesco Werner, il quale illustrò i punti al centro della discussione tra i Sei. I nodi più delicati rimanevano le richieste della Francia di bloccare il passaggio al voto a maggioranza all'interno del Consiglio e di ridimensionare il ruolo della Commissione. Su questi aspetti, i tre gruppi principali ribadirono le loro preoccupazioni. A nome del gruppo liberale, l'ex ministro degli Esteri italiano Gaetano Martino, presidente del Parlamento europeo dal 1962 al 1964, sottolineò che la Commissione non doveva essere trasformata 'da organo politico ad organo tecnico', con la conseguenza che sarebbe venuto meno anche il controllo politico del Parlamento.[31] E a nome di quello democristiano, Hans Furler dichiarò che se da un lato era auspicabile fare sempre tutto il possibile per giungere nel Consiglio a decisioni condivise, dall'altro non si poteva accettare la richiesta di rimanere vincolati al requisito dell'unanimità ogniqualvolta uno Stato avesse affermato che erano in gioco i suoi interessi vitali.[32]

Il 29 gennaio 1966 la riunione tra i governi dei Sei si concluse con un'intesa che aprì la strada all'adozione, alcuni mesi dopo, del regolamento finanziario per la politica agricola fino al 1970. I cinque partner della Francia erano riusciti ad evitare che il Trattato Cee fosse sottoposto a modifiche. In cambio, però, il governo francese aveva ottenuto concessioni di rilievo. Era stato stabilito che la Commissione dovesse prestare maggiore attenzione al coordinamento con il Consiglio dei ministri. E, soprattutto, si era deciso che, quando fossero stati coinvolti interessi molto importanti di uno o più Stati membri, all'interno del Consiglio vi sarebbe stato uno sforzo collettivo per raggiungere soluzioni consensuali. Il testo dell'accordo precisava, tuttavia, che era emersa la constatazione di un dissenso tra la Francia e le altre nazioni su cosa si sarebbe dovuto fare se lo sforzo di conciliazione non avesse avuto successo: per la Francia, il ricorso al voto a maggioranza sarebbe stato inammissibile, mentre gli altri paesi non erano intenzionati a escludere del tutto questa opzione.

Al compromesso di Lussemburgo fece seguito il ritorno della Francia nelle sedi istituzionali da cui si era allontanata o che aveva deciso di frequentare in maniera intermittente. La crisi della sedia vuota era finita. Ma con quali conseguenze, a giudizio del Parlamento europeo?

L'accordo raggiunto fu preso in esame dall'Assemblea nella seduta

del 9 marzo 1966, sulla base di una relazione presentata, a nome della Commissione politica, dal socialdemocratico tedesco Ludwig Metzger.[33] La relazione esprimeva viva preoccupazione sui termini del compromesso. Sul problema del voto a maggioranza, era stata inserita in particolare una precisazione di Gaetano Martino, secondo il quale se era legittima una differenza di interpretazione di una norma del Trattato, non lo era, ed era questo che avveniva invece nel caso in questione, una divergenza relativa alla sua attuabilità. Mettere in discussione l'attuabilità di una norma significava, secondo l'ex ministro degli Esteri, togliere certezza al diritto e rendere aleatori tutti gli accordi siglati dagli Stati.[34] Le critiche al compromesso di Lussemburgo furono ribadite con forza dal relatore Metzger nella sua esposizione in aula: la Commissione rischiava una seria riduzione del suo ruolo politico, mentre il persistente dissenso tra la Francia e i cinque partner sulla possibilità di un ricorso in ultima istanza al voto a maggioranza avrebbe potuto condurre di fatto alla vittoria della tesi francese.[35]

I rappresentanti dei tre gruppi principali furono unanimi nel sostenere, sia pure con una diversa accentuazione di toni, che la soddisfazione per la fine dell'autoesclusione francese non poteva celare i timori nei confronti dell'evoluzione del quadro istituzionale comunitario. Esprimendo la posizione del gruppo socialista, Vals affermò che l'esito della crisi della sedia vuota poteva rappresentare un vero e proprio spartiacque nella storia dell'integrazione europea, segnando il passaggio da una fase di speranza e di slancio verso il futuro a un periodo assai meno dinamico.[36] E a nome dei liberali, René Pleven sottolineò con lucida amarezza che dal conflitto istituzionale provocato dalle scelte golliste a uscire sconfitto era stato in definitiva proprio il Parlamento europeo:

> 'Pensando a ciò che è avvenuto a Lussemburgo, dove si sostiene che non ci sono stati né vinti né vincitori, io vi dico: siamo franchi, un vinto c'è stato ed è stato quello che è stato rimesso in "frigorifero", dopo averlo fatto uscire qualche settimana grazie al signor Hallstein: il Parlamento europeo. Tutti sono stati d'accordo per considerare come inopportuna la questione di un accrescimento delle competenze del Parlamento europeo'.[37]

L'applicazione del compromesso di Lussemburgo diede ragione a queste valutazioni critiche dei parlamentari?

La Commissione subì indubbiamente una consistente perdita di peso politico. Il suo ruolo di motore dell'integrazione europea non venne meno, ma fu esercitato in forma più moderata, senza le ambizioni manifestate in precedenza. All'interno del Consiglio dei ministri, la divergenza di vedute sulla possibilità di ricorrere al voto a maggioranza si risolse decisamente a favore della tesi francese: per quasi due de-

cenni, il ricorso a tale modalità di voto risultò di fatto impossibile, ad eccezione di casi limitati. E per il Parlamento si aprì, in effetti, una fase davvero sconfortante: nel momento in cui l'equilibrio dei poteri si spostava a vantaggio dei governi, l'aspirazione ad aprire una nuova frontiera nel percorso storico delle istituzioni parlamentari, assorbendo quelle prerogative che tendevano a sfuggire di mano agli organi legislativi nazionali, subì un duro colpo. Se, secondo le parole del socialista belga Fernand Dehousse, adottando nel 1962 la denominazione 'Parlamento europeo' si era voluto scegliere uno 'pseudonimo' che anticipasse le linee dell'evoluzione futura, la distanza rispetto a una significativa valorizzazione dell'istituzione parlamentare rimase considerevole. Il percorso di avvicinamento all'obiettivo prefigurato dallo 'pseudonimo' riprese però, dopo il ritiro di de Gaulle, con il rilancio della costruzione europea che fu avviato dal vertice dell'Aia del dicembre 1969, a seguito del quale il Parlamento fu investito di significative prerogative in materie di bilancio. Nel 1974 fu deciso il passaggio all'elezione diretta,[38] e a partire dall'Atto unico del 1986 si sarebbe aperto un lungo ciclo di riforma dei Trattati da cui l'organo parlamentare sarebbe emerso come uno dei principali beneficiari.[39] Il Parlamento europeo era uscito pesantemente sconfitto dalla crisi della sedia vuota, ma il suo processo di sviluppo non era stato annientato dalla battaglia perduta.

Note

[1] Cfr. N. Piers Ludlow, *The European Community and the Crises of the 1960s. Negotiating the Gaullist Challenge* (London & New York, 2006).

[2] Assemblea parlamentare europea, *Discussioni*, seduta di venerdì 21 marzo 1958, pp. 104-105.

[3] Ivi, seduta di martedì 13 maggio 1958, p. 6.

[4] Parlamento europeo, Commissione politica, *Per l'elezione del Parlamento europeo a suffragio universale diretto. Raccolta di documenti*, Lussemburgo, Direzione generale della documentazione parlamentare e dell'informazione, 1969.

[5] Assemblea parlamentare europea, *Discussioni*, seduta di giovedì 20 marzo 1958, pp. 86-87 e ivi, seduta di venerdì 21 marzo 1958, pp. 89-90.

[6] Parlamento europeo, *Discussioni*, seduta di venerdì 30 marzo 1962, p. 150.

[7] Ivi, p. 152.

[8] Ivi, p. 151.

[9] Archivi Storici dell'Unione europea, Firenze (d'ora in avanti ASUE), PE0-422, Parlamento europeo, Documenti di seduta, 1963-1964, n. 31, 14 giugno 1963, Relazione presentata a nome della Commissione politica sulle competenze e i poteri del Parlamento europeo, *Progetto di risoluzione,* p. 26.

[10] E' quanto lamentò ad esempio Gaetano Martino nel marzo 1965 in un intervento in aula: Parlamento europeo, *Discussioni*, seduta di giovedì 25 marzo 1965, p. 240.

[11] Cfr. C. Malandrino, *"Tut etwas Tapferes": compi un atto di coraggio. L'Europa federale di Walter Hallstein. 1948-1982* (Bologna, 2005).

[12] Parlamento europeo, *Discussioni*, seduta di mercoledì 24 marzo 1965, pp. 166-172.

[13] *Risoluzione su taluni aspetti dell'organizzazione finanziaria della Cee*, ivi, p. 212.

[14] Cfr. L. Grazi, 'Verso una "communauté d'action supranationale". Il gruppo socialista all'Assemblea comune della Ceca (1953-1957)', in F. Di Sarcina, L. Grazi, L. Scichilone (a cura di), *Europa in progress. Idee, istituzioni e politiche nel processo di integrazione europea* (Milano, 2006), pp. 25-38.

[15] ASUE, PE0 AP BUDG-19650429, Commissione per i bilanci e l'amministrazione, riunione del 29 aprile 1965, processo verbale, PE 13.946, pp. 3-4.

[16] ASUE, PE0-535, Parlamento europeo, Documenti di seduta, 1965-1966, n. 34, 10 maggio 1965, Relazione presentata a nome della Commissione per i bilanci e l'amministrazione sulle proposte della Commissione CEE al Consiglio.

[17] Parlamento europeo, *Discussioni*, seduta di martedì 11 maggio 1965, p. 68.

[18] Cfr. P. Ludlow, 'A Supranational Icarus? Hallstein, the early Commission and the search for an independent role', in A. Varsori (ed.), *Inside the European Community. Actors and Policies in the European Integration. 1957-1972* (Baden Baden-Bruxelles, 2006), pp. 37-53.

[19] Ch. de Gaulle, *Discours et messages*, IV, *Pour l'effort. Août 1962-Décembre 1965* (Paris, 1970), pp. 379-380.

[20] Parlamento europeo, *Discussioni*, seduta di venerdì 24 settembre 1965, pp. 5-8.

[21] Ivi, pp. 9-10.

[22] *Risoluzione sull'attuale situazione della Comunità europea,* ivi, p. 12.

[23] Cfr. P. Scalingi, *The European Parliament. The Three-Decade Search for a United Europe* (London, 1980), pp. 77 ss.

[24] Parlamento europeo, *Discussioni*, seduta di mercoledì 20 ottobre 1965, p. 69.

[25] Ivi, p. 89.

[26] Ivi, seduta di giovedì 21 ottobre 1965, p. 137.

[27] Ivi, p. 139.

[28] Ivi, seduta di mercoledì 20 ottobre 1965, pp. 102-107.

[29] *Risoluzione sull'Ottava relazione generale dell'attività della Comunità economica europea*, ivi, seduta di giovedì 21 ottobre 1965, pp. 143-146.

[30] Ivi, seduta di giovedì 25 novembre 1965, p. 93.

[31] Ivi, seduta di giovedì 20 gennaio 1966, p. 121.

[32] Ivi, pp. 131-134.

[33] ASUE, PE0-669, Parlamento europeo, Documenti di seduta, 1966-1967, n. 18, 7 marzo 1966, Relazione presentata a nome della Commissione politica sulla situazione attuale della Comunità europea.

[34] ASUE, PE0 AP POLI-19660228, Commissione politica, processo verbale della riunione del 28 febbraio 1966, PE 15.369, p. 4.

[35] Parlamento europeo, *Discussioni*, seduta di mercoledì 9 marzo 1966, pp. 118-124.

[36] Ivi, pp. 128-129.

[37] Ivi, p. 136.

[38] Cfr. D. Pasquinucci, L. Verzichelli, *Elezioni europee e classe politica sovranazionale. 1979-2004* (Bologna, 2004).

[39] Cfr. Y. Mény (ed.), *Building Parliament: 50 years of European Parliament History. 1958-2008* (Luxembourg, 2009).

Elena Baldassarri

The Importance of Parliamentary Exchanges in the Relationship between Europe and North America

Parliamentary diplomacy doesn't represent a topic typically studied, although, in last years, it is a very common practice and seems to be increasing in importance.[1] The term 'parliamentary diplomacy' could be used in different ways. Most importantly, 'it relates to the range of international activities undertaken by parliamentarians in order to strengthen mutual understanding between countries'. In addition, 'it allows countries to assist each other in improving the control of governments and the representation of a people, and finally it raises the democratic legitimacy of inter-governmental institutions'.[2]

Foreign policy has always been exclusive terrain of the executive power. In recent decades, however, some factors have significantly influenced the balance between Parliament and Government in matter of foreign policy. The first factor is connected to the new global approach of the problems Parliaments are facing. Some of the main issues that affect the legislative power, such as environmental problems, unemployment and economic crisis, must be considered in a worldwide mindset. Secondly, every government is becoming more and more involved in international organizations and inter-parliamentary structures.[3]

Parliamentary diplomacy is an oft-utilized concept for politicians, scholars, instead, have ignored it for two main reasons.

The first reason comes from the fact that parliamentary diplomacy, in the past in international relations and international law, was defined as a concept derived from 'multilateral negotiations characterized by institutionalization, rules of procedure, public debate and the vote on draft resolutions'. This definition means the implicitly or explicitly group formation and 'bloc voting' in multilateral negotiations as a parallel to parliamentary assembly. Some scholars have described it as 'embryonic party system'.[4] For these scholars the United Nations and its predecessor, the League of Nations, have some resemblances to a parliamentary body because 'as political parties were once regarded as disreputable instruments for the suppression of individual liberty, so the activities of *blocs* and groups of States at the United Nations have sometimes been condemned on the ground that moral principle is cynically sacrificed for some selfish sectional interest'.[5] This interpretation of 'Parliamentary diplomacy' is analogous with methods of legislative bodies, and does not describe a real diplomacy made by parliamentarians.

The second reason for which scholars have ignored parliamentary diplomacy comes from the continuous reaffirmation of the always hegemonic neo-realist and institutionalist approaches of study, based on traditional concepts of national diplomacy and international organizations.[6] This approach is missing the two dimensions that characterize the term 'parliamentary diplomacy': the transnational construction of regional and value-based political groups and the composite character of the state. It is important that the disciplines of diplomatic history and international relations analyse political geography and culture as well as domestic complexity and contingency. These two approaches are fundamental because, like today and as in the past, the main factors of the governments' legitimacy are internal approval and external alliances.[7]

According to Noël A. Kinsella and Peter Milliken, Speaker of the Senate and Speaker of the House of Commons of Canada respectively, 'parliamentary diplomacy must be an important complement to the diplomatic initiatives undertaken by the government'.[8] In this sense, it is referred to as inter-parliamentary activity (whose prototype institution is the Inter-Parliamentary Union)[9] parliamentary exchanges, protocol events (such as the official welcoming ceremonies for heads of state and heads of government or other senior parliamentary dignitaries) and parliamentary conferences. [10]

Some scholars argue that foreign policy and democracy do not mix, primarily because foreign policy needs expertise, secrecy and urgency in decision-making and, for this reason, remains in the hands of the executive branch of the government. But the fact that some policy areas require more secrecy does not mean that there can be no responsible mechanisms or open debate. The proliferation of international or trans-national parliamentary bodies, as well as an increased international role for national and regional parliaments, contradict empirically the Realist claim that there is no role for parliaments in foreign affairs. Obviously the influence of parliaments is not as important in world politics as that of governments or other executives, but one should not ignore it, although its impact has so far been rather limited.

The 'parliamentary decline' thesis states that parliaments have lost power to the executive branch of government over the past century, but especially since the end of World War Two, in particular during the Cold War and in the issue of foreign and defence policies. This hypothesis is demonstrated in most of Western liberal democracies.[11]

The end of the Cold War seems to have reversed the movement. But it is also true that there was some evidence of a change to that trend before the end of the Cold War - for example, during the Vietnam war. It is equally true that although the integration process in

Western Europe can be seen as an accelerator to the decline of parliaments through the increased role of prime ministers, presidents, or foreign ministers, the debate in Europe has led to a number of initiatives where national and other parliaments have increased their influence.[12]

To understand better what was meant by 'Parliamentary diplomacy' it is necessary to underline the difference between the United States, a big power nation, that uses the parliamentary exchanges to increase understanding of the rest of the world, and, sometimes, as an expression of internal power struggles, and middle power countries such as Canada and others, that use parliamentary diplomacy to improve their space of action.

Some middle powered countries tried to create new ways to build their own originality in foreign policy and to find the space for their provincial governments, exchanging their expertises, with the purpose of increasing and developing the parliamentary system. At a regional level, parliaments could use regional inter-parliamentary organizations and through them seek to influence the corresponding intergovernmental bodies. They could also exchange experiences with the purpose of improving and simplifying national legislation.[13]

Canada seems to be a clear sample of this necessity. Immediately after the Second World War, thanks to the contribution the Country had given to the Allied forces, the Canadian government had demanded a more active role in the international arena. In particular, Prime Minister Louis St. Laurent[14] and Foreign Minister Lester Pearson[15] had adopted a policy of dynamic participation in the UN and NATO. The choices made by the two statesmen had a great influence on the country's foreign policy in the future.

Canadian public opinion therefore had acquired a new sensitivity to the role that the country was taking in international commitments. It had gained a deeper sense of national identity and demonstrating a new interest in foreign policy, it had also raised awareness of the need to share with others the responsibility for peace and security.[16]

Canada was the world's eyes to the appropriate entity resolution and crisis management which faced international equilibrium. Its location makes it one of the most powerful 'middle powers',[17] but with a special feature because it had to share its region, namely the North American continent, with the United States, the country had become the leading power in the world. For this reason Canada, being 'a regional power without a region',[18] felt more open to the rest of the world (Commonwealth Atlantic region, French-speaking countries, etc.).

The multilateralism[19] become the main principle for the Canadians in foreign policy and they were willing to accept some limits on sov-

ereignty in order to enter international organizations, as was demonstrated when the United Nations were founded.[20] As in the past, it was necessary to recreate a series of regional systems which, necessarily, have defined the margins of maneuver. Canadians also felt strongly involved especially because some were afraid to move from one status of the former colony of British Empire to state-satellite of United States.[21] They also didn't forget the evident difficulties of living near the United States[22] and to join a border with the Soviet Union in the Arctic and Newfoundland.

In this context and with those premises, arise the expansion of the Canadian inter-parliamentary activity. The process began with the establishment of the NATO Parliamentarians group in 1955 and the Canada-United States Inter-Parliamentary Group in 1959. During the Sixties, with the progress of the French-Canadian nationalism, began also the inter-parliamentary activity of the Assemblée parlementaire de la francophonie, set up in 1967. The Canada-Europe Parliamentary Association, which organizes annual meetings with delegations from the European Parliament and the Council of Europe, was created in 1980 and the Inter-Parliamentary Forum of the Americas in 2001. At the bilateral level, in addition to the link with the US Congress,[23] associations were established with the Assemblée nationale of France in 1965, the Japanese Diet in 1985, the United Kingdom Parliament in 1998 and the Chinese National Peoples Congress, also in 1998.[24]

If this is the experience of a middle power, different consideration should be made for United States. U.S. Constitution, like some others, established a system of balance of responsibilities and checks among all the branches of State power. Because of this procedure, policy often looks like compromise and reconciliation. As Edward S. Corwin wrote: 'What the Constitution does, *and all that it does, is* to confer on the President certain powers capable of affecting our foreign relations, and certain other powers of the same general kind on the Senate, and still other such powers on Congress; but which of these organs shall have the decisive and final voice in determining the course of the American nation is left for events to resolve'.[25]

It is commonly thought that during the Cold War era legislative and executive powers were very near in their decision in foreign affairs, such as a bipartisan consensus should be necessary in this period. In reality this was true only for the period of Roosevelt, Truman and Eisenhower Administrations, when the collaboration between President and congressional leaders of both Democratic and Republican parties was high. In fact it was not uncommon, as during Korean and Vietnam war, that deep disagreement paralyzed the political decision. However, it is important to underline that Congress plays also a

deterrent role and the President always must take into consideration what it might or not vote, and he often decides do not to take an action or to delay it fearing the political price he will pay after a Congress refusal. It is essential also to understand that the American Congress is not a monolithic and, a part from some rare cases such as the Marshall Plan and the Nato Treaty, it never act as a unitary body.

In the balance between President and Congress is important to recognize other powerful political figures: the lobbyists. They are people who are employed for influencing or monitoring government actions. Their power has increased in the last three decades. It is common that a foreign government have an interest in influencing the Congress in some questions of foreign policy. For these reasons they used to call for the action of lobbyists, to bear on issues such trade, commerce but also violation of human rights and infractions. A lobbyist plays an important role in interpreting what Congress might decide involving his client interest and trying to change it. One of the consequences is the deepening of the knowledge of the choices made by foreign governments and companies.

The conduct of private diplomacy by single member of Congress is called *Lone Ranger diplomacy*.[26] It is an old phenomenon[27] and affects both Democrat and Republicans. Usually, however, it fails because people looks unfavorably on it and because most legislators believe that the President has the responsibility for negotiations.

As some scholar has observed on U.S. post-Cold War foreign policy, near to some elements such as maintaining strong alliances, fostering economic integration, controlling weapons proliferation, promoting democratic values and humanitarian missions, there is the increasing influence of domestic politics on the management of foreign affairs. In this sense the efforts to face international issues are affected also by U.S. politics.[28]

However, during the Cold War years, parliamentary diplomacy had little influence and was not as widespread as it has been in the last twenty years. This probably comes from the fact that, with the policy of blocs, it was not possible for Members of Congress to have a prominent role in international relations, even within the inter-parliamentary bodies.

In those years we can speak, instead, of 'political parties diplomacy'. It was, in fact, on the occasion of international conventions that a fruitful exchange between delegates from all over the world took place. In addition we have to consider the activities held abroad by parliamentarians, as secretaries or members of parties, during their visits only 'formally' private. Instead it is very common now, that a head of foreign state will visit the Congress.[29]

One exemplary case of the parallel activity of politicians is the trip

to the United States of the Italian deputy Valerio Zanone, Liberal Party Premier. The visit took place from the 15th to the 23rd April 1978, during a very tragic period for Italian history, because on March 16, 1978, the Prime Minister Aldo Moro was kidnapped by a terrorist group, the *Red Brigades,* after the murder of his five escort agents, on his way to the House of Representatives.

This terrible act showed the fragile situation of Italian democracy and provoked great concern abroad and in particular in the United States. In Washington, in fact, the first manifestations of the new political course of Enrico Belringuer, Italian Communist Party Premier, announced in the Autumn of 1973 with the famous three *Rinascita*[30] magazine articles, provoked a certain malaise and worries about the evolution of the Italian political situation.

In an article on 14 June 1976, published by *Time*, the Secretary of State Kissinger warned the consequences of a Communist role in government. The American review reported Kissinger's words: 'It is difficult to see how we could continue to have NATO discussions if various Communist parties achieve control of Western European governments'. Kissinger had such a vigorous opposition to the 'historic compromise' that 'some Europeans accuse him of interference in internal Italian affairs'.[31]

Scholars produced numerous and authoritative studies about the American attitude towards the historic embrace of leftist parties and it is not the scope of this report to analyse it.[32] Now it could be useful to simply recall the extremely stressful atmosphere in which the Zanone visit took place in April 1978. Undoubtedly this atmosphere had considerably deteriorated after the kidnapping of Aldo Moro. The trip to the United States of a liberal political figure represented an event of great importance: he was in clear opposition to the choices of the Christian Democrats to let Communists enter the government.

Before departure, it was recommended to Zanone to communicate with the government regarding his decision to leave and stressed that 'from a formal point of view' the trip should be treated as a private one with the sole purpose of having some conferences. However inevitably Hon. Zanone would have meetings with representatives of the Congress and Senate, as the Italian Consul in the United States, Cortese de Bosis, was looking to combine, it was necessary to discuss with the Minister of Foreign Affairs, Arnaldo Forlani, before leaving.[33] In such a heated moment, it was essential for the government to coordinate and organize a good image abroad - especially in the United States.

Zanone had numerous meetings with prominent political personalities such as Senator Joseph Biden, the Chairman for European Affairs, of the Senate Foreign Relations Committee Congressman

Robert Lagomarsino of the House International Relations Committee, and economic personalities such as David Rockefeller. [34]

At the end of his trip in the United States, Zanone tried to summarize his impressions and the suggestions he had from his hosts. He underlined how it was difficult for the Americans to imagine a democratic system without the watchful eye of the opposition and for this reason the role of the PLI was naturally understood. According to him, in the United States, there were worries about the ability of Italian democracy to face the 'impact of terrorism' and that the Italian economy would disassociate itself from the international market.[35] In addition to the difficult situation in Italy at the time, Zanone also had to confront the arduous task of explaining the role that the Italian Liberal Party played in this situation, stressing that 'we are a force small, smaller than the adherence to our ideals in the country'.[36]

Almost simultaneously, Giorgio Napolitano, leader of the PCI, made a visit to the United States. The purpose of his visit was to help the Americans understand the possible outlets of political and social situation of the country, the position of the Communist Party and its autonomous development in the field of international relations in regard to soviet ones.[37]

Napolitano's visit was an event of historic significance. It was the first time a member of the Directorate of Italian Communist Party had been issued a visa for entry to the United States. The visa was granted as an exception to restrictive legislation that prevented the issuance of visas to those who constituted a threat to the country, and the Communists fell into that category. The manager of the PCI was invited to explain the policy of the party, Eurocommunism and the 'historic compromise.' The trip took place in response to invitations from Princeton University and other prestigious universities, including Harvard and Yale, and was carried out on the basis of a programme of conferences and seminars, and therefore with a precise political-cultural characterization. Despite this, the limits of the visit were clear: meetings with members of Congress and Administration were not included, but the novelty was the possibility of a direct contact and of a confrontation with some qualified sectors of United States elites. [38] Joseph La Palombara was the key organizer of Giorgio Napolitiano's meetings. He was a political scientist and a scholar of Italian policy who trained in the Faculty of Political Science at Yale University.

Napolitano, like Zanone, had been particularly welcomed and had received a lot of attention from the press. Describing his visit in a report published in the review *Rinascita*, Napolitano underlined the big interest of the press and of American cultural elite. Topics of particular importance were terrorism, its causes and its relevance and viru-

lence in Italy.[39] Contact with the American academic and cultural circles left a good impression on Napolitano, but he could not, however, fail to mention 'the reserve and suspicion' that more clearly transpired in environments where, in his view, 'naïveté, and *stereotypes*, prejudices, still weigh a lot. It is hard for a lot of people *to figure us out'*. However, the importance of the new 'channels for communication and confrontation' has remained: this visit had opened up matters invested in 'the relationship between our current positions and our remote prospects'.[40]

These two trips took place in a very tragic moment for the history of Italy and for its relationships with the United States, for this reason they represent something more than the common travel of politicians seeking support and founding. The contact done by both, Zanone and Napolitiano, responded to a real need for Congress to better understand the changes taking place in Italy, in particular concerning how the Italian democratic system was responding to these tragic events.

As I tried to demonstrate, since then, parliaments have realized that they can no longer expect governments to take the sole lead and responsibility for action abroad and they are called to take part in resolving complex problems.

Notes

[1] The term 'parliamentary diplomacy' was coined by Dean Rusk. D. Rusk, 'Parliamentary Diplomacy-Debate vs. Negotiation', *World Affairs Interpreter*, 26 (1955), pp. 121–2.

[2] F.W. Weisglas and G. de Boer, 'Parliamentary Diplomacy', in *The Hague Journal of Diplomacy*, 2 (2007), pp. 93.

[3] N. Götz, 'On the Origins of "Parliamentary Diplomacy": Scandinavian "Bloc Politics" and Delegation Policy in the League of Nations', *Cooperation and Conflict*, 40 (2005), p. 263-64.

[4] S.D. Bailey, *The General Assembly of the United Nations: A Study of Procedure and Practice* (rev. edn. New York, 1964) p. 26; P.C. Jessup, 'Parliamentary Diplomacy: An Examination of the Legal Quality of the Rules of Procedure of Organs of the United Nations', *Recueil des Cours, Collected Courses*, 89 (1956-I), p. 315; E. Hambro, 'Some Notes on Parliamentary Diplomacy', in W. Friedmann, L. Henkin and O. Lissitzyn (eds), *Transnational Law in a Changing Society:Essays in Honor of Philip C. Jessup* (New York, 1972), pp. 282-84.

[5] 'It is a normal part of diplomacy for States to consult each other on matters of common interest, and perhaps one of the chief reasons why this happens rather often at United Nations headquarters is that it is rather easy. Representatives of Member States constantly meet each other, not necessarily by careful prearrangement but rather'. Bailey, *The General Assembly of the United Nations*, p. 26.

[6] O. Wæver, 'The Rise and Fall of the Inter-paradigm Debate', in S. Smith, K. Booth and M. Zalewski (eds) *International Theory: Positivism and Beyond* (Cambridge, 1996) pp. 149–185.

[7] Götz, 'On the Origins of 'Parliamentary Diplomacy', p. 265.

[8] *Parliamentary Diplomacy: the Canadian Approach*, Speech by N.A. Kinsella and P.

Milliken, 4 May 2007 in http://www.sen.parl.gc.ca/nkinsella/PDF/Speeches/ ParlDiplomacy-e.pdf. Rabi Ray, Speaker of the Lower House of the Indian legislature, emphasizing the distinction of exerting influence rather than determining policy, said 'parliamentary diplomacy may mean either that Parliamentarians play the role of diplomats, or that Parliamentary assemblies intervene actively in the formulation of foreign policy'. R. Ray, *Parliamentary Diplomacy* (New Delhi, 1991), p. 2.

[9] Some information about Interparliamentary Union history, functions and activities in http://www.ipu.org/english/home.htm .

[10] 'Parliamentary diplomacy is a number of different and varied things such as: MPs missions abroad and participation in transnational parliamentary bodies; visits by other MPs and parliamentary delegations to parliaments and other institutions (national or transnational); questions (written and oral), reports and other studies on foreign affairs that take place within a parliamentary body; the activities of transnational parliamentary bodies, and parliamentary participation in the monitoring of elections in third countries'. S. Stavridis, 'Parliamentary Diplomacy: some preliminary findings', *Jean Monnet Working Papers in Comparative and International Politics*, 48, (2002), in http://www.fscpo.unict.it/EuroMed/jmwp48.htm. And also in S. Stavridis, *Dialogue among neighbours: the parliamentary dimension or How to strengthen cooperation between parliaments, civil society and academic institutions with the setting up of a network on ´parliamentary diplomacy´*, Fòrum universitari de la Mediterrània (Tarragona, 2005) in www.humanrights-observatory.net/revista3/Stelios%20Stavridis.pdf.

[11] This thesis is connected to the general question of the elites diminished role inside and outside of government in shaping foreign policy in the post Cold War world. Lagon denies it for U.S. policy, suggesting that the arrival of the information age and the end of the Cold War in the contrary has enlarged the power of foreign policy elites. In his articles he analyzes elites progression in an era characterized by the ascendant power of the Congress. M.P. Lagon, 'Are influentials less influential? U.S. foreign policy elites in a post-cold war information age', *World Affairs*, 158/3 (1996), pp. 122-35.

[12] V. Squarcialupi, 'Parliamentary diplomacy: the role of international assemblies', *Committee For Parliamentary And Public Relations,* WEU Parliamentary Assembly Report Document A/1685, (6 June 2000), in http://assembly-weu.org/en/documents/sessions_ordinaires/ rpt/2000/1685.pdf; S. Stavridis, 'The First two Parliamentary Fora of the Euro-Mediterranean Partnership: an assessment', *Jean Monnet Working Paper in Comparative and International Politics,* 40 (2002), in http://www.fscpo.unict.it/EuroMed/jmwp40.htm; S. Stavridis, 'The Cyprus Problem and Cyprus' Accession to the European Union: the Role of the Cypriot House of Representatives (Vouli)', *ELIAMEP Occasional Paper* No.OP02.05 (Athens, 2002) in http://central.radiopod.gr/en/wp-content/uploads/2008/10/op0205.pdf; S. Stavridis, 'The Parliamentary Forum of the Euro-Mediterranean Partnership: problems and prospects', *Mediterranean Politics* 7/2 (2002), pp. 30-53.

[13] *The parliamentary vision for international cooperation at the dawn of the third millennium*, Conference of Presiding Officers of National Parliaments (2000) in http://www.ipu.org/splz-e/sp-dclr.htm .

[14] D.C. Thomson, *Louis St. Laurent: a Canadian* (Toronto, 1967).

[15] A. Munro, A.I. Inglis (eds.), *Mike. The memoirs of the Rt. Hon. Lester B. Pearson. 1948-1957 (*Toronto 1973).

[16] G. Donaghy (ed.), *Canada and the Early Cold War 1943-1957* (Ottawa, 1998); F. Ghilardi, *Italia e Canada 1947-1951. Due esperienze a confronto* (Milano, 1997) and F. Ghilardi, *Il Canada nel sistema postwestfaliano* (Milano, 2001).

[17] A. Chapnick, 'The Canadian Middle Power Myth', *International Journal*, 55/ 2 (2000), pp. 188-206; J.W. Holmes, *Canada. A Middle Aged Power* (Toronto, 1976); S. Roussel, C. Robichaud, 'L'État postmoderne par excellence? Internationalisme et promotion de l'identité internationale du Canada', *Revue Études internationales*, 35/1 (2004), pp. 149-170.

[18] H. Mackenzie, 'Canada and the United Nations. Then and Now', in F. Ghilardi (ed.), *Nuove prospettive per la sicurezza mondiale?* (Pisa, 1998), pp. 73-91.

[19] M.K. Hawes, *Principal Power, Middle Power, or Satellite?* (Toronto, 1984), pp. 3-8; K.R. Nossal, *The Politics of Canadian Foreign Policy* (Scarborough, 1997), pp. 154-159; T. Keating, *Canada and World order. The Multilateralist tradition in Canadian Foreign Policy* (Toronto, 1993).

[20] J. English, 'A Fine Romance: Canada and the United Nations. 1943-1957', in Donaghy (ed.), *Canada and the Early Cold War*, pp. 73-89.

[21] K. McNaught, 'From Colony to Satellite', in S. Clarkson (ed.), *An Independent Foreign Policy for Canada* (Toronto, 1968), pp. 173-183.

[22] J.W. Holmes, *Life with Uncle. The canadian-american relationship* (Toronto, 1981).

[23] 'As the saying goes, "Americans are benevolently ignorant about Canada, while Canadians are malevolently well-informed about the United States." Being well-aware of this long-standing imbalance of understanding and interest, our gracious Canadian hosts set out to enlighten us...' This statement held by Darcia Harris Bowman underline how it is important today the longstanding fellows exchange between USA and the counterparts in Canada. It, in fact, provides a comparative study of Westminster versus U.S.-model parliamentary systems and examine the relationship between the United States and Canada from an institutional perspective. Specifically, it promotes increased understanding between each country's major trading partner of the other's distinctive culture, as well as examine the few areas of disharmony between neighbours. Information in http://www.apsanet.org/content_4162.cfm?navID=112.

[24] 'Parliamentary Diplomacy: A Career Path for Some Members of Parliament?', *Occasional Papers on Parliamentary Government,* 16 (2003), p. 5, in http://www.parlcent.ca/publications/pdf/oppg_16.pdf. Another important exchange is the Sino-US Inter-parliamentary Exchanges, established in 1999, that promote mutual trust and understanding between the Chinese National People's Congress (NPC) and the United States Congress. Both sides agreed that the Sino-U.S. relationship is one of the most important of international relations. In http://www.china-embassy.org/eng/xw/t34231.htm

[25] E.S. Corwin, *The President, Office and Powers, 1787-1957* (New York, 1957), p. 171.

[26] The term generally is referred to the attitude of a single man who tries to find a resolution with personal diplomacy. Probably one of the most famous is Henry Kissinger during Nixon's and Ford's Administrations.

[27] Ripley remembers the activity of Henry Cabot Lodge during the negotiations for the Paris Treaty after the First World War. R.B. Ripley, J.M. Lindsay, *Congress resurgent: foreign and defense policy on Capitol Hill* (Ann Arbor, 1993), p. 263.

[28] M.I. Abramowitz, 'Sense and sensibility: making our way in the post cold war world', *Vital Speeches of the Day*, 62/14 (1996), pp. 425-30.

[29] For example in the 101st Congress the House of Foreign Affairs Committee received 132 foreign dignitaries and 34 delegations, while the Senate's Foreign Relations Committee received 80 of them. Ripley, Lindsay, *Congress resurgent*, p. 263-64.

[30] E. Berlinguer, 'Imperialismo e coesistenza alla luce dei fatti cileni', *Rinascita*, 28 settembre 1973, p. 3; E. Berlinguer, 'Via democratica e violenza reazionaria', *Rinascita*, 5 ottobre 1973, p. 3; E. Berlinguer, 'Alleanze sociali e schieramenti politici', *Rinascita* 12 ottobre 1973, p. 3.

[31] 'Italy: don Enrico bids for power', *Time*, 14 June 1976 in http://www.time.com/time/magazine/article/0,9171,914218,00.html

[32] M. Del Pero, *L'alleato scomodo. Gli USA e la DC negli anni del centrismo. 1948-55* (Roma, 2001); L. Nuti, *Gli Stati Uniti* e *l'apertura a sinistra. Importanza e limiti della presenza americana in Italia* (Bari, 1999); S. Pons, 'Stalin, Togliatti, and the Origins of the Cold War in Europe', *Journal of Cold War Studies*, 3/2 (2001); V. Fouskas, *Italy, Europe, the Left. The Transformation of Italian Communism and the European Imperative* (Aldershot, 1998); R. Gardner, *Mission: Italy. Gli anni di piombo raccontati dall'ambasciatore Americano a Roma 1977-1981* (Milano, 2004), A. Giovagnoli, S. Pons, (eds), *L'Italia repubblicana nella crisi degli anni settanta. Tra guerra fredda e distensione* (Soveria Mannelli, 2003); R. Gualtieri, 'The Italian political system and détente

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[33] 'Ti confermo quanto detto a voce e cioè che è assolutamente urgente un tuo incontro con il ministro Forlani per annunciargli il tuo viaggio negli Stati Uniti'. Lettera a Zenone, 'Incontro con il ministro Forlani', Archivio Camera Deputati, Archivi Privati, Archivio Valerio Zanone, Viaggio negli Stati Uniti, 15-23 aprile 1978, busta 61.

[34] Zanone met Rockefeller thanks to Emilio Francolini the Consular Affair Representative for the United Nations. With him, he probably talked about Italian situation and asked about founding for the Liberal Party. He met important representatives of the American diplomatic world like Robert Hunter, Staff Member of the National Security Council and future U.S. Ambassador to NATO, Mr. Ernest Lee, Director of the International Affairs Department at the AFL-CIO and Robert Barbour, Deputy Assistant Secretary of the Bureau of European Affairs. International Communication Agency, *Valerio Zanone Itinerary*, Archivio Camera, fondo Zanone, b. 61.

[35] Ansa, 'Conclusioni visita Zanone Usa', Telegram n. 390/1, 22nd April 1978, Archivio Camera, fondo Zanone, b. 61.

[36] 'Appunto riservato per il dott. Frenkel', 21st April 1978, Archivio Camera, fondo Zanone, b. 61, p. 2.

[37] *L'Unità,* 12 April 1978.

[38] G. Napolitano, 'Taccuino di viaggio. Il PCI spiegato agli americani', *Rinascita* (maggio, 1978).

[39] 'E sempre mi colpirà l'essenzialità e concretezza di queste discussioni informali (*off the record*, non destinate a essere utilizzate per la pubblicazione, né sotto forma di interviste né per semplici citazioni): le domande sono asciutte, vanno subito al punto che interessa, in un'ora o un'ora e mezzo si svolge un confronto serrato, sostanzioso, di cui si terrà conto'. Napolitano, 'Taccuino di viaggio'.

[40] G. Cubeddu, '1978. Giorgio Napolitano negli Usa. Alla ricerca della solidarietà nazionale', *Rivista 30 giorni,* in http://www.30giorni.it/it/articolo.asp?id=17702

Silvia Benussi

Il Congresso degli Stati Uniti: etnia e genere nella politica americana

Dal 1969, anno dell'elezione della prima donna afroamericana al Congresso, Shirley Chisholm, all'ultima sessione del 110° Congresso, nel 2008, ventotto donne afroamericane sono state elette al Congresso degli Stati Uniti.[1]

La prima donna ad essere eletta al Congresso degli Stati Uniti fu Jeannette Rankin, nel 1917. Fin da allora, la loro presenza nelle due camere è stata esigua. La percentuale si è attestata a poco meno del 17 per cento nella sua punta massima, raggiunta nella Camera dei Rappresentanti durante il 110° Congresso. L'evoluzione sociale che, nel corso del ventesimo secolo, ha portato lentamente all'emancipazione degli afroamericani, ha determinato la parallela emancipazione delle donne. Ancora una volta, come già era accaduto con l'abolizionismo dell'Ottocento, la storia afroamericana e la storia delle donne si sono intrecciate. La presenza delle donne nel Congresso è stata favorita dal mutamento sociale nella condizione femminile dovuto alla Seconda Guerra Mondiale, e tuttavia la loro percentuale è di gran lunga lontana dal rappresentare il numero delle donne nella popolazione. Dagli anni Settanta vi è stato un cambiamento nelle caratteristiche e nel percorso politico delle congresswomen: è diventato meno raro trovare tra di loro donne giovani con figli piccoli, e si è vista una progressiva diminuzione delle donne provenienti da famiglie ricche o politicamente influenti. Col passare del tempo le donne nel Congresso hanno avuto sempre meno una storia passata di legami politici familiari e sempre più un passato di donne in carriera che hanno iniziato a muovere i primi passi in politica ricoprendo incarichi negli enti locali o comunitari.[2]

La loro presenza è aumentata in particolare con le elezioni del 1992, che è stato chiamato l'Anno della Donna. In seguito a quelle elezioni il numero delle donne al Congresso è aumentato di più di 20 neo rappresentanti e senatrici. Le ragioni di un simile cambiamento sono state numerose. Innanzitutto vi è stato un alto numero di seggi cosiddetti aperti, vale a dire in cui non vi era un candidato già titolare: il 103° Congresso ha visto uno dei più ampi ricambi della storia, sia per la scelta di diversi suoi membri di ritirarsi, sia per la creazione di nuovi distretti in seguito al censimento del 1990; si è trattato quindi di elezioni particolarmente favorevoli ai neofiti, fra i quali vi erano molte donne. Inoltre in quelle elezioni ha prevalso il dibat-

tito su questioni interne, in particolare concernenti la famiglia, l'istruzione, la salute, la cura dei bambini, che hanno portato le donne al centro del dibattito politico nazionale. Ancora, in quell'anno ha influito sulla scelta degli elettori un nuovo sentimento di ostilità verso i vecchi volti della politica e un atteggiamento più favorevole nei confronti dei nuovi candidati. Il dibattito nazionale sulle molestie sessuali, provocato dall'udienza al Senato di conferma sulla nomina a giudice della Corte Suprema di Clarence Thomas e dallo scandalo delle molestie sessuali durante la Tailhook Association Convention del settembre 1991, aveva mobilitato una grande parte dell'elettorato femminile.[3] L'elettorato sembrava gradire una ventata di novità in politica e considerare con grande attenzione i problemi delle donne nel lavoro e nella società. Il 1992 non è stato solo l'Anno della Donna, ma anche quello dei neri e degli ispanici, verso i quali si era registrato parimenti un maggior favore dell'elettorato; questo ha avvantaggiato ulteriormente le candidate afroamericane.[4] Le elezioni del decennio successivo hanno portato poi tendenzialmente ad un aumento ulteriore del numero delle rappresentanti e senatrici, sia pur in maniera decisamente più graduale.[5]

La prima donna afroamericana eletta al Congresso degli Stati Uniti è stata Shirley Chisholm, nel 1968 per il 91° Congresso. Da allora, oltre a lei, altre 26 donne afroamericane hanno servito nella Camera dei Rappresentanti fino al 110° Congresso, mentre solo una, Carol Moseley Braun, è stata eletta al Senato. L'elezione di Shirley Chisholm è avvenuta più di 50 anni dopo l'elezione della prima donna al Congresso e quasi cento dopo l'elezione del primo uomo di colore. Le donne afroamericane si videro negare il diritto di voto in quanto donne quando esso fu esteso agli uomini di colore durante la Ricostruzione, e per l'appartenenza razziale furono in larga misura tenute ai margini del movimento suffragista, oltre a subire il congelamento dei diritti civili e politici negli Stati del sud. Il punto di svolta è costituito dal *Voting Rights Act* del 1965, che garantì il diritto di voto degli afroamericani proibendo i test d'istruzione e gli altri impedimenti formali sfruttati dai bianchi per controllare l'accesso alle urne, e soprattutto stabilendo un valido meccanismo per far rispettare tali divieti tramite l'intervento del governo federale.[6] Nel ventennio successivo, l'atto fu modificato per favorire ulteriormente la partecipazione politica dei neri, con la creazione di distretti a maggioranza minoritaria nelle aree in cui vi fosse prova di passata discriminazione. Si trattava, cioè, di creare dei distretti elettorali in cui la maggioranza della popolazione fosse di colore, in modo da favorire l'elezione di rappresentanti afroamericani al Congresso. Tuttavia nel 1995 la Corte Suprema emise una sentenza secondo la quale la razza poteva essere uno dei fattori considerati nel tracciare i distretti, ma non il fattore predomi-

nante.[7] La redistribuzione dei distretti con l'attenzione rivolta principalmente alla razza fu dichiarata incostituzionale in quanto discriminatoria nei confronti dei bianchi. L'effetto politico di tale decisione è stato di rendere ancora più rilevante, per il successo dei politici appartenenti alle minoranze etniche, la capacità di conquistare un ampio consenso di base che trascenda le fratture razziali della società americana.[8]

L'ingresso delle donne afroamericane in politica comporta problematiche del tutto peculiari, dovute all'intrecciarsi delle complesse questioni di etnia e di genere.[9] Ad esempio, una delle difficoltà alle quali fanno fronte i politici donne o appartenenti alle minoranze è quella di porsi in maniera adeguata verso la questione della rappresentanza: da un lato ogni persona che entra in politica vuole conquistare il consenso più ampio nella propria base elettorale, e si sentirà quindi in dovere di porsi come rappresentativa non solo di tutto il proprio distretto, ma più in generale dell'interesse nazionale e delle tematiche che più stanno a cuore alla propria parte politica. Tuttavia un uomo politico afroamericano dovrà allo stesso tempo bilanciare questa esigenza con la necessità di essere sufficientemente rappresentativo dei più specifici interessi della comunità afroamericana, pena l'essere visto nell'ambito di quest'ultima come un corpo estraneo e correre quindi il rischio di essere rigettato in blocco. Una donna dovrà allo stesso modo presentarsi come in grado di portare avanti una politica ampia e onnicomprensiva, e sarà anzi una sfida del proprio mandato riuscire ad occuparsi anche di tematiche non identificate tradizionalmente come femminili; ma dovrà anche tenere conto del fatto che il suo elettorato si aspetta che sia anche interessata alle questioni relative al genere che possono sorgere alla Camera dei Rappresentanti o al Senato, e che si impegni a promuovere determinate tematiche relative alle donne. È evidente che questo già delicato equilibrio si presenta di gran lunga più difficile per le donne afroamericane, che devono conciliare la necessità di essere viste come rappresentative dalla più ampia fetta possibile di elettorato e quella di essere in qualche modo rappresentative, o quanto meno non estranee, alla propria identità etnica e di genere. Inoltre le qualità più valorizzate in politica sono la razionalità, l'assertività, la determinazione, tutte associate comunemente agli uomini, mentre alle donne sono maggiormente associate la dolcezza, la remissività, l'altruismo; una donna con un'immagine troppo rispondente a queste ultime caratteristiche rischia però di essere vista come poco credibile sul piano politico, mentre una donna che se ne distacchi troppo può correre il rischio di avere per contro l'immagine di una sgradevole virago. Le donne afroamericane devono ancor più destreggiarsi in un simile dilemma, dato che la peculiare storia della loro comunità ha determinato contro di

loro feroci accuse di ipersessualizzazione da un lato, o di matriarcalismo dispotico e castrante dall'altro.

Tuttavia dal punto di vista strettamente numerico vi è una più alta proporzione di donne fra i membri del Congresso afroamericani rispetto alla percentuale femminile sul totale dei membri. Infatti, a partire dalla svolta dell'anno dalla donna, tale proporzione ha avuto un andamento crescente; all'inizio del 110° Congresso la percentuale delle donne sul totale dei membri alla House of Representatives era, come si è detto, poco meno del 17 per cento, mentre la percentuale delle donne fra i membri afroamericani della House of Representatives era superiore al 30 per cento. Non solo: la percentuale di afroamericani sul totale della popolazione è intorno al 12 per cento, ma mentre la percentuale degli afroamericani, uomini e donne, sul totale dei membri della House of Representatives non arriva al 10 per cento, la percentuale delle donne afroamericane sul totale delle donne della House of Representatives ammonta circa al 19 per cento. Quindi mentre gli afroamericani e le donne in generale sono sottorappresentati, le donne afroamericane sono sovrarappresentate sul totale dei rispettivi gruppi. Le ragioni di un simile fenomeno sono molteplici. Un'analisi approfondita è fornita dallo studio condotto da R. Darcy e C.D. Hadley che ha confermato, già nel 1988, come un'analisi delle difficoltà e dei vantaggi delle donne di colore in politica debba andare ben oltre il mero riferimento alla doppia appartenenza etnica e di genere, e che ha individuato nella più dinamica esperienza di partecipazione ad attività di carattere politico nel movimento per i diritti civili, e prima ancora nelle svariate organizzazioni in difesa degli interessi e dei diritti degli afroamericani, una molla di ambizione politica e un background culturale suscettibili di avvantaggiare le donne nere.[10]

Nella comunità afroamericana il lavoro di base in ambito politico è condotto in maggioranza da donne, che mostrano una capillarità d'impegno di gran lunga superiore non solo all'attitudine degli uomini di colore, ma anche a quella delle donne delle altre comunità.[11] Uno studio condotto sui membri delle legislature degli Stati ha rilevato un'omogeneità fra il livello di istruzione e i settori di occupazione prevalenti fra gli uomini, afroamericani e non, e le donne afroamericane, riscontrando invece più bassi livelli d'istruzione e lavori meno prestigiosi fra le donne bianche, offrendo così un'immagine professionale delle elette afroamericane più assertiva e preparata.[12]

Le donne nere hanno inoltre una più lunga tradizione sociale di conciliazione fra il lavoro e la cura della famiglia, e sono quindi meno vincolate da ruoli stereotipati. Ancora, le comunità afroamericane, che hanno sempre dovuto far fronte a notevoli difficoltà, hanno sviluppato una maggiore solidarietà interna, e sono quindi in grado di fornire un migliore supporto, anche se non si deve confondere la rete solida-

ristica interna alla realtà afroamericana con una tendenza della stessa a favorire le candidate donne rispetto alla società americana nel complesso, tendenza smentita da Darcy e Hadley.

Analizzando i dati relativi all'attività istituzionale delle congresswomen afroamericane, emerge un quadro tanto chiaro quanto illuminante del loro percorso politico. Innanzitutto è necessario precisare che non è fuori luogo parlare della loro attività nel complesso. Infatti per quanto ciascuna di esse offra il proprio apporto personale nelle tematiche alle quali si dedica con maggior interesse, nelle esperienze individuali che ne forgiano l'attività e nella rispondenza alle specifiche esigenze del proprio distretto, è senza dubbio possibile individuare, ed anzi salta prepotentemente agli occhi di chi studia la loro attività, un sentire comune. L'analisi delle scelte legislative di questo gruppo di donne porta a un continuo gioco di rimandi dall'una all'altra in un'attività di supporto reciproco, praticato verso iniziative che pur differenti nello specifico rientrano in un comune ventaglio di valori. Una capacità di fare rete, salvo rare eccezioni, che permette di costruire una politica condivisa di ampio respiro.

L'ambito dal quale è più facile partire per individuare una tematica fondamentale comune è sicuramente quello della lotta contro la discriminazione.[13] La questione razziale rimane predominante, investendo anche le problematiche relative all'immigrazione e all'incontro con diverse culture e diverse lingue: gli strumenti utilizzati per la protezione dei diritti civili, e in particolare per il diritto di voto, vengono modellati a tutela di queste nuove esigenze: ad esempio, la PL 73 del 1975, promossa in particolare da Barbara Jordan, estende le previsioni del Voting Rights Act alle discriminazioni linguistiche e, territorialmente, alle aree di forte immigrazione messicana.[14]

Allo stesso tempo però il problema della discriminazione contro le donne emerge prepotentemente, tanto da assumere pari importanza. Questo vale in particolare per Shirley Chisholm, che ha una storia politica personale di autonomia rispetto alla leadership maschile afroamericana, un'indipendenza raggiunta tramite il supporto di base costituito soprattutto da donne e giovani. Così, le congresswomen afroamericane si impegnano a favore dell'Equal Rights Amendment, approvato in sede federale ma non ratificato da parte nel numero minimo di Stati.[15]

È innegabile comunque che il problema della discriminazione contro le donne sia sentito soprattutto in una prospettiva che prende atto specificamente dei problemi delle donne afroamericane, problemi che attengono alle difficoltà strutturali della famiglia afroamericana già individuate in numerosi studi a partire dagli anni Sessanta, e dovute al retaggio storico dell'esperienza della schiavitù prima, e della segregazione razziale poi. Ma la tematica della protezione contro le pratiche di-

scriminatorie si amplia rispetto alle lotte più tradizionali della leadership afroamericana, espande il suo oggetto per ricomprendere un ventaglio sempre più vasto di categorie deboli, bambini, anziani, malati.

Il problema delle enclaves sociali svantaggiate si fonde quasi naturalmente con la questione del welfare e dei provvedimenti di carattere economico. Chiaro esempio è in questo senso la PL 261 del 1972, presentata da Shirley Chisholm, che rinforzando la Equal Employment Opportunity Commission garantisce pari opportunità in ambito lavorativo, al fine di agevolare le minoranze etniche e le donne nel loro approccio al mondo del lavoro.[16] Specie nel periodo delle pioniere afroamericane al Congresso, l'ideale familiare di stampo tradizionale si scontra con la realtà costituita dall'alta frequenza di famiglie afroamericane disgregate a causa della disoccupazione e delle difficoltà sociali ed economiche. Il ruolo paterno si fa assente, e le donne sono costrette, come era accaduto spesso nella storia afroamericana, ad uscire da un ruolo tradizionale di cura della casa per mandare avanti da sole le proprie famiglie. La donna afroamericana è forzata nei panni della matriarca nera, panni fittizi data l'assenza di un potere sociale ed economico concreto.[17]

Le congresswomen ribadiscono continuamente che l'obiettivo delle politiche sociali è quello di rendere autonomi i cittadini, tramite ad esempio la formazione al lavoro, e non di incoraggiarne la dipendenza. L'assistenza pubblica, contrastata al Congresso, e non solo dai conservatori, come negazione della cultura americana dell'autosufficienza e dell'etica del lavoro, diventa nelle scelte politiche delle congresswomen afroamericane il mezzo per ottenere quelle pari opportunità che, sole, garantiscono proprio il conseguimento dell'autosufficienza e la realizzazione dell'etica del lavoro.

Le donne nere al Congresso cercano di valorizzare quella solidarietà comunitaria che è stata per secoli uno dei principali elementi di forza nella storia della popolazione afroamericana. Le comunità, che secondo il loro progetto le politiche federali devono rafforzare, sono poste al centro del recupero dell'individuo, e vi è un forte impegno per dotarle di servizi. Lo stesso interesse per il buon governo e per la trasparenza sono fondamentalmente legati all'ostilità per le pratiche che sembrano marginalizzare ulteriormente gli strati più deboli della società; da qui la lotta, ad esempio, contro i privilegi dei lobbisti e il sostegno finanziario alle grandi imprese, il così detto corporate welfare, o contro le eccessive spese militari che drenano risorse al sociale. Ad esempio, durante lo scandalo Enron la rappresentante Sheila Jackson-Lee, eletta nel distretto di Houston nel quale il colosso aveva la sua sede principale, si impegnò per far sì che il peso del fallimento non ricadesse in maniera schiacciante sugli impiegati truffati dai loro stessi superiori.[18]

Nel segno dell'empowerment afroamericano sono sollecitati provve-

dimenti che rafforzino le imprese delle minoranze, specie le piccole imprese che sono reputate l'ossatura della classe media americana. Negli anni Novanta Cardiss Collins si impegnò verso il Dipartimento della Difesa, il maggiore appaltatore del governo federale, perché fosse riservata una quota degli appalti da questo conferiti alle piccole imprese di proprietà di donne o appartenenti a minoranze.[19] Non si evocano, neanche da parte delle congresswomen più radicali, come Maxine Waters e Barbara Lee, sistemi sociali e politici differenti, ma soltanto la possibilità per ogni cittadino di entrare autenticamente a far parte della mainstream americana, tramite il recupero della partecipazione comune di tutte le fasce sociali alla costruzione del sogno americano, che aveva le sue radici nelle politiche di Roosevelt e, soprattutto, nella Great Society di Lyndon Johnson, ispirata a sua volta anche dal pensiero lungimirante di Martin Luther King Jr. La stessa eredità africana, estremamente sentita nell'ambito delle valutazioni relative alla politica estera, è orientata verso la speranza di valorizzare le istituzioni democratiche locali in una prospettiva di integrazione con il sistema politico ed economico del mondo occidentale e degli Stati Uniti stessi.

La parola chiave in certo qual modo è integrazione: integrazione degli afroamericani nel sistema sociale ed economico americano, delle donne nel mondo del lavoro, e, nell'ambito istituzionale, del cittadino con l'amministrazione, per favorire la partecipazione alla vita pubblica. Il diritto sociale e l'integrazione da esso garantita portano le fasce di popolazione marginali nella mainstream americana, permettendo solo in quel momento una realizzazione completa degli stessi diritti civili e politici, un cerchio che si chiude idealmente dove il singolo diritto è complementare all'altro, e non suo limite. In tal senso, le iniziative da loro perseguite rispondono pienamente all'eredità politica, ma anche culturale, del movimento per i diritti civili, riuscendo in alcuni casi a fondere con successo le istanze che erano emerse nel movimento in maniera conflittuale: la necessità di una partecipazione paritaria alla società americana e la volontà di preservare e valorizzare le caratteristiche specifiche della tradizione nera americana.

Note

[1] J.E. Manning, C.J. Shogan, *Women in the United States Congress: 1917-2009, CRS Report for Congress* (Washington DC, 2009); M.L. Amer, *African American Members of the United States Congress: 1870-2008, CRS Report for Congress* (Washington DC, 2008); http://womenincongress.house.gov/historical-data/women-of-color.html.

[2] K. Foerstel, *Biographical Dictionary of Congressional Women* (Westport, 1999), p. 1; M. Kaptur, *Women of Congress: A Twentieth-Century Odyssey* (Washington DC, 1996), pp. 5-6; L. Solowiej, T.L. Brunell, 'The Entrance of Women to the Us Congress: The Widow Effect', *Political Research Quarterly* 56, 3 (2003).

[3] Sullo scandalo Thomas/Hill e i suoi effetti sulla politica americana cfr. G. Smitherman (ed.), *African American Women Speak Out on Anita Hill-Clarence Thomas* (Detroit, 1995); V. Sapiro, J. Soss, 'Spectacular Politics, Dramatic Interpretations: Multiple Meanings in the Thomas/Hill Hearings', *Political Communication* 16, 3 (1999); D. Thomas *et al.*, 'Deconstructing the Political Spectacle: Sex, Race, and Subjectivity in Public Response to the Clarence Thomas/Anita Hill "Sexual Harassment" Hearings', *American Journal of Political Science* 37, 3 (1993).

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[5] G. Browning, 'The Gang of 114', *National Journal* 26, 4 (1994), pp. 158-162; Per un'analisi approfondita delle tematiche che hanno influito sulle elezioni al Congresso negli anni Novanta cfr. K. Dolan, 'Electoral Context, Issues, and Voting for Women in the 1990s', *Women & Politics* 23, 1-2 (2001); T.P. Kim, 'Clarence Thomas and the Politicization of Candidate Gender in the 1992 Senate Elections', *Legislative Studies Quarterly* 23, 3 (1998); K.U. Hoffman *et al.*, 'Candidate Sex and Congressional Elections: Open Seats Before, During, and After the Year of the Woman', *Women & Politics* 23, 1-2 (2001); M. Margolies-Mezvinsky, B. Feinman, *A Woman's Place… The Freshmen Women Who Changed the Face of Congress* (New York, 1994); C. Lusane, *African Americans at the Crossroads: The Restructuring of Black Leadership and the 1992 Elections* (Cambridge, 1994).

[6] http://www.ourdocuments.gov/doc.php?doc=100.

[7] *Miller* v. *Johnson*, 515 US 900 (1995); cfr. anche *Shaw* v. *Reno*, 509 US 630 (1993).

[8] H. Fineman, 'Shifting Racial Lines', *Newsweek* 125 (10 July 1995), pp. 38-9. Cfr. anche A.L. Higginbotham *et al.*, 'Shaw vs. Reno: A Mirage of Good Intentions with Devastating Racial Consequences', *Fordham Law Review* 62, 1593-659; D. Lublin, 'Racial Redistricting and African-American Representation: A Critique of Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?', *The American Political Science Review* 93, 1 (1999); L.M. Overby, K.M. Cosgrove, 'Unintended Consequences? Racial Redistricting and the Representation of Minority Interests', *The Journal of Politics* 58, 2 (1996); R.E. Weber, 'Race-Based Districting: Does It Help or Hinder Legislative Representation?', *Political Geography* 19, 2 (2000).

[9] Cfr. D.M. Clayton, A.M. Stallings, 'Black Women in Congress: Striking the Balance', *Journal of Black Studies* 30, 4 (2000), 574-603; G. Lerner, *Black Women in White America* (New York, 1992), pp. 163-71; P. Giddings, *When and Where I Enter: The Impact of Black Women on Race and Sex in America* (New York, 1996), pp. 325-7.

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3.
Identità territoriali, autonomie e istituzioni rappresentative

Territorial Identities, Autonomies and Representative Institutions

Ester Martí Sentañes

Parlamento, re e municipio: un'analisi comparativa delle relazioni di potere nel Regno di Sardegna e nel Principato di Catalogna nel XV secolo

1. *Introduzione*

Questo articolo fa parte di un progetto intitolato 'Municipi, corts i monarquia. Una anàlisi comparada de les relacions de poder entre els regnes de la Corona d'Aragó',[1] che intende svolgere un approfondimento delle relazioni di potere che esistono fra la Monarchia, le assemblee rappresentative e le città regie della Corona d'Aragona durante il XV secolo, e in modo particolare durante il regno di Alfonso, il Magnanimo.

In questo progetto assume particolare importanza lo studio della Sardegna, sia per la posizione strategica dell'isola, sia per il grande valore ad essa riconosciuto dalla Corona. Inoltre, la Sardegna dispone di diversi studi sulle assemblee rappresentative e sulle oligarchie urbane, che costituiscono un interessantissimo elemento di studio e di analisi per una comparazione con i territori iberici della Corona, e in modo particolare con il Principato della Catalogna, all'interno del quale si dispone di maggiore documentazione.

È opportuno sottolineare che la scelta di questo argomento si fonda sull'esigenza di conoscere più profondamente il funzionamento interno delle assemblee rappresentative all'interno della Corona d'Aragona, così come le dinamiche municipali che ruotano intorno a queste riunioni. La relazione di questi due ambiti, quello della gestione delle città regie e quello delle assemblee rappresentative, permette di stabilire una dinamica di dialogo fra gli elementi in comune e quelli di differenziazione fra la realtà italiana e quella iberica, apportando un significativo contributo alla conoscenza del funzionamento dei parlamenti e delle c*orts*, ma soprattutto della vita municipale e dei rapporti tra le oligarchie che ne fanno parte.

Inoltre, questo studio fornisce un strumento perfetto per studiare la posizione della monarchia in tutto questo processo, permettendoci di analizzare le sue tecniche di controllo sul Braccio reale nei diversi regni della Corona, così come la sua capacità di ingerenza nella vita municipale, la sua libertà di interferire nelle decisioni delle assemblee e anche il suo spazio d'intervento nella gestione dei regni. Questi punti non erano stati studiati in maniera congiunta fino a questo momento e diventano un eccellente strumento per rappresentare

un'immagine più solida di quella finora a disposizione sul funzionamento istituzionale, sulle assemblee e anche sull'ambito comunale, fra i diversi regni che compongono la Corona d'Aragona.

La scelta di questo periodo è radicata nell'interesse che suscita dal punto di vista istituzionale l'arrivo di una nuova dinastia alla Corona d'Aragona, i Trastamara. Inoltre sottolineiamo che dopo il Compromesso di Caspe, la nuova famiglia che è stata eletta, perdendo inizialmente il potere della legittimazione dinastica, dovrà imporsi all'elite del paese, che contemporaneamente ha bisogno del sovrano per realizzare i suoi progetti.

Dal punto di vista metodologico questo progetto ha provveduto ad elaborare una ricerca bibliografica, attribuendo un ruolo importante allo studio comparativo di pubblicazioni, e in particolar modo ai recenti e specifici studi sui rapporti fra monarchia, municipio e parlamenti. Dal punto di vista documentale, aldilà degli atti parlamentari, assume una grande importanza la documentazione comunale, giacché permette, sempre grazie ad un studio comparativo, di addivenire ad una visione complessiva di come la città gestisce i suoi affari nei parlamenti, delle relazioni con la monarchia e con le altre istituzioni, e ad una maggiore conoscenza delle elite che la controllano, così come un'approssimazione ai gradi di relazione di queste con gli altri stamenti e con altre città o territori della Corona. Così, si è data particolare importanza allo studio della documentazione dell'Archivio Storico Comunale di Cagliari, ma anche di altre città regie, come Sassari, Alghero, Bosa e Iglesias. Si è tenuto conto, altresì, della documentazione degli Archivi di Stato di Cagliari, Sassari, così come dei diversi archivi napoletani e siciliani, con la finalità di estendere la ricerca agli altri stati italiani della Corona d'Aragona.

2. *Monarchia, oligarchie urbane e parlamenti come oggetti di studio*

Malgrado gli studi realizzati negli ultimi anni sulle assemblee rappresentative e anche sul municipio, in riferimento al caso catalano e sardo, è opportuno sottolineare che i lavori tendono ad essere molto meno frequenti riguardo alla relazione di questi due mondi, vale a dire la rappresentanza municipale nelle *corts* e parlamenti, e in particolare la rappresentanza delle città regie. Quest'ambito diventa paradossalmente una tematica poco analizzata ovunque, nonostante la sua grande rilevanza giacché apporta un grande contributo di informazione sui rapporti fra la monarchia e il potere urbano, così come offre una visione in gran parte nuova dei rapporti, delle tensioni, dei legami e delle reti famigliari e clientelari che si creano all'interno delle assemblee rappresentative in ogni specifico braccio e fra i diversi stamenti.

Uno degli obiettivi principali di questo studio comparativo, dunque,

è l'analisi delle oligarchie che compongono il governo municipale delle città regie, concentrando l'interesse sulla conoscenza dei metodi elettivi all'interno del consiglio e degli uffici del comune in generale, sul grado di relazione delle oligarchie con l'amministrazione regia, addivenendo in questo modo a un quadro più definito delle sue risorse e attività economiche, sempre in comparazione con gli altri regni della Corona.

Un altro obiettivo della ricerca è la realizzazione di un'analisi prosopografica delle famiglie che controllano la vita municipale durante il Basso Medioevo, dando priorità, quando le fonti lo hanno consentito, all'esame della documentazione municipale.

In diretta relazione con quest'aspetto, è opportuno sottolineare che uno degli obiettivi principali di questo studio è l'analisi della figura del sindaco inviato nei parlamenti, giacché è il rappresentante municipale nelle sopradette assemblee ed è anche la figura di collegamento tra la città, i tre stamenti e il re. Così, la ricerca ha operato un approfondimento sul profilo di questi personaggi, il loro *cursus hororum*, il sistema di elezione, ma anche sull'identità delle persone elette, mettendo in evidenza gli aspetti comuni, o, per contro, le differenze con i sindaci delle città iberiche e quelli sardi. Inoltre, riguardo al numero di sindaci che ogni città può presentare al parlamento, sebbene questa sia una questione puramente onorifica giacché ogni nucleo urbano ha diritto soltanto a un voto indipendentemente dal numero dei rappresentanti presenti nei parlamenti, sappiamo che tanto più elevato è il numero di sindaci di una città, maggiore sarà il senso di notorietà che questa riuscirà a trasmettere nel resto del Braccio reale e nell'assemblea in generale. In questo periodo, specialmente durante il Regno d'Alfonso *il Magnanimo*, nel Principato, il numero di sindaci inviati dalle città oscilla normalmente fra i quattro di Barcellona, i tre di Perpignano, i due di Lleida, Gerona e Tortosa, e un solo rappresentante di Cervera, Berga e Villafranca del Penedès.[2] Nello stesso periodo in Sardegna il numero di rappresentanti inviati nei parlamenti oscilla tra i quattro di Cagliari, i tre di Sassari e Bosa, i due d'Iglesias e di Alghero e un unico sindaco per i piccoli nuclei, come Osilo,[3] rendendosi evidente la preminenza all'interno del Braccio reale, nei rispettivi regni, dei due capoluoghi, che saranno importanti punti di riferimento e guideranno, non senza problemi a volte, le politiche di gruppo all'interno delle assemblee.

Inoltre, in Catalogna, almeno durante il Regno del Magnanimo, si tenderà normalmente, a inviare da parte di ogni città un sindaco giurista e uno appartenente all'oligarchia cittadina.[4] Anche in Sardegna è frequente la presenza di giuristi, così come fra i rappresentanti di Cagliari, Sassari e Alghero nel Parlamento de 1421.[5] La presenza di questi giureconsulti, che, come detto, assumeranno una crescente im-

portanza all'interno del governo urbano, sarà molto frequente nelle ambasciate che le città invieranno al monarca o ad altri nuclei urbani. Così, fra gli ambasciatori che Cagliari invierà al sovrano nel 1429 si segnala la presenza di Antoni Amat, dottore in legge, e di un altro cittadino, Joan Garballer. La stessa dualità la ritroviamo nell'ambasciata del 1432, nella quale partecipano Pere Salset, dottore in legge, e Pere Ianfridi, giurato.[6]

Riguardo al percorso professionale di questi rappresentanti, si osserva che la maggioranza di essi ha assunto in precedenza, e anche successivamente allo svolgimento dell'incarico di sindaco, diversi incarichi all'interno del governo cittadino. Così, nel caso catalano, il sindaco della città di Lleida nelle Corts del 1409, Francesc del Bosch, fu eletto primo consigliere della città nel 1368, assumendo nuovamente quest'incarico tra il 1418 e il 1421. Fu anche deputato del Braccio reale fra il 1428 e il 1431 e posteriormente svolse il ruolo di *oïdor de comptes* della Generalitat fra il 1438 e il 1442. Un altro sindaco della stessa città, inviato nelle assemblee rappresentative degli anni 1416, 1419-1420, 1421-1423, 1436-1437 e 1440, Jaume Navarra, sarà eletto già nel 1402 membro del Consiglio dei Cinquanta della città, e nel 1428 sarà giurato. In Sardegna la situazione è abbastanza simile. Ad esempio, Simone Roig, sindaco di Cagliari nel Parlamento del 1421, fu nello stesso anno luogotenente di Berenguer Carròs, conte di Quirra,[7] ma anche deputato del *General* del Regno di Sardegna[8] e ambasciatore di Cagliari presso il re fra il 1427 e il 1428 insieme a Raimondo Boter.[9]

Inoltre, questo progetto si è interessato allo studio della documentazione che le città regie sarde e quelle catalane si scambiano con la monarchia e le altre istituzioni, con un particolare interesse agli elementi documentali inerenti le riunioni rappresentative. Sono state altresì di grande utilità, in assenza della documentazione richiamata – situazione purtroppo frequente riguardo alla documentazione sarda di questo periodo –, la corrispondenza intercorsa fra le città e il sovrano, e anche le lettere scambiate fra le diverse città demaniali del regno e le altre della Corona, che fanno riferimento anche a tematiche che vanno aldilà di quelle trattate durante le assemblee, come ad esempio le diverse ambasciate inviate al monarca per risolvere problemi puntuali delle sue città. In questa linea, la documentazione municipale evidenzia anche una rete di rapporti che si crea fra le diverse città del regno in Sardegna con lo scopo di informarsi e aiutarsi mutuamente e fare fronte così alla formulazione delle richieste da presentare al re, in modo più timido che in Catalogna, al di fuori del momento assembleare. Si considererà sempre come un punto di partenza il municipio catalano, essendo Barcellona il principale riferimento del modello di gestione municipale. Così, in Sardegna, pro-

prio a causa della mancanza di documentazione conservata e della minore durata delle assemblee – almeno dei Parlamenti del 1355 e 1420 – è più complicato fornire un'idea chiara dei contatti all'interno del Braccio reale e fra i sindaci e il consiglio cittadino. Così, nel Parlamento del 1421 Cagliari e Iglesias presentano insieme le richieste di osservanza dei privilegi.[10] D'altronde, in Sardegna, come succedeva nel Principato, esisteva anche una relazione tra le città regie e la monarchia, con buoni rapporti generali, fino al punto che Cagliari farà da intermediaria nella riunione del 1446 fra il sovrano e il Braccio militare.[11]

In Sardegna, inoltre, non si rompe mai il legame istituzionale con la Catalogna. Infatti, aldilà della dinamica del funzionamento delle assemblee, che corrisponde precisamente al modello catalano, i contatti con la Catalogna e in particolare con Barcellona continuano ad essere frequenti. Così, nel 1446 i consiglieri di Cagliari scrivono a quelli di Barcellona chiedendo il loro intervento perché venga modificato, per loro stessi e per i consiglieri di Alghero, l'eccessivo peso del *terç* che gravava sulla pesca del corallo in Tunisia.[12]

In effetti, questi legami fra i diversi regni evidenziano che aldilà delle assemblee, i contatti, tramite ambasciatori, tra le città e il monarca erano sempre presenti, elemento che nel panorama sardo sarà l'unico modo di continuare a gestire i problemi della città e del suo territorio, visto che la periodicità della celebrazione delle assemblee rappresentative è piuttosto bassa.[13] Ad esempio, la città di Sassari invierà diverse ambasciate al monarca, con le quali i rappresentanti della città gli chiederanno la conferma di antichi privilegi e nuove immunità, sempre nell'intento di preservare i diritti della città e gli interessi dell'oligarchia urbana.[14]

In riferimento al citato concetto della periodicità delle assemblee, si sottolinea che il numero delle stesse convocate in questo periodo nel Regno di Sardegna è chiaramente inferiore al numero delle *corts* convocate in Catalogna. Ad esempio, il primo parlamento convocato in Sardegna nel XV secolo è del 1421, unico peraltro del Regno di Alfonso *il Magnanimo*. Le *corts* catalane, invece, furono convocate nel 1409 da Martino *l'Umano*, e dopo il Compromesso di Caspe, da Ferdinando di Antequera nel 1413 e 1414. Durante il Regno del figlio Alfonso, dette assemblee furono convocate dodici volte e in più ci furono due parlamenti.[15] Successivamente al Regno di Giovanni II, la cui documentazione in Sardegna è ancora in corso di studio, si arriva al Regno di Ferdinando il Cattolico, durante il quale non si registra più un'abissale disparità nella frequenza delle convocazioni. Infatti, in Sardegna i parlamenti vengono convocati negli anni 1495, 1497, 1500 e 1504-1511,[16] e tuttavia in Catalogna se ne convocheranno fino a sei.

Diventa particolarmente interessante comparare anche la durata

di queste assemblee rappresentative in Sardegna e in Catalogna per le informazioni relative ai rapporti dei tre stamenti con la monarchia. Nell'isola queste tendono a essere abbastanza brevi. Ad esempio, il primo parlamento, del 1355, dura dal 15 febbraio al 30 aprile, segno evidente anche della forza della monarchia in questo periodo in Sardegna e della scarsa tradizione parlamentare previa, paragonata con la realtà catalana.[17] Il Parlamento del 1421 dura soltanto dal 26 gennaio al 6 febbraio. Fra i motivi di questa spiccata sollecitudine del monarca a chiudere i lavori dell'assemblea bisogna sottolineare la necessità impellente dello stesso di ottenere il donativo, che, insieme a quello offerto dal Parlamento siciliano, servirà ad intraprendere la spedizione per la conquista del Regno di Napoli.[18] Al contrario, le c*orts* catalane del XV secolo sono note per un approccio molto meno conciliante nei confronti delle richieste del sovrano. Infatti, sono molto frequenti le sessioni interminabili, molto spesso bloccate per la mancanza dei rappresentanti dei tre bracci, o per altre cause, come le epidemie o gli impegni del re con i regni, che costringono l'assemblea a muoversi da una città all'altra, determinando l'allungamento dei lavori, talvolta anche per anni. Inoltre, non è di aiuto al rapido svolgimento dell'assemblea, la posizione dei tre stamenti, che non rinunciano facilmente alle loro rivendicazioni di privilegi e alle richieste di riparazioni di *greuges* che presentano all'assemblea. In Sardegna, se i Parlamenti sardi del 1355 e del 1421, e le riunioni del Braccio militare del 1446 e del 1452 erano stati convocati per problemi congiunturali, sostanzialmente, per quanto detto, per l'esclusiva volontà del sovrano, nel successivo parlamento convocato ad Oristano e celebrato negli anni 1481-1485, si comincerà ad osservare un certo grado di maturità nel rapporto basato sul patto tra il re e i tre stamenti, che spesso determinerà un maggiore grado di conflittualità nelle assemblee.[19] Queste tensioni tra il re e i tre bracci si possono attribuire, oltre alla maturità acquisita nella pratica parlamentare di più di un secolo e alla specifica crescita economica delle città sarde appartenenti alla Corona, anche alle ansie sempre più autoritarie della Monarchia.

Riguardo alle oligarchie urbane che controllano il governo urbano sardo, a cui appartengono praticamente tutti i sindaci inviati nelle assemblee, si è proceduto a una loro identificazione, seguendo un metodo comparativo con altri studi di questo genere fatti in Catalogna e anche a Valencia. Questo studio si è basato in gran parte sulla documentazione municipale, seppure questa abbia bisogno di altre fonti documentali per permetterci di averne un'idea più chiara. L'obiettivo è stato la proiezione di uno studio prosopografico, che si interessasse anche di conoscere le attività economiche di questa oligarchia urbana, e in particolare delle famiglie dei sindaci, così come

delle loro relazioni famigliari. Risulta interessante il fatto che, relativamente spesso, diversi membri della stessa famiglia siano presenti nella rappresentanza nei parlamenti, esattamente come accadeva nelle *corts* catalane. Inoltre si riscontra qualche caso in cui la stessa famiglia è rappresentata, nello stesso momento o a breve distanza di tempo, in diversi stamenti, benché questo fenomeno si riproduca in maniera meno evidente che nella Catalogna. Così, Pietro Salset, dottore in decreti e sindaco di Cagliari nel Parlamento de 1421, fu sostituito da un'altro membro della famiglia, Antonio, nel Parlamento successivo del 1481.[20] Inoltre, un altro sindaco cagliaritano presente nel Parlamento del 1421, Pietro des Banchs, potrebbe appartenere alla stessa famiglia del giurista Raimondo des Banchs, convocato nel Parlamento del 1355 anche come rappresentante della città di Cagliari.[21] Un altro personaggio rilevante fu Nicola Aymerich, presente come rappresentante di Cagliari nel Parlamento del 1497, e anche nel successivo del 1500 come rappresentante di Castelsardo e Iglesias. Lo incontriamo ancora, sempre in rappresentanza di Cagliari, nel Parlamento del 1504-1511.[22] La famiglia Aymerich, d'origine catalana, si dedicava al commercio. Fra i suoi membri si segnala la presenza di numerosi consiglieri della città di Cagliari, che acquisiscono, inoltre, numerosi feudi e incarichi nell'amministrazione regia, come ad esempio Martino, che tenne l'ufficio di console dei siciliani nel 1454, incarico che, anni dopo, nel 1492, riceverà in eredità un altro membro della famiglia, Pietro Aymerich.[23] Nella stessa famiglia si trovano alcuni personaggi che assumono incarichi ecclesiastici di un certo prestigio, e offrono della stessa, un'immagine di nucleo famigliare socialmente ben posizionato all'interno della città, presente praticamente in tutti gli ambiti di decisione della società, capace di articolare una complessa rete di rapporti, che certamente meriterebbe, al pari di altre famiglie con le stesse caratteristiche, uno studio più approfondito.

3. *Conclusioni*

Il numero di parlamenti convocati in Sardegna durante il XV secolo, così come la loro durata, risulta molto inferiore a quelli convocati negli altri regni della Corona, a causa, in buona parte, del processo di conquista dell'isola.

La forza della monarchia sul controllo delle oligarchie urbane del Regno di Sardegna si mostra più evidente rispetto agli altri regni della Corona, e in particolare nei primi anni del XV secolo.

Il sistema del cerimoniale dei parlamenti in Sardegna è in linea di massima identico a quello catalano, sebbene la tradizione parlamentare nell'isola sia praticamente inesistente all'arrivo dei catalano-aragonesi. Questo fatto segnerà anche i rapporti tra le città regie e il so-

vrano, che, durante i primi anni del Quattrocento, saranno poveri di particolari, rispetto alla realtà valenciana e catalana.

Coll'avanzare del secolo, e in particolare dopo il Parlamento del 1481, si comincia a riscontrare una maggiore forza e coesione delle oligarchie sarde, che si mostreranno più spesso in opposizione alla volontà del monarca quando questo sarà necessario, con lo scopo di preservare i suoi interessi di gruppo, in maniera molto simile a quanto accadeva all'interno del Braccio reale nelle *corts* catalane.

Le oligarchie delle principali città regie sarde si presentano con un profilo simile a quello delle città degli altri regni della Corona, e in particolare delle città catalane, da dove proviene la maggior parte di esse, sebbene in Sardegna colpisca il gran numero di famiglie di mercanti.

La città di Cagliari, come gli altri capoluoghi dei diversi regni della Corona d'Aragona, avrà una posizione privilegiata nei parlamenti, avendo la possibilità di poter inviare più sindaci rispetto al resto delle città convocate ed essendo la città di riferimento delle stesse. Inoltre, in Sardegna, in maniera similare a come accade in Catalogna, le diverse città regie creeranno una rete d'amicizie e anche di rivalità tra di loro, con lo scopo di affrontare le richieste del re o per chiedergli qualche grazia speciale, cercando di creare una politica di coesione all'interno del Braccio reale.

Il sistema elettivo utilizzato nelle elezioni del consiglio cittadino e per i numerosi uffici è il metodo basato sulla *cooptació*, come succedeva nei municipi catalani. Questo modello si modifica con l'introduzione, non senza problemi, della *insaculació*.

Si osserva un'identica traiettoria riguardo al profilo dei rappresentanti municipali nelle assemblee catalane e sarde: entrambi appartengono all'esclusivo nucleo di cittadini che controllano il governo urbano, e fanno parte delle grandi famiglie presenti all'interno del consiglio comunale.

Nel caso catalano si riproduce praticamente in tutti i procuratori municipali inviati nelle *corts* una dualità tra un sindaco esperto in leggi e un importante oligarca, arrivando così a inviare alle assemblee una rappresentazione fedele agli interessi del gruppo dominante. Questo stesso processo si riproduce in linea di massima in Sardegna.

I procuratori inviati nelle *corts* e parlamenti, sia nel caso catalano che nel caso sardo, presentano un solido percorso istituzionale precedente. Spesso hanno fatto parte del consiglio cittadino e anche di diversi consigli della città, e contemporaneamente hanno ottenuto incarichi rilevanti nell'amministrazione municipale.

In una percentuale più bassa, ma comunque significativa, alcuni sindaci sardi, similarmente a quanto accadeva nel Principato di Catalogna, hanno ottenuto un ruolo all'interno dell'amministrazione re-

gia. Così, occupano una posizione importante i sindaci esperti in leggi, che potevano essere interpellati dalla casa reale, o nel caso sardo, spesso dal viceré, con lo scopo di ottenere un consiglio giuridico. Tra l'altro questo sarà un magnifico strumento di cui il sovrano, spesso, si servirà per guadagnarsi la simpatia del consiglio cittadino dal quale proviene il procuratore, cercando di facilitare una posizione favorevole della città all'interno del Braccio reale e nell'assemblea, creando così una complessa rete clientelare che molto spesso lega le oligarchie urbane, gli altri stamenti e la casa reale.

Spesso, una stessa famiglia può presentare diversi membri, o contemporaneamente o successivamente, all'interno delle *corts* e parlamenti o nell'ambito delle più elevate sfere della gestione municipale, perpetuando così il potere familiare nel tempo. In qualche caso specifico si può osservare anche la presenza della stessa famiglia nell'occupazione di una posizione rilevante nelle assemblee rappresentative in diverse città.

Inoltre, risalta come una delle strategie comuni delle oligarchie urbane l'acquisto di un titolo nobiliare con lo scopo, da una parte, di posizionarsi meglio all'interno del consiglio cittadino, e dall'altra, per cercare di aumentare il prestigio famigliare e ottenere la possibilità di prendere parte al Braccio militare, essendo così possibile trovare contemporaneamente, o con un breve intervallo di tempo, la stessa famiglia sia nel Braccio reale sia in quello militare delle assemblee rappresentative.

Nel periodo considerato la nobiltà si acquisisce in Catalogna normalmente creando un vincolo famigliare con una famiglia nobile, solitamente grazie a un matrimonio o comprando un titolo direttamente. In Sardegna risalta il numero di cittadini che ricevono uno o diversi feudi come ricompensa per i favori prestati alla monarchia durante il processo di conquista dell'isola, che occupa buona parte del XV secolo. Si ottiene in questa maniera la possibilità di partecipare ai parlamenti all'interno del Braccio militare.

Inoltre, benché sia evidente l'esigenza di analizzare la documentazione appartenente ai diversi archivi ecclesiastici, la ricerca finora fatta mette in evidenza che molte famiglie catalane e sarde che hanno avuto un ruolo importante nella rappresentanza cittadina nei parlamenti, presentano anche importanti esponenti all'interno del clero, alcuni dei quali faranno parte del Braccio ecclesiastico.[24]

Infine, in qualche caso particolare si riscontrano famiglie di cittadini che in meno di mezzo secolo riescono a essere rappresentate nei diversi bracci delle assemblee, o in tutti contemporaneamente, creando così una ampia rete di contatti e di potere.

Note

[1] Progetto realizzato grazie al contributo della borsa di ricerca postdottorale Beatriu de Pinós della Generalitat di Catalogna.

[2] *Cortes de los Antiguos Reinos de Aragón y de Valencia y Principado de Cataluña. Cortes de Cataluña* (Madrid, 1913), pp. 39-40.

[3] A. Boscolo, *I Parlamenti di Alfonso il Magnánimo(1421-1452). Acta Curiarum. Regni Sardinae* (Cagliari, 1991), vol. III, pp. 79-144.

[4] E. Martí, *Lleida a les Corts. Els síndics municipals a l'època d'Alfons el Magnànim* (Lleida, 2006), pp. 105-106.

[5] Boscolo, *I Parlamenti di Alfonso il Magnánimo*, p. 117.

[6] E. Putzulu, *Carte reali aragonesi e spagnole dell'Archivio Comunale di Cagliari: 1358-1719* (Padova, 1959), pp. 56, 59.

[7] C. Baudi di Vesme, *Codex Diplomaticus ecclesiensis* (Torino, 1877), doc. 31.

[8] Archivio di Stato di Cagliari (ASC), Registro della Deputazione per l'esazione di 50.000 fiorini, D1 Busta 10, ff. 11v-15.

[9] Putzulu, *Carte reali aragonesi*, pp. 42-45, 48-56.

[10] Boscolo, *I Parlamenti di Alfonso il Magnánimo*, p. 87.

[11] A. Marongiu, 'Le istituzioni rappresentative della Sardegna', in *Acta Curiarum Regni Sardinae, Istituzioni rappresentative nella Sardegna Medioevale e Moderna. Atti del Seminario di Studi* (Cagliari, 1984), pp. 42-43.

[12] P. Tola, *Codice Diplomatico della Sardegna* (Sassari, 1985), vol. II, p. 68.

[13] P. Sanna, 'I Parlamenti del Regnum Sardiniae: problemi storico-istituzionali', *Archivio Sardo del Movimento Operaio Contadino e autonomistico* 47/49 (1996), p.35.

[14] A. Mattone, 'Gli statuti sassaresi nel periodo aragonese e spagnolo', in *Gli statuti sassaresi: economia, società, istituzioni a Sassari nel Medioevo e nell'Età Moderna* (Sassari, 1986), p. 438.

[15] A. Udina, 'El Braç Reial a les Corts Catalanes durant el regnat del Magnànim', in *Atti del XVII Congresso di Storia della Corona d'Aragona* (Barcelona-Lleida, 2000), vol. III, pp. 1013-1021.

[16] A.M. Oliva-O. Schena, *I Parlamenti dei Vicerré Giovanni Dusay e Ferdinando Girón de Rebolledo (1495,1497, 1500, 1504-1511). Acta Curiarum Regni Sardinae* (Cagliari, 1998), vol. 5.

[17] G. Meloni, *Il parlamento di Pietro IV d' Aragona (1355). Acta Curiarum Regni Sardinae* (Cagliari, 1993), vol. 2, pp. 253-255.

[18] J. Vicens Vives, *Notícia de Catalunya* (Barcelona, 1969), p. 112.

[19] B. Anatra, 'Contrappunti sui Parlamenti sardi', *Archivio Sardo del Movimento Operaio Contadino e autonomistico* 47/4 (1996), p. 137.

[20] A.M. Oliva-O. Schena, 'Potere regio ed autonomie cittadine nei parlamenti sardi del XV secolo', in *Autonomía Municipal en el mundo mediterráneo. Historia y perspectivas* (Valencia, 2002), pp. 154-155.

[21] Meloni, *Acta Curiarum*, p. 106.

[22] A.M. Oliva-O. Schena, *I Parlamenti dei Vicerré Giovanni Dusay e Ferdinando Girón de Rebolledo,* pp. 219, 233, 402.

[23] F. Floris, *Feudi e feudatari in Sardegna* (Cagliari, 1996), vol. II, pp. 539-541.

[24] E. Martí, 'Incidència i relació dels síndics eclesiàstics de Lleida amb les corts medievals', in *Arrels cristianes. Temps de consolidació. La Baixa Edat Mitjana. Segles XIII-XV* (Lleida, 2008), vol. II, pp. 134-137.

Sara Chirra

Riflessioni sul mancato Parlamento di Giovanni II d'Aragona nel Regno di Sardegna

1. *Introduzione*

Dopo la morte di Alfonso *il Magnanimo*, avvenuta nel 1458, l'erede al trono della Corona d'Aragona, Giovanni II detto il *Senza Fede*, sembrava destinato a regnare per breve tempo a causa della sua età avanzata; invece, viene ricordato come uno dei sovrani più longevi – oltre che privo di scrupoli – del XV secolo. Ciononostante, questo periodo rimane in gran parte ancora inesplorato e poco studiato dalla storiografia italiana e, soprattutto, sarda. Gli studi recenti si sono orientati ad approfondire per il XV secolo i lunghi governi, ormai ampiamente esaminati e conosciuti, del fratello già citato Alfonso (1416-1458),[1] e del figlio, Ferdinando *il Cattolico* (1479-1516),[2] senza considerare il periodo del regno di Giovanni II (1458-1479), vissuto tra due sovrani di statura politica e diplomatica imponente, rimanendo, forse per questo motivo, all'ombra delle due personalità.[3] Probabilmente questo oblio storiografico è stato causato soprattutto dai numerosi studi incentrati sulla figura del fratello, di cui si conoscono, nel dettaglio, le velleità imperialistiche mediterranee, che determinarono il consolidamento del proprio potere nei possedimenti mediterranei della Corona d'Aragona. Alfonso intraprese la sua affermazione nel *Mare Nostrum* siglando *in toto* la conquista del Regno di Sardegna e Corsica, iniziata nel 1323 e conclusa circa cent'anni più tardi con la fine della secolare guerra tra l'Unione d'Aragona e il Regno di Arborea.[4]

La linea politica di Giovanni nel Regno di Sardegna fu orientata prevalentemente alla riorganizzazione amministrativa e istituzionale del territorio sardo. Durante gli anni del suo regno, il re pensò di convocare e far celebrare in Sardegna per ben tre volte un Parlamento generale, a circa quarant'anni dall'ultima assemblea, voluta e presenziata dal fratello, e a pochi anni dalla riunione straordinaria celebrata esclusivamente dallo stamento militare negli anni 1446 e 1452.[5]

L'istituto parlamentare venne introdotto in Sardegna nella metà del XIV secolo e subì nel corso del Quattrocento una lunga evoluzione, tanto da diventare un 'organismo' di rappresentanza del Regno.[6] Il compito di rappresentare gli ordini sociali nelle assemblee era affidato ai tre 'stamenti' o 'bracci': quello ecclesiastico, primo nell'ordine delle precedenze, era costituito dal clero regolare e secolare e presieduto dall'arcivescovo di Castel di Cagliari; quello militare o feudale,

che includeva feudatari, nobili e cavalieri del Regno, era presieduto dal nobile più titolato; infine, quello regio era composto, invece, da sindaci e rappresentanti delle città cosiddette 'regie', ossia le città non infeudate: Castel di Cagliari, Bosa, Villa di Chiesa, Alghero, Castellaragonese, Sassari e, successivamente, anche Oristano.[7] I lavori si svolgevano nei giorni e nelle sedi prestabiliti dal re con una convocazione solenne inviata ai partecipanti, nella quale veniva indicata, peraltro, seppure in maniera sommaria, anche la motivazione della riunione. Le assemblee si svolgevano secondo le procedure delle *Corts* catalane stabilite su un rapporto di tipo contrattualistico fra re e sudditi, secondo un tacito accordo che contemplava l'approvazione del 'donativo' in seguito alle richieste di favori pubblici e privati presentate dai tre bracci.[8]

Il primo Parlamento sardo si celebrò nel 1355 su disposizione del re Pietro IV *il Cerimonioso*. Successivamente, la guerra contro il Regno di Arborea,[9] che si perpetrò dalla metà del XIV secolo sino alla prima decade del secolo XV, non permise ai sovrani di indire altre assemblee parlamentari sino al 1421, quando Alfonso decise di convocare in seduta plenaria e sotto la sua diretta presidenza i tre stamenti; la sessione proseguì vent'anni più tardi con la riunione del solo 'braccio' militare al fine di mettere ordine nel Regno di Sardegna, devastato dalla decennale guerra contro gli Arborea, e di incassare il donativo.[10]

Tra questa riunione stamentaria e il successivo parlamento del 1481 voluto dal sovrano neoeletto Ferdinando, non vennero celebrati nel Regno sardo altri Parlamenti; tuttavia dallo spoglio dei registri di Cancelleria consultati per questa occasione, relativi alla serie *Sardinie* dell'Archivio della Corona d'Aragona di Barcellona è emersa la volontà da parte di Giovanni II di far celebrare un Parlamento nel Regno di Sardegna all'indomani dalla sua ascesa al trono della Corona d'Aragona, al fine di fronteggiare le difficoltà ereditate dalla politica del fratello nella gestione governativa dei territori del Principato di Catalogna, sconvolti da tensioni sociali ed economiche a causa dell'assenteismo del *Magnanimo*, continuamente impegnato nelle campagne militari in Italia.[11]

2. *Primo tentativo di convocazione del Parlamento sotto Giovanni II*

La linea politica che intendeva adottare il terzo Trastamara era volta a soddisfare le proprie aspirazioni nei territori iberici continentali piuttosto che salvaguardare le conquiste realizzate da Alfonso nel Mediterraneo, in pieno rispetto al ruolo istituzionale affidatogli dal padre Ferdinando I (1412-1416) di proiettare le mire espansionistiche della casata dei Trastamara verso la Castiglia. Per assolvere a tale obiettivo, Giovanni aveva usurpato i diritti sul Regno di Navarra

spettanti al figlio primogenito Carlo, il quale, ereditando il titolo di principe di Viana, aveva assunto la sovranità del regno, dopo la morte del nonno Carlo III di Navarra.[12] L'intenzione del sovrano catalano-aragonese era quella di usare come pedina la Navarra per realizzare la sua espansione verso il Regno di Castiglia e annetterlo alla Corona d'Aragona.[13]

Al fine di attuare le sue strategie politiche nei territori d'oltralpe, Giovanni doveva far fronte a una pluralità di complicazioni createsi dalla politica adottata da Alfonso, tesa alla costituzione di un impero catalano-aragonese che aveva il suo epicentro nel Mediterraneo e che, quindi, trascurava gli interessi dei territori continentali della Corona d'Aragona. Il *Senza Fede* aveva bisogno perciò di denaro per risollevare le povere casse del patrimonio regio, provate dalle campagne militari del *Magnanimo*, come dimostra un memoriale indirizzato al procuratore regio del Regno di Sardegna di recente nomina, Francesco Navarro, al quale viene ordinato di raccogliere nell'isola ingenti somme di denaro da tutti i *prestadors* abbienti per sopperire alle necessità impellenti in cui versava la Corte regia.[14]

Il precipitare delle difficoltà che si verificarono nei territori iberici negli anni '60 del XV secolo – ci riferiamo, in particolare, oltre al malcontento della popolazione barcellonese che non condivideva la politica autoritaria del dispotico re e ne condannava i modi totalitari, anche alle ribellioni dei contadini cosiddetti di 'remença' che, approfittando dello stato di totale anarchia del Principato, avanzarono a loro volta pretese al fine di guadagnarsi un po' di libertà[15] – spinse il re Giovanni II a ricercare e raccogliere quanto più danaro possibile per riportare la calma nei territori continentali. Inoltre, i continui dissapori con il primo figlio Carlo di Viana, per questioni di eredità e di primogenitura e il conseguente arresto del principe suscitarono l'ennesima reazione da parte dei catalani contribuendo a determinare la prima sollevazione catalana che avrebbe portato due anni dopo alla decennale e tristemente nota guerra civile.[16] Infine, la morte improvvisa e prematura del principe Carlo, avvenuta nel settembre del 1461 ufficialmente per motivi di salute, sebbene i barcellonesi accusassero la matrigna Giovanna di averlo fatto assassinare per favorire il figlio Ferdinando nell'*affaire* della primogenitura,[17] spinsero il sovrano Giovanni II a inoltrare con urgenza un'istanza di convocazione parlamentare nel Regno sardo. Il sovrano poteva fare affidamento in Sardegna sui mercanti e nobili che spesso si mostravano disponibili ad affiancarlo nelle imprese militari all'interno delle truppe reali o ad allestire queste a proprie spese o a partecipare ad attività politico-diplomatiche che il re intraprendeva; i mercanti più abbienti e i feudatari più potenti sopperivano alle necessità economiche del sovrano e prestavano servizio anche fuori dal Regno sardo al suo seguito.[18]

Il 3 dicembre 1461 da Calatayud il monarca, rivolgendosi al viceré Nicolò Carroz, gli comunicò l'intenzione di convocare e far celebrare un Parlamento generale, al fine di discutere dello stato di disordine creatosi nei territori del Principato catalano e di rimettere in sesto l'erario regio provato dalla situazione drammatica che si era creata.[19] Giovanni intendeva, però, modificare quella che era la prassi dei precedenti Parlamenti (del 1355 e del 1421), presenziati dai sovrani, delegando al viceré tale funzione, con l'intenzione di formalizzare in tal senso l'assenteismo regio.[20] Il sovrano, infatti, ordinò al Carròs di presenziare l'assemblea parlamentare in qualità di viceré con la piena potestà conferitagli per l'incarico che rivestiva.[21] Il viceré avrebbe dovuto decidere in quale città del Regno far celebrare le riunioni parlamentari, occuparsi della spedizione delle lettere convocatorie preparate dal re da inviare ai tre bracci o stamenti, formalizzare la presentazione dei capitoli di Corte e, infine, nominare i preposti per la riscossione del 'donativo'. I tre bracci, o stamenti (quello ecclesiastico, feudale e reale), rappresentanti la totalità degli abitanti dell'isola, avrebbero dovuto riunirsi quanto prima, date le necessità finanziarie.[22]

Il giorno successivo, infatti, furono inviate le lettere-mandato ai membri che componevano i tre stamenti: per il braccio ecclesiastico furono convocati tutti i prelati e il clero regolare dell'isola: gli arcivescovi di Castel di Cagliari, Sassari, Arborea; i vescovi di Ampurias, Bisarcio, Ploaghe, Galtellì, Santa Giusta, Bonavolla, Bosa, Torralba, Ales, Gora (Sora-Sorres), Terranova;[23] per il braccio reale furono invitati i consiglieri rappresentanti le sette città regie[24]; infine, per il braccio militare (o feudale) le persone più rappresentative della feudalità e nobiltà isolana:[25] vennero convocati il marchese di Oristano e conte di Goceano Antonio Cubello;[26] Nicolò Carròs, che venne invitato in qualità non di viceré ma di conte di Quirra;[27] il conte di Oliva Francesc Gilabert de Centelles;[28] il visconte di Sanluri Antonio de Sena; Pietro e Giovanni de Sena, rispettivamente fratello e padre del visconte; altri feudatari tra cui Antoni d'Erill;[29] Pere de Besalú, senescalco del Regno di Sicilia sotto Giovanni II;[30] Jacme de Aragall,[31] luogotenente del governatore nel Capo di Cagliari e Gallura;[32] Çerafí de Muntanyans;[33] e numerosi altri feudatari appartenenti a potentati di origine iberica ma trapiantati nel Regno sardo nel corso dei secoli XIV e XV.[34]

Oltre a queste personalità nobili di estrazione iberica, vi erano anche alcuni esponenti dell'oligarchia sarda che avevano accresciuto nel corso del XV secolo il proprio potere sia nell'ambito della burocrazia urbana sia nell'acquisizione di feudi: ci riferiamo in particolare ai mercanti (poi ascesi al rango di feudatari e nobili) oriundi di Sassari: Angelo Cano,[35] Angelo de Marongio,[36] Antonio Gambella[37] e il podestà della città turritana Brancacho Manca.[38]

Il 12 dicembre 1461, Giovanni inviò al Carròs un altro memoriale nel quale lo informava di aver già provveduto a far redigere le lettere di convocazione dei tre bracci in previsione dell'imminente celebrazione parlamentare: contava in tutto 26 lettere per il braccio militare, 16 per il braccio ecclesiastico e 6 per quello reale. In tale contesto, il sovrano stabilì i punti principali di alcuni capitoli del programma che si sarebbe discusso durante le assemblee: *in primis*, il Trastamara, che attribuiva una grande importanza strategica all'isola, proponeva di far redigere un piano di riforme da attuare nel Regno sardo, al fine di sfruttare al meglio sia le rendite destinate al mantenimento dell'isola sia le risorse economiche disponibili per far fronte alle spese ordinarie e straordinarie della corte regia. Dispose, inoltre, che tutti i rappresentanti dei tre stamenti prestassero in tale occasione giuramento di fedeltà e obbedienza al figlio primogenito, il principe Ferdinando, affinché fosse riconosciuto ufficialmente erede universale dell'Unione catalano-aragonese.[39]

Dalla lettura dei documenti si evince che le lettere di convocazione furono spedite subito dopo averne dato comunicazione al viceré; inoltre, furono redatti tutti i capitoli del programma da presentare in aula durante le sessioni parlamentari.[40] Malgrado le fasi preliminari si fossero concluse in tempi rapidi, il Parlamento non venne celebrato; le ragioni del mancato espletamento non sono note. Tuttavia, ripensando alla situazione precaria che stava vivendo in quel momento il Principato di Catalogna a pochi giorni dallo scoppio della guerra civile, si potrebbero formulare delle ipotesi. Infatti, dallo spoglio dei registri di Cancelleria trapela chiaramente che il Regno di Sardegna fu coinvolto a vario titolo in tutte le fasi della guerra civile catalana e si distinse per la puntualità dimostrata nell'esaudire le richieste di aiuto da parte del sovrano, istanze di natura finanziaria, militare e umana, tanto individuale quanto collettiva, espressione di una lealtà maturata nei decenni da parte di benefattori, nobili, feudatari e mercanti, che avevano acquisito potere e ricchezza nell'isola grazie ai sovrani catalano-aragonesi. Alla luce di ciò, i documenti consultati offrono dati interessanti sugli appoggi materiali e gli aiuti economici concessi sin dai primi focolai della sollevazione catalana da alcuni personaggi sardi, molti dei quali furono convocati per il Parlamento mai celebrato.[41]

Ciononostante, si suppone che i sospetti, mai sopiti, sull'assassinio del figlio Carlo di Viana, i ripetuti tentativi del sovrano di far accettare il prediletto Ferdinando in qualità di suo successore[42] e l'astio manifestato pubblicamente dai Barcellonesi anche nei confronti di Giovanna, moglie del Trastamara,[43] allarmassero Giovanni distogliendolo dalla decisione di avviare le sedute parlamentari sarde.

3. *Secondo tentativo di convocazione del Parlamento*

Le fasi della guerra civile sono tristemente note: sin dall'assedio di Girona del 1462 si percepì l'impossibilità di concordare una risoluzione pacifica con i ribelli catalani nel giro di breve tempo. Tanti e vani furono i tentativi del re di sedare le ribellioni nei territori iberici e di evitare il propagarsi dell'ondata bellica nei regni d'oltremare.[44]

A quattro anni dallo scoppio della guerra, nel 1466 Giovanni II pensò nuovamente di convocare nel Regno di Sardegna un Parlamento generale per discutere sull'incombenza di ridurre alla fedeltà e all'obbedienza regia i sovversivi catalani e castigare o espellere anche dal Regno sardo le persone che avevano aderito a vario titolo alla ribellione nel Principato. In tale occasione nell'istruzione inviata al viceré Carròs, si stabilì anche un contributo in denaro, una sorta di donativo, che sarebbe risultato molto utile per superare almeno le necessità più gravi. L'entità della somma richiesta veniva stabilita nel memoriale stesso: il re meditava di procacciare dal marchese di Oristano, Leonardo de Alagón, 15.000 fiorini d'oro; alla città di Castel di Cagliari, invece, avrebbe chiesto 550 *salmes* di frumento; ad Alghero avrebbe ribadito il rispetto dell'impegno di vendere il corallo estratto per un valore di 4.500 fiorini. Il re dispose, inoltre, che il viceré Carròs facesse un censimento sulle proprietà e i beni presenti nel territorio sardo appartenenti al patrimonio regio, sulle cui rendite poteva rivalersi.[45]

Anche questa volta il tentativo di convocazione del Parlamento fallì, come già era successo cinque anni prima. Sebbene non se ne conosca la motivazione, anche in questo caso si può ipotizzare che la contingenza della guerra e le necessità impellenti di sostegni economici avevano spinto il sovrano a chiedere direttamente gli aiuti materiali e pecuniari alle persone votate alla causa reale e alle città regie, senza il tramite della convocazione dei Bracci, come accadde, peraltro, nel Regno di Sicilia.[46]

4. *Terzo e ultimo tentativo di convocazione del Parlamento*

Il tragico evolversi della guerra, gli instabili equilibri dovuti ai continui voltafaccia degli alleati di Giovanni e il bisogno persistente di denaro spinsero il re a decidere di convocare per la terza volta un Parlamento nel Regno di Sardegna nel 1468. Da Monçó il 22 novembre il sovrano inviò un ambasciatore nell'isola con il compito di consegnare al viceré Carròs un memoriale contenente le istruzioni per una celere convocazione parlamentare, al fine di condurre a termine una guerra che aveva condannato il Principato catalano al collasso finanziario e sociale e per sottomettere definitivamente i ribelli all'obbedienza regia.[47]

Ancora una volta il Parlamento non venne espletato e ancora una

volta non se ne conoscono le ragioni, sebbene prevalga in questo ultimo caso l'ipotesi del timore che le lungaggini relative alla burocrazia delle assemblee parlamentari avrebbe inevitabilmente rallentato il tanto agognato epilogo della guerra civile, ritenendo ancora una volta valido e più opportuno proseguire con la linea politica di Giovanni II che contemplava la vendita o l'assegnazione delle cariche istituzionali e delle dignità nobiliari per ovviare alla carenza finanziaria patita dal real patrimonio.

Note

[1] Sulla politica italiana del *Magnanimo* cfr.: E. Dupré-Theseider, 'La politica di Alfonso il Magnanimo', in *IV Congreso de Historia de la Corona de Aragón. Palma di Maiorca, 1955* (Barcelona, 1976), vol. I, pp. 225-251; J.M. Madurell Marimón, 'Alfonso el Magnánimo en tierras de Italia (1435-1458)', in *Atti del IV Congreso de Historia de la Corona de Aragón. Palma de Mallorca, 1955* (Mallorca, 1959), vol. I, pp. 135-148; E. Pontieri, 'Alfonso V d'Aragona nel quadro della politica italiana del suo tempo', in *Estudios sobre Alfonso el Magnánimo con motivo del quinto centenario de su muerte. Curso de conferencias. Mayo de 1959* (Barcelona, 1960), pp. 245-307; E. Pontieri, 'Dinastia, Regno e capitale nel Mezzogiorno Aragonese', in *Storia di Napoli* (Napoli, 1974), vol. IV/I, pp. 1-230; E. Pontieri, *Alfonso il Magnanimo re di Napoli. 1435-1458* (Napoli, 1975); A. Ryder, 'La politica italiana di Alfonso il Magnanimo (1442-1458)', *Archivio Storico per le Province Napolitane* 38, (1958), pp. 43-106; 39, (1959), pp. 235-294; A. Ryder, *The Kingdom of Naples under Alfonso the Magnanimous*, Oxford, 1975. A. Ryder, *Alfonso the Magnanimous King of Aragon, Naples ans Sicily 1396-1458* (Oxford, 1990); S. Tramontana, *Il mezzogiorno medioevale. Normanni, Svevi, Angioini, Aragonesi nei secoli XI-XV* (Roma, 2000).

[2] A.M. Oliva-O. Schena (ed.), 'La Sardegna e il Mediterraneo all'epoca di Ferdinando il Cattolico', in *Acta Curiarum Regni Sardinie. I Parlamenti dei viceré Giovanni Dusay e Ferdinando Girón de Rebolledo* (Cagliari, 1998), p. 39; R. Romano-A. Tenenti, *Alle origini del mondo moderno. 1350-1550* (Milano, 1967), p. 80; M.L. Frosio, *La Spagna potenza mondiale. L'età dei re Cattolici* (Milano, 1980); J.H Elliot, *La Spagna imperiale 1469-1776* (Bologna, 1982); J.N. Hillgarth, 'Los reyes católicos 1474-1516', in *Los reinos hispánicos* (Barcelona-Buenos Aires-México, 1984); J. Perez, *Isabel y Fernando. Los reyes Católicos* (Madrid, 1988); E.S. Esteban, 'Del Mediterráneo de la Corona de Aragón al Atlántico de la monarquía hispánica', in *La Mediterrània de la Corona d'Aragó, segles XIII-XVI. VII Centenari de la sentència arbitral de Torrellas, 1304-2004, XVIII Congrés d'Història de la Corona d'Aragó* (València, 2005), vol. I, pp. 43-64.

[3] Su Giovanni II si rimanda agli studi di J. Vicens i Vives, *Joan II de Aragón. Monarquía y revolución en la España del s. XV* (Barcelona, 1953); Idem, 'La politique européenne du royaume d'Aragon-Catalogne sous Jean II (1458-1479)', in *Annales du Midi* LXV/23, (1953), pp. 405-414; Idem, *Els Trastamares. Segle XV* (Barcellona, 1956).

[4] Sull'argomento si veda F.C. Casula, *La storia di Sardegna* (Sassari, 1994), vol. III, p. 84 ss.

[5] Su queste due assemblee parlamentari cfr. A. Boscolo (ed.), *Acta Curiarum Regni Sardinie. I Parlamenti di Alfonso il Magnanimo*, revisione, apparati e note di O. Schena (Cagliari, 1993).

[6] Di estrazione evidentemente iberica, l'istituto parlamentare rappresentava nel Regno di Sardegna il momento più significativo del rapporto tra sovrano e sudditi, i quali si incontravano per discutere delle problematiche dello Stato inerenti agli ambiti più disparati e accordare le concessioni reciproche previste dal *do ut des*, cfr. G. Sorgia, 'I

Parlamenti', in J. Carbonell- F. Manconi (ed.), *I Catalani in Sardegna* (Cinisello Balsamo, 1984), pp. 163-168. Per una visione d'insieme sui Parlamenti sardi si vedano, inoltre, il volume degli *Acta Curiarum Regni Sardiniae. Istituzioni rappresentative nella Sardegna medioevale e moderna. Atti del Seminario di studi* (Cagliari, 1986); M. da Passano, 'La legislazione', in Carbonell, Manconi (ed.), *I Catalani in Sardegna*, p. 76; A. Mattone, 'Problemi di storia del Parlamento sardo (XIV-XVII secolo)', in *Assemblee di Stati e Istituzioni rappresentative nella storia del pensiero politico moderno (secoli XV-XX), Atti del convegno internazionale. Perugia, 1982* (Rimini, 1983), pp. 152-183; A. Mattone, 'I Parlamenti', in Carbonell, Manconi (ed.), *I Catalani in Sardegna*, pp. 84-91; A. Mattone, ' "Corts" catalane e Parlamento sardo: analogie giuridiche e dinamiche istituzionali (XIV-XVII secolo)', in *La Corona d'Aragona in Italia (secc. XIII-XVIII), Atti del XIV Congresso di Storia della Corona d'Aragona. Sassari-Alghero 1990* (Sassari, 1990), vol. IV, pp. 251-274; Oliva-Schena, *I Parlamenti dei viceré Giovanni Dusay*; A.M. Oliva-O. Schena, 'Autonomie cittadine e potere regio negli atti del Parlamento del Regno di Sardegna e Corsica nel Quattrocento', *Archivio Storico Sardo*, 2 (2001): *Sardegna e Spagna. Città e territorio tra medioevo ed età moderna*, pp. 69-79. G. Olla Repetto, 'La collana *Acta Curiarum Regni Sardiniae*', *Archivio Sardo del movimento operaio contadino e autonomistico* 47/49 (1996), A cinquant'anni dalla liberazione. Percorsi di storia moderna e contemporanea, pp. 75-90; P. Sanna, 'I Parlamenti dei Regnum Sardiniae: problemi storico-istituzionali', *Archivio Sardo del movimento operaio contadino e autonomistico*, 47/49 (1996), pp. 29-49; O. Schena, 'Vicende della famiglia Carròs attraverso gli atti dei Parlamenti', in *L'espansione mediterranea della Corona d'Aragona e della Corona di Spagna. Imprese e fortune dei Carròs nel Valenzano e in Sardegna (secoli XIV-XVIII). I Seminario di Studi* (Villasor-Mandas 2007), c.d.s.

[7] Alle sessioni parlamentari, presiedute dal re, potevano partecipare anche i maggiori funzionari regi, cfr. Sorgia, *I Parlamenti*, pp. 163-164.

[8] Il 'donativo', motore effettivo delle convocazioni, a partire dal Parlamento del 1421 divenne quasi un'imposta periodica da versare alle casse della Corte regia per far fronte a qualsivoglia esigenza. Oltre che con scadenza regolare, il 'donativo' poteva essere, altresì, richiesto anche in caso di eventi straordinari, come il matrimonio di un membro della casa reale o per sopperire alle urgenze di una guerra che poteva verificarsi, anche fuori dai territori sardi, cfr. Schena, 'Vicende della famiglia Carròs'. Sulle differenze e analogie tra le *Corts* celebrate nel Principato di Catalogna e le assemblee parlamentari sarde cfr. Mattone, ' "Corts" catalane e Parlamento sardo'.

[9] Sulla guerra tra Regno di Sardegna e Regno di Arborea si vedano i volumi pubblicati nella collana Collezione di Documenti per il Regno di Sardegna (Co.Do.Re.Sa.) dell'Istituto di Storia dell'Europa mediterranea del Consiglio Nazionale delle Ricerche: J. Armangué i Herrero-A. Cireddu Aste-C. Cuboni (ed.) *Proceso contra los Arborea* I (Pisa, 2002); S. Chirra (ed.), *Proceso contra los Arborea* II-III (Pisa, 2003); S. Chirra-M.G. Farris-V. Grieco-C. Matricolo (ed.), *Proceso contra los Arborea* VI, c.d.s.

[10] Boscolo-Schena, *Acta Curiarum Regni Sardinie. I Parlamenti di Alfonso il Magnanimo*, p. 10.

[11] Il *Magnanimo* mirava a realizzare un ambizioso disegno politico che aveva come obiettivo quello di costituire un vasto possedimento catalano-aragonese che comprendesse tutti i territori del Mediterraneo; tale proposito si fece concreto in seguito alla conquista del napoletano, avvenuta nel 1442, cfr. Dupré-Theseider, *La politica italiana*, p. 229.

[12] M. Desdevises du Dezert, *Don Carlos d'Aragón, principe de Viana* (Parigi, 1889); J. Vicens i Vives 'Trajectoria mediterrànea del Princep de Viana', *Episodis de la Historia* (Barcelona, 1961); Vicens i Vives, *Historia crítica de la vida y reinado de Fernando II de Aragón*, introduzione di M.A. Marín Gelabert (Zaragoza, 2006); N. Coll, *Juana Enríquez* (Madrid, 1953).

[13] Vicens i Vives, *Els Trastamaras*, p. 152.

[14] Archivo de la Corona de Aragón (ACA), *Cancillería* (*Canc.*). Serie *Sardinie*, reg. 3396, ff. 81*v*-82.

[15] Cfr. J. Vicens i Vives, *Historia de los Remensas en el siglo XV* (Barcelona, 1978); A. Jordá Fernández, 'Los remensas: evolución de un conflicto jurídico y social del campesinado catalán en la Edad Media', *Boletín de la Real Academia de Historia* CLXXXVII, Cuaderno II, (mayo-agosto 1990), pp. 217-229; G. Feliu i Monfort, 'El pes ecònomic de la remença i dels mals usos', *Anuario de Estudios Medievales* 22, (1992), pp. 145-160; Idem, 'Els antecedents de la remençai els mals usos', *Quaderns de la Selva. Estudi en honor de Pons Guri* 13, (2001), pp. 209-228; L. To Figueras, 'Drets de justícia i masos: hipòtesi sobre els orígens de la pagesia de remença', *Revista d'Història Medieval* 6, (1995), pp. 141-149; D. Abulafia, *I Regni del Mediterraneo occidentale dal 1200-1500. La lotta per i predominio* (Roma, 2001), p. 212 ss.

[16] Vicens i Vives, *Fernando el Católico*, pp. 95-115. Sulla guerra civile catalana del 1462-1472 si veda: J. i S. Sobrequés i Callico, *La guerra civil catalana* (Barcelona, 1972); S. Sobrequés i Callico, 'Barcelona i la Mediterrània durant la guerra civil catalana del segle XV', in *La Corona d'Aragona e il Mediterraneo: aspetti e problemi comuni da Alfonso il Magnanimo a Ferdinando il Cattolico (1416-1516), Atti del IX Congresso di storia della Corona d'Aragona* (Napoli, 1982), vol. II, pp. 290-291; Idem, 'Extraterritorialitat del poder polític del consell de cent durant la guerra civil catalana del segle XV', in *El món urbà a la Corona d'Aragó del 1137 als decrets de nova planta. XVII Congrés d'Historia de la Corona de Aragón* (Barcelona, 2003), vol. II, pp. 923-93.

[17] Vicens i Vives, *Juan II*, p. 255.

[18] ACA, *Canc*., reg. 3402, f. 70 ss.

[19] ACA, *Canc*. Reg. 3398, f. 160*v*.

[20] L'assenteismo regio verrà codificato nel Parlamento generale del 1481 voluto dal sovrano Ferdinando il *Cattolico* che investì il viceré della 'preheminencia real', cfr. B. Anatra, 'La Sardegna dall'unificazione aragonese ai Savoia', in J. Day, B. Anatra, L. Scaraffia (ed.), *La Sardegna medioevale e moderna*, in G. Galasso (ed.), *Storia d'Italia* (Torino, 1987), vol., X, pp. 382-383.

[21] ACA, *Canc*. reg. 3398, f. 168.

[22] Ibid., ff. 168-170.

[23] Ibid., f. 169.

[24] Ibid., f. 169*v*.

[25] Ibid., f. 170.

[26] Ibid., ff. 123*v*-129*v*; Casula, *Distosa*, voce 'Cubello, Antonio', p. 491.

[27] I Carròs parteciparono attivamente alla campagna di realizzazione del Regno di Sardegna e Corsica e per tale ragione furono tra i primi a essere beneficiati con la concessione di vasti territori feudali. In riferimento a questa famiglia cfr. Casula, *La Sardegna aragonese*, p. 370 ss; J. Sendra i Molió, *Els Comtes d'Oliva a Sardenya* (Oliva, 1996), pp. 41-43.

[28] Giovanni II annovera il conte tra i più fedeli magnati e *milites* che prestarono giuramento di fedeltà al re nel 29 novembre 1458, cfr. ACA, *Cartas Diplomatiques Reales* (*CDR*), *Papeles varios*, n. 3; F. Floris, *Feudi e feudatari in Sardegna* (Cagliari, 1996), p. 216; L.L. Brook-F.C. Casula-M.M. Costa-A.M. Oliva-R. Pavoni-M. Tangheroni (ed.), *Genealogie medievali di Sardegna* (Sassari, 1984), Tav. XXXIII, 27, p. 396.

[29] Su questo personaggio si veda *Genealogie medievali*, Tav. XXXIV, 20, p. 406.

[30] Cfr. Casula, *Di.Sto.Sa.*, voce 'Besalú (*Bisuldunum*), Pietro Giacomo de', p. 187; G. Serreli, 'La politica territoriale dei Carròs: il caso della Marmilla nel XV secolo', in *L'espansione mediterranea della Corona d'Aragona e della Corona di Spagna. Imprese e fortune dei Carròs nel Valenzano e in Sardegna (secoli XIV-XVIII). I Seminario di Studi* (Villasor-Mandas, 2007), c.d.s.

[31] Casula, *Di.Sto.Sa.*, voce 'Aragall, Giacomo (Jaume) de (1°)', p. 67; Floris, *Feudi e feudatari*, pp. 535-539; F. Floris-S. Serra, *Storia della nobiltà in Sardegna* (Cagliari, 1986), p. 183; Oliva, *Il consiglio regio*, pp. 216-217.

[32] ACA, *Canc*. reg. 3395, ff. 94*v*-96*v*.

[33] Boscolo-Schena, *Acta Curiarum Regni Sardinie. I Parlamenti di Alfonso il Magnanimo*, p. 24; Floris-Serra, *Storia della nobiltà*, p. 275.

[34] ACA, *Canc*., f. 170.

[35] Casula, *Di.Sto.Sa.*, voce 'Cano o Canu, Angelo', p. 300; Floris-Serra, *Storia della nobiltà*, p. 204.

[36] Mattone, *Gli Statuti sassaresi*, p. 437.

[37] ACA, *Canc.* reg. 3396, ff. 84*v*-86*v*. Su questa famiglia si veda, inoltre, F. Loddo Canepa, 'Origen del cavallerato y de la nobleza del Reyno de Cerdeña', *Archivio Storico Sardo* 24 (1954), pp. 319-320; Floris-Serra, *Storia della nobiltà*, p. 245; Floris, *Feudi e feudatari*, pp. 66-71.

[38] Floris-Serra, *Storia della nobiltà*, pp. 261-262.

[39] ACA, *Canc.* reg. 3398, ff. 175-175*v*.

[40] Ibid., reg. 3399, ff. 113*v*-116.

[41] Un esempio è dato dalla richiesta fatta qualche mese prima dal re al procuratore del Regno di Sardegna, affinché gli venissero forniti aiuti economici e mezzi quali cavalli, armi e quanto necessario per frenare la sommossa organizzata in Catalogna contro di lui, cfr. ACA, *Canc.* reg. 3397, ff. 112-112*v*.

[42] Vicens i Vives, *Fernando el Católico*, pp. 164-166.

[43] N. Coll, *Juana Enríquez* (Madrid,1953).

[44] S. Sobreques i Vidal, *El setge de la Força de Gerona en 1462* (Barcelona, 1962).

[45] ACA, *Canc.* reg. 3399, ff. 136-138.

[46] ACA, Canc. reg. 3399, ff. 136-138. Sui sostegni del Regno di Sicilia si veda Vicens i Vives, *Fernando el Católico.*

[47] ACA, *Canc.* reg 3413, ff. 52-63. Giovanni continuava a trovare considerevoli difficoltà a finanziare le operazioni militari al fine di ristabilire la sua autorità nel Principato di Catalogna, i cui ingressi monetari dipendevano *in toto* dai donativi ottenuti dalle *Cortes* e dai Parlamenti.

Lluis-J. Guia Marin[1]

I mutamenti dinastici e il Parlamento sardo. Il caso di Cagliari come 'Prima Voce' dello Stamento reale[2]

I mutamenti dinastici che intervengono nel Regno di Sardegna agli inizi del XVII secolo interrompono la tradizione del Parlamento sardo che per più di due secoli era stato sempre convocato ogni dieci anni.[3] Parallelamente alla guerra di successione spagnola, si inaugurava infatti un nuovo meccanismo di relazioni diplomatiche fra il sovrano e gli stamenti privilegiati che rese inutile la convocazione dell'assemblea generale. Questa modifica sarà mantenuta dai Savoia che non ritennero più opportuna la convocazione del Parlamento.[4] In questo sistema Cagliari, 'prima voce' delle città isolane, riuscì a mantenere un ruolo preminente, almeno dal punto di vista formale. Questo le permise di esercitare una leadership politica che presto si sarebbe frustrata di fronte all'assolutismo piemontese.

La struttura del Parlamento sardo durante l'epoca medievale e moderna ha meritato nel corso degli ultimi decenni un'attenzione storiografica notevole, specialmente dallo svolgimento nel 1984 del Convegno internazionale *Acta Curiarum*.[5] Una struttura, fondamentalmente analoga a quella di cui si dotarono le *Corti* degli altri regni della Corona d'Aragona, come quello di Valencia e la Catalogna, nella quale la Sardegna era inclusa.[6] Non è inutile avvertire che nel regno sardo si trattava di ricreare il contesto politico caratteristico dei paesi catalano-aragonesi. In questa struttura la composizione del terzo stato o stamento reale ha seguito gli stessi modelli, indipendentemente dal numero delle città e delle ville che hanno avuto il diritto di partecipare, che nel caso della Sardegna era molto ridotto rispetto al caso valenciano o a quello catalano: solitamente Cagliari e altre sei città (Sassari, Alghero, Bosa, Castellaragonés, Oristano, e Iglesias) hanno avuto questo diritto e hanno potuto votare in Parlamento.

Inoltre, il resto dei comuni di giurisdizione reale, sia per far parte di terre demaniali, sia per essere feudi 'convertiti' e controllati dalla Corona, ha avuto occasione di fare arrivare le proprie richieste in concomitanza alle sedute parlamentarie. Nell'ultimo Parlamento di Montellano, così come è stato studiato da G. Catani e C. Ferrante,[7] troviamo numerose richieste di questi comuni ritrovate subito dopo quelle presentate dalle città con diritto di partecipazione al Parlamento.

I comuni sardi hanno sofferto, come gli omologhi iberici, una pressione forte dell'autorità monarchica.[8] Essa era particolarmente efficace nel caso sardo e provocava una dipendenza forte dal potere reale; di-

pendenza che bisogna spiegare perché la loro conformazione era avvenuta parallelamente al consolidamento del dominio sul territorio.[9] Era assolutamente evidente che il principio che legittimava il potere comunale e la condizione delle elites prendeva spunto da una concessione monarchica iniziale, un privilegio reale, in modo tale che la oligarchia cittadina, strutturalmente debole, fu limitata spesso ad adottare un dissenso discreto e rispettoso.[10] Questa affermazione può diventare corretta, nello spazio e nel tempo, per altri territori come Valencia. Le somiglianze con questo altro 'piccolo' regno della Corona erano ancora più grandi e si possono evidenziare nella propria struttura del braccio reale. Bisogna sottolineare la preminenza istituzionale e politica delle rispettive capitali di ciascun regno, Cagliari e Valencia;[11] una superiorità che inoltre è supportata dai processi di conquista e che ha condizionato in qualche modo la traiettoria globale di tutto lo stamento. Le capitali hanno provocato spesso l'inasprimento dei rapporti con il resto delle città reali – nel caso sardo specialmente con Sassari – mentre quest'ultime hanno opposto resistenza ad accettare che Cagliari fosse la preferita.[12] Questo stato di tensione è stata sfruttato dalla stessa monarchia allo scopo di ottenere una divisione interna dello stamento e conseguentemente una resistenza più debole alle loro richieste. Così la traiettoria dello stamento popolare sardo sarebbe stata condizionata dall'antagonismo crescente della città più rappresentativa del nord dell'isola, Sassari, contro Cagliari. Tuttavia, la pressione insistente dei sassaresi per fare eccellere la propria città in tutti i *fora* (primato ecclesiastico, erezione dell'università, riunioni particolari dello stamento militare), alla fine sarà neutralizzata o strumentalizzata dalla Corona per soddisfare i propri interessi.

In realtà le caratteristiche delle Corti di Sardegna, e più in particolare del loro stamento reale, non differivano troppo dai modelli iberici, come pure non differiva la politica della Monarchia rispetto ai propri territori. Così l'ultimo Parlamento sardo del regno di Carlo II, il Parlamento Montellano del 1698-99, fu l'ultima occasione in cui gli stamenti furono convocati per costituire la più importante assemblea rappresentativa del regno. Nonostante il peso della tradizione e i condizionamenti delle riunioni precedenti di sottommissione totale agli obiettivi reali, si possono osservare alcuni elementi atipici, o comunque si può constatare l'essere davanti un'istituzione che conserva, nonostante tutto, la sua vitalità interna. Il Viceré aveva provato, senza riuscirci, a spingere gli stamenti verso un donativo permanente di venti anni, mettendo in conto inevitabilmente uno strappo alle prerogative per la concessione di nuovi servizi, con la volontà di annientare, di fatto, una qualsivoglia capacità di pressione. La resistenza stamentale è riuscita, oltretutto, a far ridurre il donativo tradizionale da 70.000 scudi a 60.000 grazie a una serie di espedienti argomentativi sul deplorevole

stato economico dell'isola. I discreti risultati ottenuti dagli stamenti sul piano contributivo non furono corrisposti con l'approvazione di tutti i capitoli presentati. Era questa, in tutti i casi, una politica comune dei monarchi nei confronti delle assemblee rappresentative di tutti i regni della Corona d'Aragona.[13] Molte delle proposte degli stamenti erano rifiutate dal re.

L'ultima riunione del Parlamento del regno di Sardegna si concludeva senza che nulla facesse pensare a un sistema di relazione fra il monarca e gli stamenti che andava modificandosi negli anni successivi. In effetti, l'interruzione delle riunioni parlamentari non significò alcun cambiamento nel contesto legale e politico, poiché esso continuò a caratterizzarsi attraverso il protagonismo politico degli stamenti e la necessità di conservare una corrispondenza stretta fra questi e il monarca per risolvere i problemi fondamentali di governo. Tutto ciò nel quadro d'una progressiva preminenza dei monarchi frutto dell'inevitabile affermazione dell'assolutismo. Comunque Corti o Parlamenti continuarono ad essere un obbligato riferimento nella pratica politica, anche se non vennero mai più convocati.[14] Un riferimento che, nel caso della Sardegna, separata della corona spagnola dalla guerra di successione d'inizio XVIII secolo, durerà fino alla soprannominata 'perfetta fusione' del 1847. Quindi, la mancanza di convocazioni sempre è stata considerata un fatto straordinario e congiunturale motivato da cause non vincolate alla volontà dei monarchi.

Di conseguenza, giammai si perse la speranza di un ritorno alla normalità – spesso tradita dagli eventi della politica internazionale –: si doveva dare un senso al compimento naturale della prassi politica del regno. Nel caso della Sardegna, la guerra di Successione aveva causato il pretesto grazie al quale i monarchi successivi, appartenenti a dinastie varie, rimandassero la 'chiamata' del Parlamento.[15] Tale rinvio non significò una rinuncia per nessuno di loro al servizio economico offerto dagli stamenti ogni dieci anni contestualmente alle riunioni parlamentarie. L'impegno per lo svolgimento delle riunioni obbligatorie che non era stato interrotto durante i due secoli precedenti, si mantenne esplicito e tacitamente vigente,[16] ma si dovrà aspettare gli eventi rivoluzionari sul finire del XVIII secolo, in modo che gli stamenti sardi, e in particolare lo stamento militare, potessero soddisfare il loro desiderio di riunirsi in una assemblea autoconvocata.[17]

In alternativa si sarebbero presentate petizioni *ad hoc* per assolvere all'assenza di riunioni. Formule non nuove[18] ma che da allora sarebbero state preponderanti nel contesto politico ed istituzionale. Si trattava di riunioni ridotte dei rappresentanti degli stamenti che in nome di tutti raggiunsero accordi con il monarca. In queste riunioni la città di Cagliari[19] fu incaricata della rappresentanza del resto delle città demaniali malgrado città come Sassari, aspiranti a un rap-

porto privilegiato con il monarca, non rimasero per nulla soddisfatte.

Per arrivare al perfezionamento delle giunte rappresentative degli stamenti, era stato compiuto un lungo cammino. Era questa una possibilità a cui si ricorse durante la celebrazione delle riunioni parlamentari per coordinare le proposte provenienti da ogni braccio o stamento e rendere possibile la trattativa successiva di questi con i ministri del re. La risorsa delle riunioni rappresentative inoltre era stata provata in tutti i paesi della Corona durante i periodi in cui le Corti o i Parlamenti non si erano riuniti.[20] Ma gli obiettivi preposti da parte di ognuno di essi erano diversi; gli stamenti sardi non avevano ottenuto, per esempio, i privilegi dei loro omonimi di Valencia di potersi riunire senza il permesso previo del viceré. Ciò in particolare ha interessato lo stamento militare che in Sardegna si arrogava l'iniziativa e la direzione politica.[21]

Le riunioni del nobiliario, qualora avessero luogo, provocavano una reazione a catena nella quale a propria volta gli altri due stamenti avrebbero dovuto pronunciarsi sugli oggetti trattati in seno a quello militare – perchè considerati di interesse comune – fino a trascendere la competenza di quest'ultimo. Poiché in Sardegna riunioni degli stamenti ecclesiastici e demaniali per così dire *extra parlamentarie* non sono esistite, fu imprescindibile ricorrere alle prime voci di ogni stamento per avviare una corrispondenza necessaria; una con l'arcivescovo di Cagliari e l'altra con il giurato capo della stessa capitale.

Così la corrispondenza fra gli stamenti e di questi con il monarca si articolava sporadicamente attraverso un sistema di giunte rappresentative a carattere tripartito. Il sistema era semplice benché, se da un lato i Parlamenti risposero alla convocazione con una obbedienza 'consigliabile', dall'altro la monarchia non si interessò a consolidare questo meccanismo alternativo 'semplificato'. La congiuntura propizia si presentava durante la guerra della Successione.

Così la prima volta che questo copione si presentava, fu all'epoca di Filippo V di Borbone nel 1706, quando il monarca, ragionando sull'impossibilità di convocare la magna assemblea, chiese agli stamenti la proroga del Donativo dell'ultimo Parlamento di Carlo II, conosciuto come il Parlamento di Montellano del 1698-99. Sicuramente si potrebbero citare altri precedenti importanti sull'attività delle riunioni degli stamenti,[22] sempre con una partecipazione evidente di Cagliari, in particolare durante l'inconcluso Parlamento di Camarasa del 1666-1668 in poi. Questo ed altri precedenti non hanno smesso di essere eventi straordinari ed eccezionali.

La guerra era inoltre una situazione eccezionale perché il conflitto richiese l'immediata riscossione di nuove risorse. Così l'economia di guerra, oltre ad interferire sulle risorse importanti di un'economia isolana già fragile, ha finito anche per interessare il corretto funzionamento delle istituzioni. La riunione del Parlamento sardo, di cadenza decen-

nale nei due secoli precedenti, cedette il posto alle riunioni ricorrenti delle giunte delle prime voci dei tre stamenti, con la presenza esclusiva di Cagliari in rappresentanza dello stamento reale. In queste riunioni si decise, facendo appello ad una situazione d'emergenza, il rinnovamento dei donativi. Siamo nel 1706 quando per la prima volta constatiamo questo meccanismo, come già abbiamo ricordato, e il principale responsabile fu Filippo di Borbone.

L'incorporazione della Sardegna alla causa degli Asburgo, nel 1708, inaugurava un momento storico su cui una storiografia successiva contrapponeva un *periodo austriaco* a un *periodo spagnolo*. Infatti, oltre alle convulsioni prodotte dalla guerra e dai cambiamenti dinastici che questa ha comportato, la situazione interna continuava a essere pressoché 'normale'.[23] La documentazione locale non suggerisce alcuna forma sostanziale di cambiamento della struttura politica ed istituzionale del regno e dei vincoli con la Monarchia spagnola, ma solo i cambiamenti dei titolari della Corona. Tuttavia, sotto Carlo d'Austria, successivamente Carlo VI imperatore, la guerra continuava a condizionare tutte le politiche del governo. Così i segni più lampanti della gestione austriaca emersero grazie a una politica di riscossione sistematica delle risorse. Questa politica continuerà ad avere ripercussioni, potenzialmente molto pericolose sulla struttura politica ed istituzionale del regno, così come era già accaduto sotto il governo di Filippo V.

Il consolidamento delle giunte delle prime voci degli stamenti sarà una di queste. Carlo non dubitava della possibilità di approfittare dei vantaggi stabiliti attraverso il precedente istituito dal Borbone e di fronte alla richiesta di convocare il Parlamento da parte del suo viceré, il conte di Cifuentes, gli ordinò di chiedere una proroga del donativo alla fine del 1709.[24] Il viceré non aveva più rimedio e si rivolse alle prime voci dei tre stamenti per chiedere questa proroga. Essi, compresa la capitale Cagliari, provarono a riprodurre le funzioni base del Parlamento: servizi in cambio di concessioni reali. Di fronte a una mole così diversa di richieste, risalta l'importanza in particolare di una fra esse: la questione del ritorno degli esiliati. Un banco di prova che metteva in gioco i vincoli interni familiari e clientelari, capace di creare una barriera divisoria fra due gruppi di élites, accentuata dalla guerra. L'altra richiesta consisteva nel dare risalto al consolidamento desiderato dai funzionari sardi all'interno del Consiglio d'Aragona: una vecchia rivendicazione del regno per avere confermato il mantenimento delle posizioni per i suoi 'naturali'. Tuttavia il nuovo sistema forniva al monarca una libertà decisionale più amplia aldilà di una necessaria corrispondenza da mantenere con le élites.

Carlo ricorrerà a questo sistema nel 1712 e ancora nel 1715, sempre facendo appello a una situazione straordinaria per l'immancabile difesa del regno.[25] Inoltre fra queste due proroghe negli ultimi mesi del

1712, chiedeva un altro donativo straordinario rendendosi fruitore lui stesso del predetto meccanismo. In tutte queste occasioni non vennero meno le petizioni degli stamenti e questo perchè la formula si era pienamente consolidata. Un meccanismo che sarà mantenuto lungo tutto il secolo XVIII e parte del XIX.[26]

Così le procedure generate nel 1706 da Filino, e rinnovati a partire da 1709-10 da Carlo, diventavano un riferimento per la nuova dinastia dei Savoia. In soli pochi anni si sono trasformate in una tradizione del regno sardo[27] la quale rimarrà viva fino al 1834, quando vi si ricorse per l'ultima volta.[28] I Savoia, evitando la convocazione del Parlamento, continuarono a comunicare costantemente con gli stamenti tramite una giunta ristretta delle prime voci, all'interno della quale Cagliari mantenne sempre una preminenza anche se protocollaria. La giunta acconsentiva al rinnovamento dei servizi economici, mantenendo la finzione della piena vigenza dell'istituto parlamentario. In occasione della prima proroga del 1721, gli stamenti e la città di Cagliari presentavano una serie di richieste.[29] Era di fatto l'ultima occasione in quanto l'insieme della società stamentale, con la forte primazia della città di Cagliari, provava a mantenere il carattere contrattuale delle proprie relazioni con la monarchia. In effetti si richiedeva che tali petizioni avessero il carattere di capitoli di *Cortes*, come se fossero uscite da un Parlamento.[30] Si dovrebbe ricordare che la prassi contrattuale, che aveva caratterizzato le relazioni degli stamenti (e in particolare quella della città di Cagliari) con la monarchia asburgica, cedeva terreno a un nuovo sistema nel quale la via di concessione volontaria della Corona di grazie e benefici, e lasciava le mani libere a essa per decidere a proprio piacimento circa le petizioni stamentali.

Senza dubbio il consolidamento delle giunte rappresentative fu un elemento determinante affinché non si riconvocasse il Parlamento. Questa traiettoria ci conferma l'idea che l'avanzamento dell'assolutismo, aldilà dei cambiamenti dinastici, fu la causa fondamentale di una 'distorsione' istituzionale. Nondimeno, senza per questo rinnegare l'affermazione progressiva del potere dell'istituzione monarchica, era persino evidente durante il XVIII secolo in Sardegna la forte preminenza sociale e politica degli stamenti. Essa riuscì a sostenersi in un contesto legale ed istituzionale ereditato dal passato, che, lungi dal dimenticarcelo, continuava a rimanere quasi identico. Teoricamente mentre vigeva tale meccanismo, la possibilità di convocare il Parlamento non era mai stata preclusa. Era questa la situazione nel Settecento sardo.

Il protagonismo delle prime voci e pertanto della città di Cagliari, avrebbe voltato verso altre direzioni lungo quella traiettoria alla fin fine debole del regno sardo sotto la dominazione piemontese. Il simbolo di quel protagonismo furono le cerimonie di insediamento dei viceré capaci di ricreare la scenografia che le riunioni degli stamenti facevano

organizzare a preludio delle sessioni parlamentari. Queste cerimonie seguivano scrupolosamente le formule ristabilite ai tempi degli Asburgo, specialmente durante il regno di Carlo II. Inoltre, all'inizio di un regno le occasioni delle *enhorabuenas*, delle condoglianze o dei giuramenti di fedeltà erano le giustificazioni atta a mostrare la propria magnificenza. Una di quelle ultime passerelle in cui si ripeteva ancora il cerimoniale ispanico con un chiaro protagonismo cagliaritano ebbe luogo nel 1821 in occasione dell'intronizzazione di Carlo Felice.[31]

La lettura della cronaca di questo giuramento solenne non lascia dubbi nel definire tale scenario come patetico: vi erano i massimi rappresentanti sociali e civici della società sarda, così marcatamente distanti col passare del tempo da coloro che si prodigavano di rappresentare, e fra loro Cagliari, la prima voce dello stamento reale, la pomposa capitale di un regno che di certo non costituiva un'eccezione.

Note

[1] Professore dell'Universitat de València e Associato presso l'Istituto di Storia dell'Europa Mediterranea, Consiglio Nazionale delle Ricerche, Cagliari.

[2] Il presente studio si inserisce nella Commessa PC.P01.008.002, 'Politiche difensive e sistemi di difesa degli Stati del Mediterraneo', del C.N.R., Italia; e nel progetto di ricerca 'Parlamentos y Ciudades de la Corona de Aragón' (Ref. DER2009-09193 del Plan Nacional de I + D), Ministero d'Educazione e Scienza, Spagna. Questo lavoro è stato fatto attraverso la documentazione conservata nell'Archivio di Stato di Cagliari (d'ora in poi ASC) e nel fondo 'Consiglio di Spagna' dell'Archivio di Stato di Napoli (d'ora in poi ASN) e tradotto in italiano dal dott. Bruno Pomara.

[3] Il Parlamento presieduto dal vicerè Eximèn Pérez Escrivà de Romaní (1481-1485), inaugurava questa cadenza regolare. I successivi convocati persino da Ferdinando il Cattolico si svolsero sotto la presidenza dei vicerè Juan Dusay e Fernando Girón de Rebolledo fra il 1495 e il 1511. I processi di queste due ultime sessioni sono stati pubblicati in A. M. Oliva e O. Schena: *I parlamenti dei Viceré Giovanni Dusay e Ferdinando Girón de Rebolledo. 1495, 1497, 1500, 1504-1511* (Cagliari, 1998).

[4] Fra il 1706 e il 1834, le petizioni di proroga del donativo si fecero ogni tre o quattro anni. La documentazione si conserva nell'ASC per la maggior parte nelle sezioni della *Reale Udienza* (RU)*, Proroga Donativo,* dalla busta 69/1 fino alla 69/22, 1710-1834 e *Segreteria di Stato e Guerra* (SSG)*, II Serie, Precedenze – Onorificenze – Stamenti*, volumi 54 e 55.

[5] La storiografia sulle assemblee rappresentative sarde ha un 'prima' e un 'dopo' prendendo come momento centrale il congresso di Cagliari del 1984, *Acta Curiarum Regni Sardiniae: Istituzioni Rappesentative nella Sardegna Medioevale e Moderna.* Da quel congresso, numerosi studiosi hanno sottolineato il ruolo che le Corti sarde ebbero in epoca moderna. Sul tema si segnala: B. Anatra, *La Sardegna. Dall'unificazione Aragonese ai Savoia* (Torino, 1987); G. Serri, 'Il prelievo fiscale in una periferia povera. I donativi in età spagnola', in *Annali della Facoltà di Magistero dell'Università di Cagliari*, VII, (1983); A. Mattone, 'Centralismo monarchico e resistenze stamentarie. I Parlamenti sardi del XVI e del XVII secolo', in *Istituzioni rappresentative nella Sardegna medievale e moderna, Acta Curiarum Regni Sardiniae* (Cagliari 1986), pp. 127-179; G. Murgia, 'La società sarda tra crisi e resistenza: il Parlamento Avellano (1.640-1.643)', in *Archivio sardo del movimento operaio contadino e autonomistico*, n. 41-43, pp. 79-109; e G. Tore, 'Il Regno di Sardegna nell'età dell'Olivares (1.620-1.640): assolutismo monarchico e Parlamenti', in *Archivio sardo del movimento operaio, contadino e autonomistico*, n. 41-43, pp. 59-78. Allo stesso modo, sono già numerosi i volumi de-

dicati ai processi parlamentari, pubblicati dal *Consiglio Regionale della Sardegna.*

[6] Sulla questione: A. Mattone, 'Corts catalane e Parlamento sardo: analogie giuridiche e dinamiche istituzionali (XIV-XVII secolo)', in *Rivista di storia del diritto italiano*, LXIV (1991), pp. 19-44; e L. Guia, 'Los estamentos sardos y valencianos. Analogía jurídica y diversidad institucional', in B. Anatra e G. Murgia (eds) *Sardegna, Spagna e Mediterraneo dai Re Cattolici al Secolo d'Oro* (Roma, 2004), pp. 251-274.

[7] G. Catani e C. Ferrante*, Il Parlamento del Vicerè Giuseppe de Solís Valderrábano, conte di Montellano, 1698-1699* (Cagliari, 2004).

[8] Sull'organizzazione dei governi municipali nella corona d'Aragona e sulla pressione esercitata dalla Monarchia nei confronti degli stessi municipi, cfr.: A. Alberola Romà, 'Autoridad real y poder local. Reflexiones en torno al desarrollo del procedimiento insaculatorio en los municipios valencianos durante la época foral moderna', in *Pedralbes* n. 12, 1992, pp. 9-38; D. Bernabé Gil, 'Els procediments de control reial sobre els municipis valencians (segles XVI-XVII)', in *Recerques*, n. 38, 1.999, pp. 27-46.; R. Narbona Vizcaino, *Valencia, municipio medieval. Poder político y luchas ciudadanas. 1230-1418* (Valencia, 1995); B. Anatra, 'Istituzioni urbane nella Sardegna di Antico Regime', e G. Tore, 'Oligarchie, Consigli civici e autoritarismo regio nella Sardegna Spagnola', in R. Ferrero (a cura di), Autonomía Municipal en el mundo mediterráneo (Valencia, 2002), pp. 123-131 e pp. 189-210, rispettivamente; e J. M. Torras i Ribé, *Els municipis Catalans de l'Antic Règim. 1453-1808* (Barcelona, 1983).

[9] Si deve evidenziare come il regime municipale era stato costruito sul modello catalano-aragonese. Un modello che condivideva una struttura simile a quella dei principali organi di governo e il sistema già conosciuto come *insaculación* (basato in un sorteggio su liste chiuse di membri della oligarchia cittadina); tale sorteggio, grazie a un processo cronologicamente comune a tutta la Corona, si era convertito in un meccanismo di accesso ai carichi di governo. A loro volta, questi ultimi erano analoghi a quelli che già esistevano in qualunque municipio della Catalogna, dell'Aragona o della regione valenzana ed erano monopolizzati da certi gruppi sociali omologhi composti da membri della piccola nobiltà urbana, ma anche da famiglie di grandi commercianti non privilegiate, appaltatori di cespiti reali, o artigiani arricchiti, buona parte dei quali basavano le proprie attività economiche nel commercio speculatore dei cereali. Da Oristano, tra il 1479 e l'85, fino a Bosa, nel 1556, passando per Cagliari, nel 1500, una dopo l'altra, tutte le città sarde di giurisdizione reale dotate del diritto di partecipare alle Corti adottarono il procedimento insaculatorio. Sui municipi sardi e sulla loro storia bisogna citare i contributi di diversi storici dell'isola nella collettanea *Autonomía Municipal en el mundo Mediterraneo: Historia y perspectivas,* a cura di R. Ferrero, citato nella nota precedente. In essa, fra gli altri studi si segnalano quelli di B. Anatra, G. Murgia, G. Tore, O. Schena, A. M. Oliva, M.G. Mele, e M.E. Cadeddu. Cfr. inoltre, F. Manconi, *Raccolta di documenti editi e inediti per la Storia della Sardegna. 5. Libro delle Ordinanze dei Consellers della Città di Cagliari. 1346-1603* (Sassari, 2005); F. Manconi, *I Libri dei Privilegi della città di Alghero. Libre Vell* (Sassari, 1997); B. Tavera e G. Piras, *I Libri dei Privilegi della città di Alghero. Libre Gran* (Sassari, 1999); e F. Uccheddu, *Il 'Llibre de Regiment' e le pergamene dell'Archivio Comunale di Oristano. Secc. XV-XVII* (Oristano, 1998).

[10] L'affermazione di Gianfranco Tore (Tore, *Oligarchie*, p. 194) che nel regno di Sardegna, già dai primi anni della conquista catalano-aragonese, le oligarchie urbane dimostrarono una distinta propensione a soddisfare le domande finanziarie della monarchia e non manifestarono una significativa opposizione alle disposizioni e agli ordini emanati dai sovrani e pensati per l'organizzazione e buon governo delle città, si potrebbe estendere, nello spazio e nel tempo, al regno di Valencia, nonostante che il suo ragionamento consideri il caso sardo come un caso singolare rispetto agli altri regni peninsulari della Corona d'Aragona.

[11] L. Guia Marín, 'La ciudad de Valencia y el brazo real. Las cortes de l645', in *Homenaje al Dr. D. Juan Reglà Campistol* (Valencia, 1975), pp. 583-596.

[12] Su questo scontro secolare, cfr. F. Manconi, 'Storia di un libro di storia', introduzione alla riedizione della *Historia General de la Isla, y Reyno de Sardeña* de Francisco

de Vico (Barcellona, 1639 [Cagliari, 2004]), Vol. I, pp. VII-LXXXVI; e *Tener la Patria Gloriosa. I Conflitti municipali nella Sardegna spagnola* (Cagliari, 2008).

[13] E. Serra, 'La vida parlamentaria en la Corona d'Aragó: segles XVI i XVII', in J. Sobrequés, J. Agirreazkuenaga, M. Morales, M. Urquijo e M. Cisneros (a cura di) *Actes del 53è Congrés de la Comissió Internacional per a l'Estudi de la Història de les Institucions Representatives i Parlamentàries* (Barcellona, 2005), Vol. I, pp. 501-536.

[14] L. Guia, 'Ruptura i continuitat de la Corona d'Aragó a Sardenya arran de la Guerra de Successió' , in *L'Aposta Catalana a la Guerra de Successió 1705-1707* (Barcellona, 2007), pp. 403-414.

[15] Sulla guerra di successione in Sardegna, vv. il lavoro citato nella nota precedente ma anche: L. Guia, 'Un destino imprevisto para Cerdeña. De los Habsburgo a los Saboya', in *La pérdida de Europa. La Guerra de Sucesión por la Monarquía de España* (Madrid, 2006), pp. 755-784.

[16] '*Haviendo resuelto su Magestad...dilatar la celebración de Cortes en este Reino atendiendo a que la constitución de los tiempos y continuas ocupaciones de la guerra no dan lugar a ello me ordena que yo solicite la prorrogación del donativo que feneze en los ultimos de este año por otros dos mas, a cuyo fin me remite la carta adjunta para VS*' (ASC, SSG), vol. 54, p 3r, 16-VII-1710.

[17] La bibliografia sull'argomento è particolarmente vasta. Mi limiterò a citare l'edizione dei testi corrispondenti alle riunioni stamentali durante la crisi rivoluzionaria sul finire del XVIII secolo: L. Carta, *L'Attività degli Stamenti nella 'Sarda Rivoluzione'* (Cagliari, 2000).

[18] Guia, 'Ruptura i continuitat', nota 14.

[19] Cagliari mantenne una situazione di privilegio e una capacità di influenza nell'ambito del suo circondario simile a quello di cui potevano godere, facendo eccezione delle logiche differenze, altre capitali dei regni dell'antica Corona de Aragón, in particolare Valencia. In questa situazione di preminenza nel braccio reale, persino la monarchia veniva coinvolta concedendo mercedi e privilegi che in tal senso confermassero una certa situazione. Il re Carlo II concedeva '*licencia a la Ciudad de Caller como primera voz del Estamento Real del Reyno de Cerdeña de que perpetuamente su Jurado en Cap pueda llevar por todo el Reyno la insignia de dicha Ciudad y en el pecho con un cordón de seda carmesí, una medalla de oro con la effigie de V. M. y las armas de dicha Ciudad*' Archivio Comunale di Cagliari (d'ora in poi ACC), pergamene, n. 533, 6-V-1.679.

[20] Il dibattito storiografico circa il carattere e la presenza degli stamenti in questo particolare tipo di riunioni in tutti i territori della Corona fu specialmente incentivato al convegno realizzatosi a Monzón, nel giugno del 2002, sotto il titolo di *Cortes Generales de la Corona de Aragón en el siglo XVI*. Gli atti relativi sono stati pubblicati nella rivista *IUS FUGIT. Revista interdisciplinar de Estudios Histórico-jurídicos*, n. 10/11, Università di Saragozza 2003.

[21] La rivendicazione degli stamenti sardi per ottenere il diritto di riunirsi alle stesse condizioni dei loro omologhi valenziani sarà un problema ricorrente e mai risolto per una sua totale soddisfazione. Alcune delle petizioni delle corti insistevano già nel 1485 per questa omologazione: '*Item supplica dit stament sia de vostra mercè, sia aquell regit, e governat ab Syndich, e Subsyndich en aquella matexa forma, en que està lo stament del Bras Militar de València...*', citato da J. Dexart, *Capitula sive Acta Curiarum Regni Sardiniae* (Cagliari, 1641), vol. I, p. 66. Per una maggiore comprensione dell'argomento, cfr. Anatra, *Corona e Ceti,* dove si analizza la traiettoria di queste petizioni.

[22] L'Archivio di Stato di Cagliari conserva notizie abbondanti sulle riunioni del braccio militare o delle commissioni dei tre stamenti insieme ai delegati del viceré, per la risoluzione di diversi temi di governo: pestilenze, difesa costiera, servizi straordinari, etc... È perfettamente documentata, inoltre, la fallimentare nascita di una deputazione sarda. L'ACC, nel *Fondo Aymerich*, conserva una collezione alquanto interessante che racchiude le riunioni dello stamento militare fuori dall'ambito parlamentare. Analogamente, attraverso la documentazione propriamente municipale si può constatare il ruolo che la città di Cagliari poté giocare nell'ambito delle relazioni degli stamenti sardi con la monarchia, ostentando con il suo *Conseller en Cap* la condizione di 'prima voce'

dello stamento reale. Per ciò che riguarda l'Archivio Capitolare e Arcivescovile di Cagliari, il carattere di prima voce dello stamento ecclesiastico di solito ostentato dall'arcivescovo di Cagliari, spiega come nei fondi di quell'archivio si conservino innumerevoli documenti sulle relazioni tra lo stamento ecclesiastico e la monarchia nei periodi in cui non si riuniva il parlamento. Infine, il *Fondo Baille* della Biblioteca Universitaria di Cagliari conserva una eccellente documentazione sugli stamenti sardi.

[23] A proposito delle diverse fasi della guerra di Successione in Sardegna, cfr. i lavori citati alla nota 14.

[24] '*Habiendose visto en esse mi Consejo Supremo de Aragón vuestra representación sobre que se abran Cortes en esse Reyno; atendiendo a que la contribución presente de los tiempos y las continuas ocupaciones de la guerra no dan lugar a lo que me proponéis sobre este tratado, ha parecido por mas conveniente la prorrogación de ellas por otros dos años'* ASN, Consiglio di Spagna (CS), Diversorum Sardegna (DS), vol. 15, 48v-50v, 20-XII-1709.

[25] I processi dove si raccoglie tutta la documentazione costituiscono un fondo specifico all'ASC (vv. Nota 2). Su queste proroghe, esiste altresì una copiosa documentazione presso l'ASN, CS, voll. 15, 17 e 19.

[26] Il testo che si riporta mette in evidenza il meccanismo ottenuto,*'Certifico doy fe y testimonio de verdad yo Joseph Antonio Lay por authoridad Real notario público desta Ciudad y secretario de esta lugartenencia General y Real Audiencia y Tribunal de la Real Cancilleria que haviendo se juntado en este dia en una de las piessas de este Real palassio el excmo. Señor conde de la Atalaya virrey Lugarteniente y Capitán General en este Reyno con los nobles y magníficos reales ministros de Justicia y Patrimonio. Y el Illustrisimo y reverendísimo Señor Arzobispo de Caller en la Sacristía desta Sancta Primacial Iglesia Calaritana, con su muy Illuestre Cabildo. El muy Illustre estamento militar en la Iglesia de la Virgen Santissima de la Esperanza; Y la Magnifica Ciudad de Caller con su Consejo General en la casa de la dicha Ciudad, lugares todos que para el infrato effecto se suelen juntar a effecto de prorrogarse la continuación del Real servicio de dos años a cuya prorroga unánimes han concurrido gustosísimos para el referido termino de dos años, aviendo assi bien consentido a ello todos los arzobispos, obispos cabildos y demás ciudades del Reyno con sus cartas originales que quedan insertadas en los autos de la referida prorroga a los que me refiero y siempre sea menester se haya la devida relación en fe de lo qual y en execución de la orden a mi verbo dada por dicho excelentísimo señor virrey doy la presente certificación firmada de mi mano y signada con el signo que acostumbro en la ciudad de Caller del Reyno de Cerdeña a los cinco días del mes de junio año del nacimiento del Señor mil setecientos y quinze*' (ASC, SSG, vol. 54, 5r 6v, 5 VI 1715).

[27] G. Olla Repetto, 'Il primo donativo concesso dagli Stamenti sardi ai Savoia'; e M.A. Benedetto, 'Nota sulla mancata convocazione del Parlamento sardo nel secolo XVIII', in *Liber Memorialis Antonio Era* (Bruselas, 1963), pp. 101-111 e pp. 113-168.

[28] *'Cerimoniale all'occasione delle arringhe a S. Eccellenza il signor Viceré Don Giuseppe Maria Montiglio d'Ottiglio e Villanova per parte dei tre stamenti del regno concernenti la loro adesione alla proroga del donativo ordinario',* (ASC, SSG, vol. 55, 457r-458v, 15-III-1834).

[29] '*Copia de las súplicas presentadas por los tres estamentos Eclesiástico Militar y Real en ocasión que se han juntado por el Excmo Señor Barón de San Remy, Virrey, Lugarteniente y Capitán General de este Reyno. De orden de su magestad en fecha de 23 abril 1721, para la prórroga del Real donativo de tres años'*.. (ASC, SSG, II serie, vol. 54).

[30] '*Todo lo qual se sirvirá V. Real M. decretar mandando que se observe inviolablemente dándoles fuerza de capítulos de corte a tal se vean tan leales vasallos mucho mas obligados a rogar por los mayores auges y exaltación de la Real casa y persona de V. R. M. a quien Dios guarde como sus leales vasallos han menester'* (Ibidem).

[31] *Relazione della funzione del giuramento solenne prestato nella città di Cagliari la sera del primo de luglio 1821 nella cattedrale di Cagliari in occasione del fortunato avvenimento al trono di S.M. il re Carlo Felice per rinuncia dell'augusto suo fratello S.M. il Re Vittorio Emmanuele IV essendo viceré il Marchese di Yenne,* ASC, Antico Archivio Regio, 16, busta 216.

Carla Ferrante

'Partiti' e schieramenti cetuali nell'ultimo Parlamento del Regno di Sardegna (1698-1699)

L'istituto parlamentare del *Regnum Sardiniae* ha interessato la storiografia soprattutto per due ordini di motivi: da un lato lo studio dell'istituzione e dell'iter procedurale per cogliere le affinità e le differenze con l'archetipo catalano, dall'altro l'esame dei capitoli di corte per ricostruire le dinamiche sociali ed economiche dei ceti locali e le reali condizioni del Regno.[1] Quasi mai si è indagato sui rapporti di forza emersi all'interno delle Assemblee e sulle modalità utilizzate per contrastare o far prevalere l'uno o l'altro 'partito'.[2] L'ultimo Parlamento celebrato in Sardegna, che si svolse in un periodo di grave crisi istituzionale della monarchia spagnola, ha offerto lo spunto per utilizzare un metodo di indagine nuovo che ha consentito di fare emergere la reale composizione dell'assemblea sarda di fine Seicento e di verificare le posizioni degli schieramenti.

1. *Premessa*

L'istituto parlamentare fu inaugurato in Sardegna nel 1355 dal sovrano Pietro IV: 'per lettres nostres dades en lo dit Castell de Caller… – ricordava il sovrano nella Cronaca – acordam de tenir Corts generals, e citam e requerim tots los prelats, nobles e cavallers, ciutats e viles de la dita illa de Cerdenya que, personalment o per lurs procuradors bastants, fossen en lo dit Castell per celebrar Corts…, en les quals se feren e se ordenaren moltes constitucions …tocants los negocis de tots los habitants'.[3] Il Parlamento sardo nasceva come 'una riproduzione in scala ridotta' del modello catalano giacché esercitava le stesse funzioni delle *Corts*, ne seguiva le stesse regole e procedure, ma nello stesso tempo funzionava in maniera più precaria e con attribuzioni più modeste. Nel primo Parlamento non fu votato il donativo, ossia il contributo finanziario a metà strada fra l'elargizione spontanea di tipo medievale e la tassazione moderna, su cui si fondava il rapporto del *do ut des*.[4] Fu solo a partire dal Parlamento celebrato da Alfonso il Magnanimo nel 1421, che l'*iter* parlamentare si perfezionò con le lettere di convocazione, la nomina dei trattatori incaricati di stabilire l'importo del donativo, la presentazione dei capitoli e l'approvazione regia.[5] Nel 1481, durante il regno di Ferdinando il Cattolico (1452-1516), per la prima volta, il Parlamento fu presieduto dal viceré; in esso trovò piena applicazione la prassi pattista tra sovrano e

sudditi attraverso la riparazione dei *greuges*, la votazione del donativo e la concessione delle grazie.[6] Il pieno perfezionamento dell'istituto si registrò però nella lunga assemblea degli anni 1497-1511 con la *comunicatio* formale al Regno di Sardegna delle procedure e della prassi seguite nelle *Corts* del Principato di Catalogna.[7]

È nel corso del Seicento che si assisterà alla definitiva maturazione del processo parlamentare: si stabilizzò definitivamente la periodicità decennale di convocazione delle assemblee, si formalizzò l'*iter* secondo un rigido cerimoniale, a partire dalla disposizione logistica dei convocati nel *Solium* di apertura, alle formule di rito, dalle precedenze e le ambasciate, alle nomine delle Commissioni e dei sindaci, sino ai tempi di esecuzione dei lavori[8]. Le riunioni dei Bracci avvenivano separatamente nei luoghi stabiliti del Castello di Cagliari e nonostante la distanza fra gli edifici fosse minima, la procedura prevedeva una serie di ambasciate fra gli stamenti e la giunta viceregia molto formali e farraginose.

Le fasi procedurali del Parlamento prevedevano: 1) la nomina regia del viceré quale presidente delle Corti, 2) l'invio delle lettere di convocazione, 3) il 'soglio' iniziale, 4) l'omaggio della prima voce dello Stamento ecclesiastico, 5) la nomina delle Commissioni degli abilitatori, dei trattatori e degli esaminatori dei *greuges*, 6) la votazione del donativo da parte degli Stamenti, 7) l'accettazione dell'offerta, 8) la presentazione dei capitoli di Corte, 9) l'approvazione o meno da parte del viceré, 10) l'invio dei verbali delle sedute e dei capitoli di Corte a Madrid presso il Consiglio Supremo d'Aragona, tramite un 'sindaco' nominato dal viceré, 11) le decretazioni regie, 12) la conclusione del Parlamento con celebrazione del 'soglio' finale per comunicare al Regno le concessioni regie e partenza del viceré.

Il Parlamento celebrato in Sardegna negli anni 1698-99 può essere considerato l'espressione più matura dal punto di vista procedurale e nello stesso tempo il luogo in cui si manifestò un profondo scontro istituzionale che fece riemergere le tensioni e le lacerazioni di metà secolo non ancora del tutto sopite e che andavano ad innestarsi in una fase molto delicata della vita della monarchia di Spagna ormai avviata verso una inevitabile decadenza.[9] Lo stato di crisi era acuito dall'incertezza politica legata alla scarsa autorità di Carlo II, sovrano malaticcio che non lasciava una discendenza diretta. La mancanza di eredi al trono favoriva inevitabilmente le mire espansionistiche di Francia ed Austria; due i contendenti: Filippo d'Angiò, pronipote di Luigi XIV e Carlo d'Austria, secondogenito dell'imperatore. Il lavorio abile e sottile delle diplomazie dei due paesi, per assicurarsi la successione dinastica, finì per dividere gli spagnoli e contribuì ad accelerare la fine della casata degli Asburgo di Spagna.[10]

Di notevole intensità è stato il movimento politico sviluppatosi intorno a tale questione che costituiva un tutt'uno con le problematiche

della decadenza spagnola e che ebbe esiti ed interpretazioni differenti, giacché, a seconda delle esigenze 'dinastiche', gli attori delle vicende che si stavano consumando talvolta esaltavano e talaltra sminuivano i sovrani della casa asburgica a vantaggio di quella borbonica e viceversa.[11] Così ad esempio il cagliaritano Vincenzo Bacallar y Sanna, protagonista nelle ultime sessioni parlamentari celebrate in Sardegna, lasciò nei *Comentarios de la guerra de España* una desolante immagine della Spagna. Il Bacallar, acceso sostenitore dei Borboni, capeggiò la resistenza filippina nell'isola e grazie ai meriti acquisiti nelle campagne militari, fu anche insignito del titolo di marchese di San Filippo (1708).[12] L'aristocratico sardo, nell'intento di scuotere i sostenitori del duca d'Anjou, aveva calcato la mano sullo stato di crisi e di dissoluzione della monarchia che, però, da lì a poco, avrebbe potuto contare su di un 'salvatore' identificato proprio nella figura di Filippo V.[13]

In sostanza il pensiero più diffuso tra i contemporanei era che la Spagna non poteva contare su un monarca autorevole capace di imporre una svolta alla difficile congiuntura. Questa analisi, condivisa dalla maggior parte degli storici che hanno affrontato le problematiche relative all'impero spagnolo dai fasti al declino e che ha dato vita ad una consolidata tradizione storiografica rappresentata soprattutto da John H. Elliot è stata poi ribaltata da Henry Kamen.[14] Questi attraverso l'esame critico delle fonti ha infatti rivalutato questo periodo giungendo ad affermare che la debolezza del sovrano non comportava automaticamente una crisi istituzionale, giacché esisteva una solida organizzazione amministrativa, articolata nei *Consejos*, in grado di tenere insieme le varie parti della monarchia.[15] L'abbandono della politica 'imperialistica' verso l'Europa avrebbe, anzi, favorito una parziale crescita economica, civile e culturale.[16] Kamen ha datato i primi segnali della ripresa già a partire dalla seconda metà del Seicento, giacché con la fine delle pestilenze si registrò un lento ma costante incremento demografico anticipatore dei progressi settecenteschi.[17] Proprio gli anni identificati come quelli della decadenza devono quindi essere considerati il momento iniziale della ripresa settecentesca che diede vita ad un nuovo assetto economico e sociale. Tra la fine del XVII secolo e il principio del XVIII, 'in quella zona incerta in cui è difficile muoversi', scriveva Paul Hazard, si assiste non solo ad un consistente e diffuso sviluppo economico, ad un aumento della popolazione, al riassetto della finanza pubblica ma anche a nuovi fermenti nel campo delle scienze e del pensiero filosofico che preparavano la successiva età delle riforme.[18] In particolare gli ultimi anni del secolo, nei quali maturò la lotta per la successione al trono, favorirono la formazione di 'una nuova coscienza europea' dove i partigiani dell'arciduca Carlo d'Austria apparivano come i difensori del 'barroquismo agonizante, caduco y castizo' mentre i seguaci di Filippo V e della Francia venivano considerati come riforma-

tori ed europeisti.[19] I 'filippisti' sentivano la necessità di costruire una nuova identità recuperando i loro trascorsi culturali in chiave innovativa, con lo sguardo rivolto all'esterno ed in particolare all'assolutismo francese; i 'carlisti' invece propendevano per una difesa del passato, dei privilegi, dei *fueros* e delle franchigie economiche.[20]

2. *Rilevazione e analisi dei due 'gruppi parlamentari'*

Questo il contesto in cui si trovò ad operare il conte Giuseppe de Solís, conte di Montellano, *adelantado* dello Yucatan, che il 29 febbraio 1696 fu nominato luogotenente generale del Regno di Sardegna, con il compito di presiedere il Parlamento.[21] Giunto in Sardegna, dopo un viaggio avventuroso, il 26 novembre 1697 il viceré predispose le convocazioni per l'apertura ufficiale del Parlamento; nell'ordine le lettere furono spedite prima agli ecclesiastici (all'arcivescovo di Cagliari, ai singoli arcivescovi, ai vescovi, agli abati, ai Capitoli), poi ai militari (ad Artale di Alagon, marchese di Villasor, prima voce dello Stamento, ai feudatari residenti in Spagna, alla nobiltà locale e ai cavalieri) e infine alle città (a Cagliari, a Sassari, a Oristano, ad Alghero, a Iglesias, a Bosa e a Castellaragonese).

Nel programma politico allegato alla lettera di convocazione e letto nella seduta inaugurale dell'assemblea stamentaria, il viceré manifestò l'intenzione di trattare della 'bona administració de la iusticia, conservació de la Real Corona […] custodia y defensa del present Regne y pau y quietud de aquella [isla]'con la speranza che 'les coses que seran per nos proposades y tractates se pugan ab tota brevetat determinar y concloure', auspicando un proficuo e celere svolgimento dei lavori parlamentari come era nella volontà del sovrano.[22]

Gli Stamenti, attraverso le prime tre voci – rispettivamente don Giuseppe Acorrá Figo,[23] arcivescovo d'Arborea (Oristano) per il Braccio ecclesiastico, don Francesco Zonza Vico, marchese di Soleminis,[24] in assenza del marchese di Villasor grande assente per malattia, per quello Militare, Giovanni Efisio Esquirro,[25] consigliere in capo della città di Cagliari per quello Reale –, rassicurarono il conte di Montellano della loro fedeltà e si dichiararono disposti a venire incontro al servizio che sarebbe stato richiesto.

Al *Solium* di apertura seguirono gli adempimenti di rito con la nomina delle Commissioni degli abilitatori; per parte regia furono nominati Francesco Pastor,[26] reggente la Reale Cancelleria, Simone Soro,[27] magistrato decano della Reale Udienza e Giuseppe Fernandez de Moros,[28] giudice del supremo tribunale del Regno; mentre gli Stamenti nominarono le loro prime voci.

Il 13 febbraio 1698 si tenne la cerimonia solenne del giuramento degli abilitatori nella cappella della Cattedrale di Cagliari, cui seguì la 'segregazione' degli stessi in una stanza attigua alla sagrestia dove sa-

rebbero rimasti senza distrazioni e coinvolgimenti sino alla conclusione dei lavori di controllo dei titoli presentati dai convocati. Le operazioni, preliminari alla votazione dell'offerta, furono effettuate in breve tempo dal 14 febbraio al 10 marzo, con un'appendice, resasi necessaria per la verifica di alcune sostituzioni, nei giorni 16-17 settembre 1698.

Il lavoro della Commissione non fu affatto semplice giacché si trattò di verificare le credenziali di tutti i convocati, di quanti ritenevano di aver diritto a partecipare all'assemblea e dei loro rispettivi procuratori. Dello Stamento ecclesiastico furono esaminati complessivamente 21 soggetti tra arcivescovi, vescovi, Capitoli, inquisitori e alti prelati, 19 procuratori e 8 subprocuratori; dello Stamento reale, ossia delle sette città regie, furono verificate la legittimità delle deleghe e delle sostituzioni. Più lunghe e complesse furono le operazioni effettuate nei confronti dei rappresentanti dello Stamento militare: in tutto 881 persone chiedevano di partecipare alle riunioni assembleari con o senza diritto di voto. Non fu solo l'elevato numero a determinare i tempi lunghi delle abilitazioni, quanto l'attenzione e il rigore formale adottato per le verifiche, giacché le delibere assunte dagli abilitatori potevano portare a delle esclusioni o a delle ammissioni improprie che, se considerate lesive dei propri diritti, avrebbero potuto dare adito a malumori, a proteste e a ricorsi.

A parte i pochi convocati che venivano abilitati *por su notorietad* o perché *notorio cavallero*, gli abilitatori erano tenuti ad esaminare le seguenti certificazioni: 1) titoli e patenti di nobiltà e cavalierato, 2) memoriali dei singoli sulle attività prestate a favore della Corona, 3) atti di battesimo o cresima, 4) atti testimoniali vari. Poiché inoltre alle assemblee parlamentari si poteva partecipare o in forma diretta e personale oppure tramite procuratore, dovevano essere controllate non solo le credenziali dei convocati ma anche quelle dei procuratori e soprattutto dovevano essere verificate la legittimità e la legalità delle deleghe. Queste, rogate dai notai, venivano rilasciate da chi per motivi vari, principalmente affari e salute, non poteva partecipare ai lavori, data l'eccessiva distanza dalle sede parlamentare che avrebbe comportato un lungo periodo di distacco dalle proprie abitazioni. Le procure potevano essere totali o soggette ad alcune limitazioni e davano diritto alla stipulazione di subdeleghe; non vi era un numero prefissato di procure, esse infatti potevano essere illimitate, tuttavia ad ogni procuratore, all'interno del consesso, non era consentito rappresentare più di tre persone. Se dunque in un primo momento una sola persona poteva essere titolare di molteplici procure, per avere la capacità di esercitare appieno i diritti di rappresentanza e di voto era necessario ripartire le deleghe fra gli amici, in modo da non superare il numero stabilito dalla normativa per partecipare alle sedute e far così valere le posizioni proprie e del delegante.

La posta in gioco era molto importante: per la monarchia si trattava di difendere le posizioni assolutistiche di cui il viceré Montellano era valido sostenitore, per la feudalità di affermare maggiori privilegi ed autonomia. Il clima in cui si svolsero queste operazioni era talmente teso che la stessa Commissione fu accusata di irregolarità nelle procedure e gli abilitatori furono chiamati a rendere conto del loro operato.[29] Le lamentele, secondo quanto precisava il segretario del Parlamento Diego Lilliu, in una lettera trasmessa al *Consejo* d'Aragona, riguardavano innanzitutto le deleghe rilasciate a favore del viceré conte di Montellano che, per il ruolo ricoperto, non poteva essere titolare di procure. Nel caso specifico il notaio Lilliu, chiamato a difendere il regolare svolgimento delle operazioni, faceva presente che le deleghe erano state immediatamente sostituite con procure a favore di altri cavalieri. Riferiva inoltre che i problemi sorti per le città riguardavano la procura rilasciata dalla municipalità di Oristano a favore di don Giuseppe della Matta che non era ammissibile giacché non si trattava di 'ciutadano insaculado', mentre nel caso di Bosa la delega non era valida giacché il procuratore non era stato nominato dal Consiglio generale, come stabiliva il diritto. Per quanto riguardava infine il sospetto diffuso che fossero state abilitate persone con meno di 20 anni, età minima prevista per il diritto al voto, il segretario Lilliu nella relazione al *Consejo* protestava l'assoluta buona fede e lealtà degli abilitatori.

La maggior parte dei convocati dunque, per ragioni diverse, tra cui soprattutto la distanza delle sedi di provenienza e le spese di soggiorno nella capitale del Regno, partecipava alle lunghe sessioni parlamentari attraverso deleghe e propri procuratori. Questi, come già detto, avevano pieni poteri di rappresentanza ed avevano anche facoltà di farsi sostituire; giacché ogni delegato non poteva disporre di più di tre procure, capitava spesso che una ristretta cerchia di persone, fra le più influenti e potenti, accumulasse un gran numero di deleghe e poi le distribuisse in modo da condizionare le votazioni. Ricorrevano a questi mezzi sia i sostenitori del viceré, sia i suoi avversari appartenenti agli Stamenti: aveva la meglio chi riusciva a portare più voti dalla propria parte. Queste manovre venivano orchestrate da una parte, dal presidente dell'assemblea, il viceré, che in cambio di onori e incarichi futuri si assicurava la felice e tempestiva conclusione delle Corti, e dall'altra parte dal capo dell'opposizione viceregia, don Artale di Alagon, marchese di Villasor, che, con l'intento di smorzare il potere regio a tutto vantaggio del ceto nobiliare, cercava di catalizzare più voti possibili.

Per verificare la reale incidenza del fenomeno, pur trattandosi di un'istituzione di antico regime poco idonea ad essere trattata con strumenti di analisi tipici delle odierne assemblee parlamentari, si è

creato un *data base* dei convocati: per ogni Stamento sono stati rilevati il nominativo del convocato, la data e il luogo di consegna, l'eventuale procura con la data e il nominativo del procuratore. Laddove la prima procura non poteva avere esito positivo perché era stato superato il numero previsto, è stato rilevato anche il secondo e il terzo procuratore, ed infine la motivazione della mancata abilitazione o del non accoglimento della procura o sostituzione.

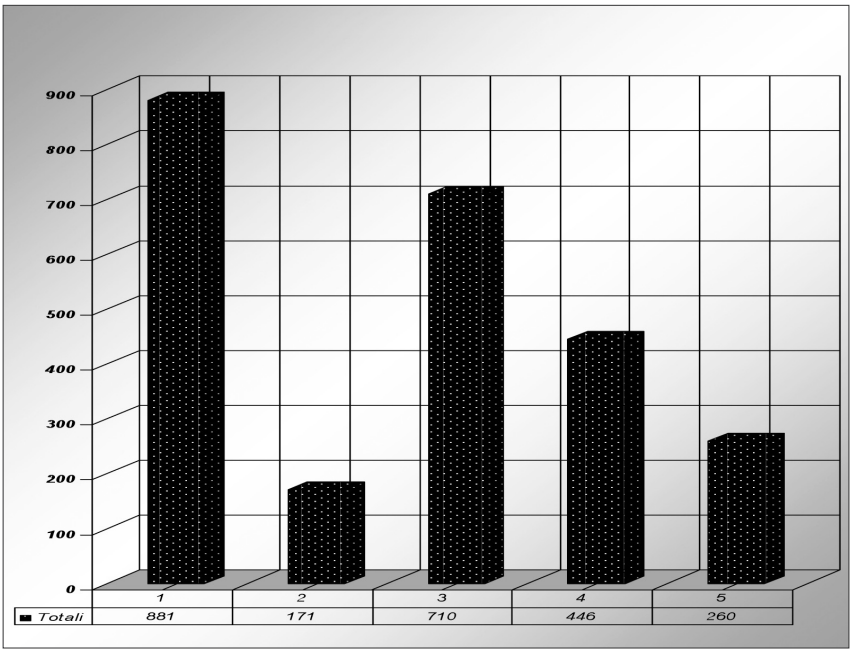
La raccolta dei dati è avvenuta secondo il seguente schema:

Tabella 1, Convocati e procuratori dello Stamento militare (es. database di rilevazione dei dati)

Convocati	Data consegna	Luogo	Procuratore	Data Procura	2° Procuratore	Note
Carta Gregorio Gaspare	13 dic. 1697	Cagliari				Abilitato senza diritto di voto perché minore
Carta don Ignazio, della villa di Sorgono, figlio di Salvatore						Abilitato senza diritto di voto perché minore
Carta Ladu don Antonio	30 dic. 1697	Ozieri	Alagon don Artale, marchese di Villasor	22 ott. 1697, Ozieri	Carta don Salvatore di Cagliari (20 feb. 1698, Villasor)	
Carta Ladu don Gavino	30 dic. 1697	Ozieri	Alagon don Artale, marchese di Villasor	22 ott. 1697, Ozieri	Carta don Salvatore di Cagliari (20 feb. 1698, Villasor)	
Carta Mallo Francesco Angelo	13 dic. 1697	Cagliari				
Carta Mallo don Giacomo Gregorio Felice, figlio di Angelo		Nuoro				Abilitato senza diritto di voto perché minore
Carta Mallo Guglielmo		Cagliari				

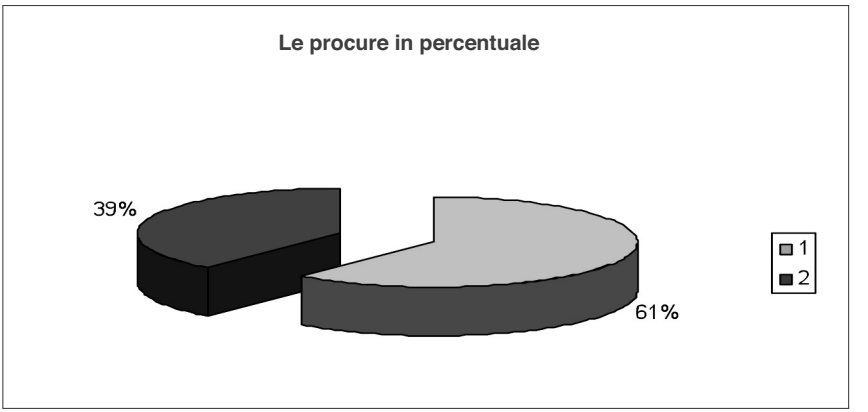
L'esame attento dei dati raccolti ha consentito di ricostruire la reale composizione sociale degli stamenti, i legami familiari, gli intrecci di natura politica ed economica tra gli esponenti del ceto nobiliare e tra questi e la monarchia, nonché lo stretto legame tra la burocrazia ossia i più alti funzionari e la corte.

Complessivamente si può vedere la partecipazione dello Stamento militare, così come emerge dopo le operazioni effettuate dagli abilitatori. Nel seguente grafico, sono infatti rappresentati il numero complessivo degli abilitati a partecipare, il numero dei minori abilitati non aventi però diritto di voto di cui è stato riconosciuto il titolo di cavalierato e nobiltà perché eredi o figli di titolati, il numero dei procuratori e il totale delle sub deleghe:

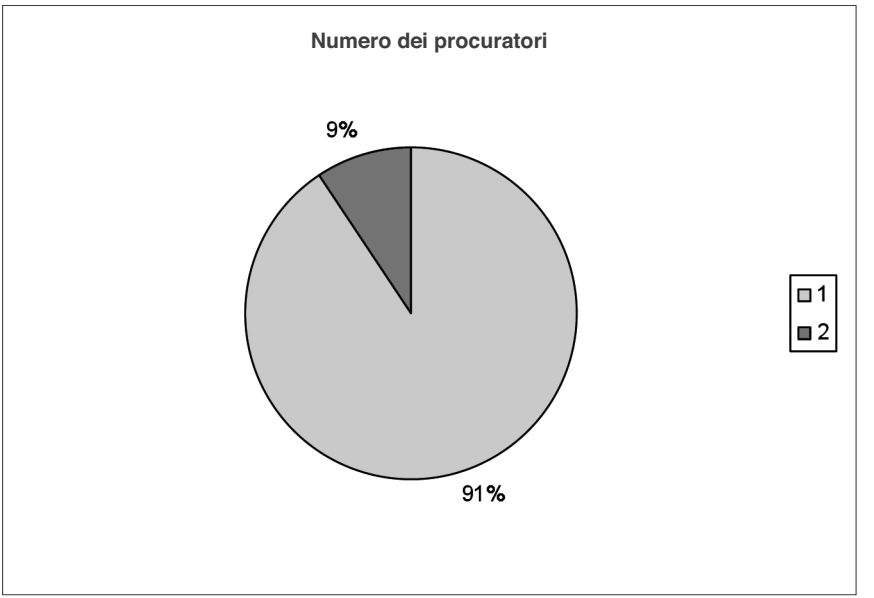


1 - Numero complessivo degli abilitati
2 - Abilitati senza diritto di voto perché minori
3 - Numero degli abilitati con diritto di voto
4 - Numero dei procuratori
5 - Numero dei subprocuratori

I militari abilitati furono pertanto 881, di essi 171 risultavano essere minori e senza diritto di voto secondo la formula *no tener bastante edad segun las fes baptismales que presentan*; quindi gli abilitati a pieno titolo ammontavano a 710, le procure rogate e ammesse 446, mentre le sostituzioni 260.



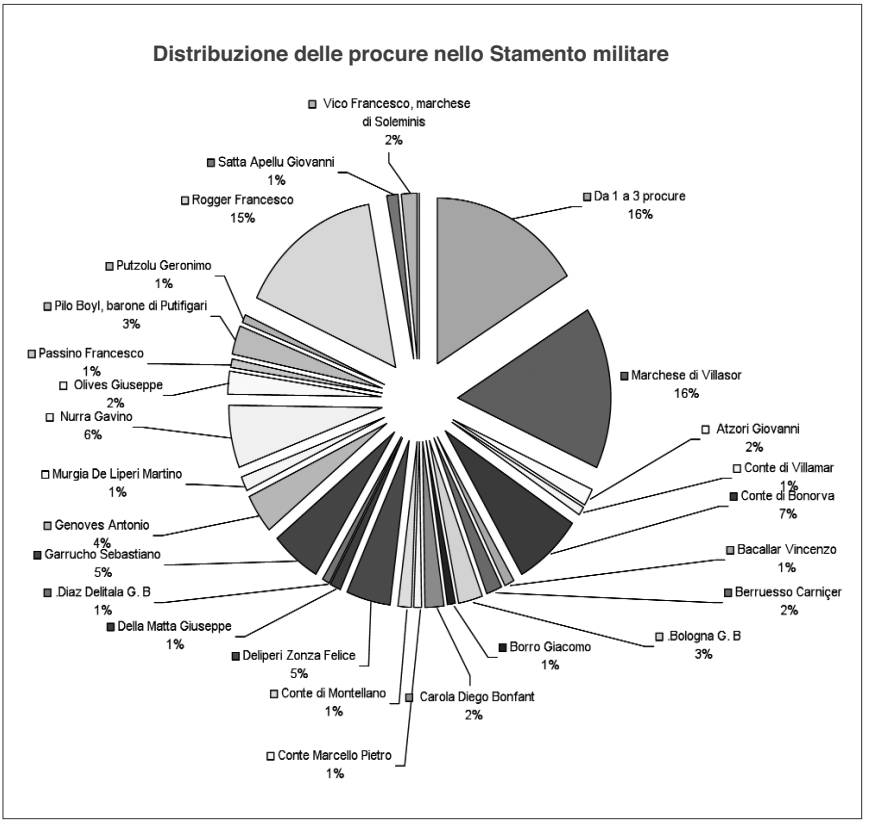
Come si può notare il voto tramite procura incideva sul totale per il 61%; se analizziamo poi il numero degli abilitati e dei procuratori, si può osservare che un esiguo numero di persone, in tutto 73 ossia il 9% sul totale degli abilitati, dominava la scena politica.



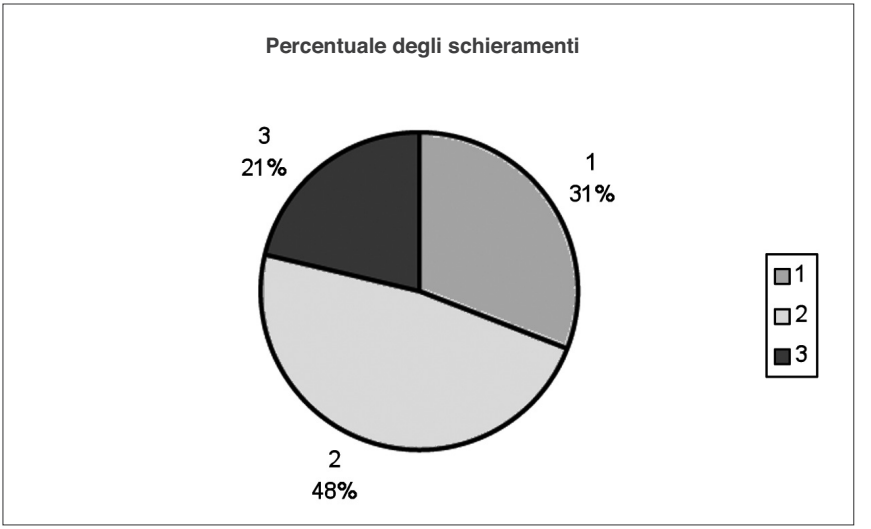
Dall'analisi puntuale dei dati emergono infatti proprio quei personaggi che capeggiavano i due gruppi parlamentari antagonisti: il marchese di Villasor che fece incetta di voti con 68 procure a suo favore e Francesco Rogger, procuratore reale, uomo di corte e fedelissimo del viceré con 59 deleghe.[30] Tra i nobili e cavalieri che si erano accaparrati un discreto numero di voti da riportare al partito 'Alagon' figuravano il conte di Bonorva con 33 voti;[31] Francesco Pilo Boyl, barone di Putifigari, con 14;[32] il marchese di Soleminis, don Giovanni Gavino Atzori di Oristano e Gaspare Berruesso Carniçer, maestro razionale, con 7 voti,[33] oltre ad una numerosa piccola schiera di personaggi minori portatori di un numero minimo di voti, da due a tre, che andavano comunque a ingrossare le fila dello schieramento e a contrastare il regolare svolgimento dei lavori parlamentari. Nel partito 'governativo' figuravano pochi elementi riconducibili al prestigioso ceto nobiliare, pronti a barattare i loro voti con il viceré in cambio di favori e riconoscimenti, come ad esempio Antonio Francesco Genovés, barone di Portoscuso che fu titolare di 18 procure,[34] il dottor Gavino Nurra, reggitore dello stato di Torralba con 21[35] e molti altri cavalieri, tra cui don Sebastiano Garrucho dell'incontrada gallurese, titolare di ben 25 procure.[36] Fattore di novità che emerge prepotente-

mente dall'analisi dei dati, è la massiccia presenza nello schieramento viceregio di elementi provenienti soprattutto dalla burocrazia: oltre al già citato Francesco Rogger, procuratore reale, figuravano giudici della Reale Udienza fra cui Francesco Quesada che, pur non essendo titolare di procure (ne ricevette solo una), si distinse nell'opera di sostegno a favore del viceré, il dottor Gian Battista Bologna con 12 procure;[37] don Vincenzo Bacallar Sanna e don Diego Carola con 5, il segretario del real patrimonio, Salvatore Rodriguez con 8,[38] il dottor Giuseppe Olives con 9;[39] don Felice De Liperi Zonza, sindaco di Sassari, con 22 e sempre di Sassari Martino Murgia De Liperi con 8 procure.

Il grafico che segue rappresenta questa distribuzione:



In totale, sommando i voti dell'una e dell'altra parte, considerando gli incerti e i voti che allo stato attuale degli studi non è stato ancora possibile attribuire con certezza, si realizzò una leggera preponderanza del 'partito' viceregio con il 48% rispetto al 'partito' Alagon con il 31%, come si può visualizzare nel seguente grafico.



La distribuzione delle procure evidenzia dunque che anche nell'isola avevano ormai preso corpo due fazioni contrapposte: una filoasburgica o carlista in aperta polemica con il viceré cui avrebbe creato seri problemi nel corso del Parlamento, l'altra filoborbonica o filippista che invece appoggiava pienamente la sua politica.[40] La prima, costituita per la maggior parte da titolati di vecchia data e da potenti feudatari, non permetteva alcuna intromissione nell'esercizio dei propri poteri, mal sopportava l'autorità viceregia, pretendendo sempre maggiori privilegi ed esenzioni; la seconda, formata in massima parte da nobiltà più recente, cavalieri, burocrati e *letrados,* aspirava a salire nella scala sociale e ad ottenere incarichi di prestigio nell'amministrazione regia. A questi ultimi si appoggiava don Giuseppe de Solís per l'attuazione del suo programma politico.

Un aspetto assai interessante del Parlamento Montellano è dunque quello della polarizzazione dei due 'partiti' stamentari, quello borbonico filoviceregio e quello asburgico che raggruppava una componente rilevante dell'aristocrazia isolana: questa contrapposizione emerge in tutte le sessioni parlamentari; così, ad esempio, nella nomina delle Commissioni dei trattatori, degli abilitatori e dei giudici dei gravami; nella scelta degli ambasciatori, ossia dei legati da inviare agli stamenti; nelle richieste avanzate dai cavalieri e caldeggiate dal viceré; nell'incetta delle procure visualizzata dettagliatamente attraverso l'analitica raccolta dei dati ed infine nella nomina del sindaco da inviare a Madrid con i verbali degli atti. Più difficile appare invece individuare la divisione politica nella formulazione e nella presentazione dei capitoli di corte e nell'approvazione del donativo, per i quali gli Stamenti appaiono, almeno formalmente, più uniti e coesi.

Note

[1] Sulle *Corts* catalane e il Parlamento sardo cfr. I. Coroleu Iuglada, I. Pella Forgas, *Las Córtes catalanas. Estudio juridico y comparativo de su organizacion* (Barcelona, 1876); *Les Corts a Catalunya, Actes del Congrés d'História institucional* (Barcelona, 1991); V. Ferro, *El dret públic català. Les institucions a Catalunya fins al Decret de Nova Planta* (Vic, 1987), pp. 185-242; A. Marongiu, *I Parlamenti sardi. Studio storico istituzionale e comparativo* (Milano, 1979); A. Mattone, '*Corts* catalane e Parlamento sardo: analogie giuridiche e dinamiche istituzionali (XIV-XVII secolo)', *Rivista di storia del diritto italiano*, LXIV (1991), pp. 19-44; Id, 'Centralismo monarchico e resistenze stamentarie. I Parlamenti sardi del XVI e del XVII secolo', in *Acta Curiarum Regni Sardiniae*, I, *Istituzioni rappresentative nella Sardegna medioevale e moderna* (Cagliari, 1986), pp. 127 ss.

[2] Prime indicazioni in tal senso si colgono in F. Floris, 'L'attività degli abilitatori nello Stamento militare', e soprattutto in 'Vita e imprese di Bernardino Mattia Cervellon, un sardo dell'età barocca', entrambi in *Quaderni bolotanesi*, rispettivamente n. 33 (2007), pp. 155-174 e XXI (1995), n. 21, pp. 237-259, in cui esamina la formazione del "partito" degli Alagón e dei Castelvì.

[3] G. Meloni, *L'Italia medievale nella Cronaca di Pietro IV d'Aragona* (Cagliari, 1980), pp. 114-115; G. Meloni (a cura di), *Il Parlamento di Pietro IV d'Aragona. 1355* (Cagliari, 1993)

[4] I Capitoli di Corte costituivano delle vere e proprie leggi pazionate, in quanto il *do* del Parlamento che votava l'offerta era condizionato al *des* dell'approvazione regia sulle richieste degli Stamenti

[5] A. Boscolo (a cura di), *I Parlamenti di Alfonso il Magnanimo (1421-1452)* Revisione, apparati e note di Olivetta Schena (Cagliari, 1993).

[6] Cfr. A. Era, *Il Parlamento sardo del 1481-1485* (Milano, 1955), pp. CIV-CXI.

[7] Nel capitolo 4 dello Stamento militare si richiedeva infatti che 'com los Parlaments passats, celebrats per manaments e comissio de vostra Magestat, sien stats diversos e no conformes y en alguns actes deviants al stil e pratica de Cathalunya e certament se procura tarditat de la conclusio y destent als qui convenen en dits Parlaments, supplique lo dit stament sie provehit per vostra altesa que las Corts y Parlaments, quant se celebraran, se haian celebrar y prosseguir juxta lo stil y pratica de Cathalunya', cfr. A. M. Oliva e O. Schena (a cura di), *I Parlamenti dei viceré Giovanni Dusay e Ferdinando Girón de Rebolledo. 1494-1511* (Cagliari, 1998), doc. n. 384, p. 726.

[8] Nella collana "Acta Curiarum Regni Sardiniae", rilevante operazione culturale intrapresa dal Consiglio regionale della Sardegna a partire dal 1984, sono stati già pubblicati i parlamenti seicenteschi di Carlo de Borja duca di Gandia (1614), a cura di G. G. Ortu, di Gerolamo Pimentel marchese di Bayona, sia lo straordinario (1626) che quello ordinario ultimato da Gaspare Prieto (1631-32), entrambi curati da G. Tore, di Fabrizio Doria duca di Avellano (1641-43) a cura di G. Murgia e infine quello di Gerolamo de Solís conte di Montellano (1698-99) cit.. Sono attualmente in corso di stampa i parlamenti di Antonio Coloma conte di Elda (1601-03) a cura di G. Doneddu e di Nicola Pignatelli, duca di Monteleone (1688-89) a cura di F. Francioni.

[9] C. Ferrante, G. Catani, 'L'autunno degli Stamenti. Costituzionalismo, lotta politica, ricompilazione delle leggi nell'ultima riunione del Parlamento sardo (1698-1699)', in *Il Parlamento del viceré Giuseppe de Solís Valderrábano conte di Montellano* (Cagliari, 2004), a questo saggio si rinvia anche per le indicazioni bibliografiche relative alla ricca letteratura esistente sulla decadenza spagnola.

[10] Sulla figura del sovrano e sulle sue vicende familiari cfr. P. Aguado Bleye, *Manual de historia de España,* t. II, *Reyes Católicos, casa de Austria. 1474-1700* (Madrid, 1954), pp. 821-864; H. Kamen, *Spain in the later Seventeenth century, 1665-1700* (London, 1981), trad. spag., *La España de Carlos II* (Barcelona, 1987), pp. 41-43. Entrambi gli autori nella ricca bibliografia rinviano in particolare a G. Maura Gamazo, *Carlo II y su Corte. Ensayo de reconstrucción biográfica,* t. 1, *Años 1661-1669*, t. II*, Años 1669-1679*

(Madrid, 1911-15), e a ID., *Vida y reinado de Carlos II* (Madrid, 1990 [1 ediz.1942]). Cfr. inoltre A. Domínguez Ortiz, *Carlos II,* in *Historia de España,* 6. *La crisis del siglo XVII* (Madrid, 1989), pp. 136-138; J. Calvo Poyato, *La vida y la època de Carlos II el hechizado* (Barcelona, 1996); di un certo interesse anche l'introduzione di A. Domínguez Ortiz al *Testamento de Carlos II* (Madrid, 1982).

[11] Sugli equilibri politici europei e il ruolo delle nazioni alla vigilia della Guerra di successione, cfr. tra gli altri R. D. Hussey, J. S. Bromley, 'Pressioni europee sull'impero spagnolo (1688-1715)', in J.S. Bromley (a cura di), *Storia del mondo moderno,* vol. VI, *L'ascesa della Gran Bretagna e della Russia. 1688-1713/1725* (Milano, 1988), pp. 409 e ss.

[12] V. Bacallar, *Comentarios de la guerra de España, desde el principio del Reynado del Rey Philippe Quinto, hasta la Paz General* (Genova, 1711), libro II, p.45. Sulla figura e l'importanza di Bacallar (1669-1726), dottore in leggi, cfr. P. Martini, *Biografia Sarda* (Cagliari, 1837), tomo I, pp. 113-140; P. Tola, *Dizionario biografico degli uomini illustri di Sardegna* (Torino, 1837), vol. I, pp. 109-113; E. Bogliolo, *Tradizione e innovazione nel pensiero politico di Vincenzo Baccallar* (Milano, 1989).

[13] Sulle vicende della guerra di successione spagnola e sulla figura di Filippo V in particolare cfr. H. Kamen, *La guerra de Sucesión en España 1700-1715* (Barcelona, 1975) e dello stesso autore *Felipe V. El rey que reinó dos veces* (Madrid, 2000); ed inoltre J. A Vidal Sales, *La vida y la época de Felipe V* (Barcelona, 1997).

[14] Sull'attività storiografica di Elliot cfr. D. Maffei, 'La Spagna e l'Europa: l'opera storica di sir John Elliot', *Rivista storica italiana*, CXII (2000), n. 1, pp. 282-317.

[15] Si trattava della tipica organizzazione polisinodale articolata in una rete burocratica specializzata e centralizzata rispetto ai territori da amministrare, *i Consejos*, di cui il più importante era il *Consejo de Estado*, presieduto dal sovrano dove venivano trattate le questioni di politica internazionale e ratificate le decisioni assunte nei Consigli territoriali di Castiglia, d'Aragona, d'Italia, delle Indie e delle Fiandre; cfr.in generale *Diccionario de historia de España*, diretto da G. Bleiberg (Madrid, 1968), tomo 1, pp. 940-947.

[16] Cfr. Kamen, *La España*, pp. 41-44; Elliot, *La Spagna*, pp. 417-433.

[17] Kamen, *La España*, pp. 67-106.

[18] Cfr. P. Hazard, *La crise de la conscience europeenne: 1680-1717* (Paris, 1934) [trad. it. *La crisi della coscienza europea,* a cura di P. Serini, (Milano 1968)].

[19] Reglá Campistol, *La Corona de Aragón*, p. 158. Sulle posizioni assunte dai partigiani austriacanti contro l'assolutismo borbonico, a difesa del sistema costituzionale rappresentativo e del ristabilimento dei *fueros,* cfr. E. Lluch, *L'alternativa catalana (1700-1714-1740). Ramon de Vilana i Juan Amor de Soria: teoria i acció austriacistes* (Vic, 2000).

[20] Sulle tesi aperte dalla storiografia spagnola tra la fine del XVII secolo e gli inizi del XVIII, in merito soprattutto alle origini dell'illuminismo spagnolo cfr. G. Stiffoni, *Verità della storia e ragioni del potere nella Spagna del primo '700* (Milano, 1989).

[21] La nomina del conte di Montellano a luogotenente e capitano generale del Regno di Sardegna per un triennio, è in ACA, *Consejo Supremo de Aragón, Registros Sardiniae*, n. 344, cc. 39v.-50v., 51-54v.; ASC, *Antico Archivio Regio,* vol. H 50, cc. 1-12v. Sul viceré cfr. J. Mateu Ibars, *Los virreyes de Cerdeña. Fuentes para su estudio.* II *1624-1720* (Padova, 1967), pp. 186-195; Bogliolo, *Tradizione e innovazione*, pp. 17-18; la voce *Montellano* in *Enciclopedia universal ilustrada europeo-americana*, *Espasa-Calpe* (Madrid - Barcelona, s.d.)*,* t. XXXVI, p. 552.

[22] Cfr. Catani , Ferrante, *Il Parlamento*, pp. 208-209, doc. n. 3

[23] Giuseppe Acorrá Figo, dottore in *utroque*, di origine cagliaritana e vescovo di Ampurias, venne nominato arcivescovo di Oristano il 30 aprile 1685, in sostituzione di Pietro de Alagón trasferito a Maiorca, e ricoprì tale incarico sino alla morte avvenuta con molta probabilità ne1 1704, quando venne nominato al suo posto Francesco Masones Nin, vescovo della diocesi di Usellus (R. Ritzler, P. Sefrin, *Hierarchia catholica medii et recentioris aevi 1667-1730* (Patavii, MCMLII), vol. V, p. 95, R. Bonu, *Serie cronologica*

degli arcivescovi d'Oristano (Sassari, 1959), pp. 111-112; vedi anche R. Turtas, *Storia della Chiesa in Sardegna, dalle origini al Duemila* (Roma, 1999), pp. 839, 864.

[24] Nato a Sassari nel 1662 e trasferitosi successivamente a Cagliari con la famiglia, aveva ereditato il marchesato di Soleminis dal padre che lo aveva ricevuto dallo zio Francesco Vico, famoso reggente del Supremo Consiglio d'Aragona raccoglitore delle prammatiche del Regno. Sposò in prime nozze una Sanjust ed in seconde Caterina Torellas, erede della baronia di Capoterra. Nella guerra di successione spagnola parteggiò per Filippo V (Floris, *Feudi e feudatari*, pp. 681-683).

[25] Dottore in leggi, fu consigliere capo della città di Cagliari negli anni 1697-1699 (M. Pinna, 'Il Magistrato civico di Cagliari', *Archivio storico sardo*, X (1914), nn. 1-4, p. 220; G. Sorgia, G. Todde, *Cagliari. Sei secoli di amministrazione cittadina* (Cagliari, 1981), p. 181); fu ammesso a partecipare allo Stamento militare 'por ser notorio cavaller' (*Atti del Parlamento* doc. n. 330) e fu nominato nel 1701 da Filippo V, di cui doveva essere partigiano, veghiere della città per il triennio 1703-1706 (ASC, *Antico Archivio Regio,* vol. H 52 , cc. 23-25).

[26] Il reggente, nominato con carta reale del 23 giugno 1682 (*ibidem*, vol. H 46, cc. 32-35), in qualità di giurisperito era il più stretto collaboratore del viceré e per queste sue prerogative venne accusato nel corso del Parlamento, dalla fazione a lui ostile, di occuparsi unicamente del luogotenente trascurando i suoi compiti istituzionali. Egli si lamentava di ciò in una lettera inviata al *Consejo* per chiarire alcune questioni sorte durante i lavori: nello scritto ricordava di essere funzionario regio da oltre 24 anni e di ricoprire la reggenza da 17 e di avere 3 figli, di cui due avevano servito il sovrano a Milano (ACA, *Consejo de Aragón*, leg. 1364, 17/8, 1699 febb. 28). Da uomo di legge possedeva una ricchissima biblioteca giuridica costituita da 300 libri che alla sua morte fu acquistata dal libraio Giacinto Pirrini (ASC, *Reale Udienza*, cl. IV, 162/2, 6 apr. 1702). Sul rilevante ruolo politico esercitato dai reggenti cfr. C. Ferrante, 'Il reggente la reale Cancelleria del Regnum Sardiniae da assessor a consultore nato del viceré, secc. XV-XVIII', in *Fra diritto e storia: studi in onore di Luigi Berlinguer promosso dalle Università di Siena e di Sassari* (Soveria Mannelli, 2008), 1, pp. 1059-1093.

[27] Dottore in leggi cagliaritano, appartenente ad una famiglia da sempre fedele alla monarchia: il padre Salvatore offrì al sovrano 5.000 soldi versati nel banco di San Giorgio di Genova per le spese militari, lo stesso fu poi sindaco dell'appendice di Stampace per 4 anni. Anch'egli prestò diverse somme di denaro alla corte nelle occasioni di ristrettezza dovute alla guerra; si distinse in modo particolare durante la pestilenza del 1652 assistendo gli infermi e interrando i morti a Stampace. Cattedratico di leggi, per oltre 15 anni (dal 1662) nell'Università di Cagliari, ricoprì per *encomienda* il posto di assessore del Real Patrimonio durante l'infermità del dottor Narciso Campus; fu avvocato dello Stamento reale nelle Corti celebrate dal viceré marchese di Camarassa e partecipò 'en la junta de la trezena'; fu per 4 anni assessore del veghiere e giurato secondo della città, ricoprendo inoltre vari incarichi onorifici (ACA, *Consejo de Aragón*, leg. 1054). Svolse la sua attività di uomo di legge anche come procuratore, patrocinando il conte e la contessa di Villamar in alcune cause patrimoniali negli anni 1662-1664 (ASC, *Archivio Aymerich*, nn. 1087, 1095); ricoprì l'ufficio di avvocato dei poveri della città di Cagliari per 11 anni, fino al 30 marzo 1669 quando giunse 'la promotiò' a giudice della sala criminale della Reale Udienza (ASC, *Antico Archivio Regio,* vol. H 27*,* c. 87v.*)*; il 31 ottobre dello stesso anno passò alla sala civile (*ibidem,* cc. 126-130). Fu infine nominato reggente provinciale del *Consejo* nel settembre 1698 fino alla sua giubilazione nel novembre del 1700 (Arrieta Alberdi, *El Consejo*, p. 626).

[28] Originario del Regno d'Aragona, baccelliere e dottore in leggi laureatosi a Salamanca, esercitò l'avvocatura e fu assessore del *Calmedina* a Saragozza, fu per un triennio luogotenente straordinario della Corte di Giustizia d'Aragona, quattro volte assessore e avvocato ordinario del Regno e due nel Tribunale dell'Inquisizione di Cuenca (ACA, *Consejo de Aragón*, leg. 1052); fu nominato giudice della sala criminale della Reale Udienza nell'agosto 1674 (ASC, *Antico Archivio Regio,* vol. H 42, cc. 50v-54); fu anche uditore generale delle galere del Regno dal 1679 (ACA, *Consejo de Aragón, Re-*

gistros, 339, cc. 199v.-201v.); nel 1702 fu nominato giudice della sala civile (ASC, *Antico Archivio Regio,* vol. H 52, cc. 4v-7).

[29] ACA, *Consejo de Aragón*, leg. 1363, 14/1-3.

[30] Francesco Rogger Gallo Serra de Litala Borquet cagliaritano ma di origine catalana, era stato sergente maggiore nella Compagnia di Infanteria della milizia cittadina, aveva partecipato alle Corti del conte di Lemos e del marchese di Camarassa, si era impegnato nella recluta di volontari per il *tercio*, era stato veghiere nel 1672 e nel 1678. Si era adoperato per riappacificare gli animi dopo l'assassinio del viceré Camarassa e fu più volte inviato in Spagna in qualità di ambasciatore (ACA, *Consejo de Aragón,* leg.1059). Aveva ricevuto l'ufficio della Procurazione per incommenda nel 1669 con un salario di 1510 reali all'anno, in sostituzione di Giacomo Artale di Castelvì, marchese di Cea, implicato nell'omicidio del viceré Camarassa (ASC, *Antico Archivio Regio*, vol. H 27, c. 128; vol. H 41, cc. 12-13); uomo fedelissimo al sovrano - lo aveva servito per oltre un trentennio - nel corso dei lavori parlamentari, data la sua avanzata età (aveva 69 anni), chiese come ricompensa per i servigi prestati una mercè a favore della moglie, donna Clementa Sanna (ACA, *Camara de Aragón*, legajo 1116/1; legajo 1363, 22 sett. 1698).

[31] L'Aymerich chiese per sé l'onorificenza di «gentilhombre de la Real Camara» (ACA, *Consejo de Aragón*, legajo 1364. 9/13, 30 sett. 1699).

[32] Della città di Sassari, era figlio di Matteo che aveva ereditato il feudo nel 1663; nelle Corti fu nominato trattatore del Militare e commissario per la numerazione dei fuochi (ACA, *Consejo de Aragón*, leg.1364, 10); capeggiò il partito filoasburgico della città e per questa attività fu insignito nel 1715 del titolo marchionale (Floris, Serra, *Storia della nobiltà*, pp. 293-294).

[33] Figlio di G. Battista che aveva ugualmente, come tanti altri membri della famiglia, ricoperto l'ufficio di maestro razionale nel 1670 (ASC, *Antico Archivio Regio*, vol. H 41, cc. 23, 28), aveva ottenuto il privilegio di nobiltà nel 1676. Gaspare Carnicer, nonostante ricoprisse una delle piazze più rilevanti dell'amministrazione regia, fu uno dei partigiani più accesi dell'arciduca d'Austria; fu allontanato dal Regno insieme ad altri quando vennero alla luce i suoi disegni politici. In seguito alla vittoria austriaca fu nominato consigliere del Supremo Consiglio d'Aragona (Tola, *Dizionario biografico*, vol.1, p. 184).

[34] Mercante cagliaritano, aveva ricevuto il cavalierato e il privilegio di nobiltà nel 1677 (*ibidem*, vol. H 44, cc. 32-37), era diventato barone di Portoscuso acquistando i territori e la tonnara da don Giovanni Maria Vivaldi; il 30 aprile 1700 Carlo II lo aveva insignito del titolo di Marchese della Guardia per i meriti acquisiti nelle Corti di Santo Stefano, Monteleone e Montellano (*ibidem*, vol. H 51 cc. 60-63v.). Nella guerra di successione spagnola sostenne il partito asburgico in accordo con i Villasor; nel 1708 fu nominato dagli austriaci governatore del Capo di Cagliari e di Gallura e successivamente riparò a Vienna, dove rimase sino alla morte (Tola, *Dizionario biografico*, vol. 2. pp. 148-149).

[35] Originario di Thiesi, dottore in leggi, era stato eletto dallo Stamento militare per giudicare sul ricorso presentato dal Marchesato di Villasor e venne ricusato da quel procuratore con l'accusa di aver commesso delitti nel territorio di sua giurisdizione; cavaliere da svariati anni chiese la nobiltà che ottenne grazie ai suoi meriti parlamentari (ASC, *Antico Archivio Regio*, vol. H 51, cc. 104-106, 23 sett. 1700). Fu attivo sostenitore della casa dei Borboni e forse, proprio per questo, fu osteggiato dai Villasor (Floris, Serra, *Storia della nobiltà*, p. 283).

[36] Originario del villaggio di Tempio, aveva ottenuto il privilegio di nobiltà nel 1690 (ASC, *Antico Archivio Regio*, vol. H 50, cc. 77-80).

[37] Di origine sassarese, trasferitosi poi a Cagliari, era stato armato cavaliere nel 1690 e aveva ottenuto il privilegio di nobiltà nel '91 (ASC, *Antico Archivio Regio*, vol. H 48, cc. 25-28v., 103-105v.); in un memoriale indirizzato al re chiese ed ottenne per il figlio, a ricompensa dei voti messi a disposizione nelle Corti, l'ufficio di capitano della baronia di Quartu e le rendite civili della stessa, offrendo in cambio la somma di 10.200 rea-

li (ACA, *Consejo de Aragón*, legajo 1363, 25 nov. 1698). Fu decisamente filoborbonico: i discendenti della sua famiglia alla fine del XVIII secolo si trasferirono nel Regno di Napoli (Floris, Serra, *Storia della nobiltà*, p. 195).

[38] Cittadino di Cagliari e notaio pubblico, aveva ricoperto l'incarico di 5° consigliere della città nel 1680; nello stesso anno il procuratore reale lo aveva chiamato a ricoprire l'ufficio di procuratore fiscale (ASC, *Antico Archivio Regio*, vol. H 46, cc. 91-92); nel 1693 aveva ottenuto il cavalierato; a fine Seicento prestava la sua opera quale segretario del Real Patrimonio e della Giunta (ACA, *Consejo de Aragón*, leg. 1363, 1698 sett. 26; Loddo Canepa, *Origen del cavallerato*, p. 87)

[39] Di probabile origine algherese, era stato assessore del Regio Patrimonio nel 1677 su nomina del procuratore reale e dal 1679 aveva ricoperto l'incarico di avvocato fiscale durante l'assenza del dottor Giovanni Palmas (ASC, *Antico Archivio Regio*, vol. H 44, cc. 21-22, 130v.-133); nel 1698 acquistò la Planargia di Bosa. Suo figlio Antonio Michele, nonostante l'arciduca d'Austria gli avesse conferito il titolo di marchese del Montenegro, parteggiò attivamente per Filippo V, distinguendosi in modo particolare nel tentativo di riconquista spagnola, (Loddo Canepa, *Origen del cavallerato*, p. 76; Floris, Serra, *Storia della nobiltà*, p. 285).

[40] L'animo filoborbonico del conte di Montellano, secondo il suo biografo Bacallar, ebbe modo di manifestarsi appieno presso la corte di Madrid durante la guerra di successione; egli infatti pur essendo 'hombre ja de crescida edad' e ritenuto 'maturo, sabio, cristiano' riuscì a entrare nelle grazie della regina, finendo col diventare uno dei suoi più fidati consiglieri. Ricoprì diversi incarichi importanti ed ottenne il titolo di duca e grande di seconda classe. Entrò a far parte del Consiglio di gabinetto del re nel momento di maggiore crisi di Filippo V; le sue posizioni intransigenti – gli spagnoli lo consideravano uomo dispotico – gli attirarono l'odio degli altri magnati nonostante la forza che gli derivava dalla protezione della regina che gli restò sempre fedele. Il Bacallar che ne racconta le vicende sottolinea però che fu soprattutto 'hombre versato en todas letras y de llanissimo trato' e che alla sua casa 'acudian muchos à una conversacion mas literaría, que politica' (Bacallar, *Comentarios*, pp. 57, 74, 83-84 e *passim*, le cit. sono rispettivamente alle pp. 57 e 352).

Vittoria Calabrò

Carrying out of the Parliamentary Resolutions: Sicilian 'Deputazione del Regno' Tasks (1567-1812)[1]

1. *Preliminary remarks*

In this occasion, it is possible to show some results of a wider and in progress research about the role and the tasks of the Sicilian *Deputazione del Regno* from 1567 to 1812. It is a research that wants to point out an important aspect in the Sicilian institutional and political history that the current historiography has substantially disregarded even if a particular attention was given to those topics that are linked to the institutional dynamics of the Reign.[2]

Although there are some references to this magistrature, the only analysis given *ex professo* by Giuseppe Scichilone to the functions of the *Deputazione* can be dated from the 1950s.[3] Besides, the topic seems to be relevant because it can be insert in the complex debate that characterized the period between the Middle and the Modern Age and the relationship between the representative institutions and the monarchy, where Sicilian *Deputazione del Regno* had an important role.

I'd like to start from a quotation taken from *Notizie sulla forma del Parlamento di Sicilia e potestà della Deputazione del Regno*, written by the abbot Antonio Tognini at the beginning of the nineteenth century:[4]

> Il volgo de' Siciliani ha dette varie millanterie sul suo Parlamento e sulla sua Deputazione del regno. I pochi illuminati hanno dovuto sempre tacere per non essere accusati di leso patriottismo. I nobili che sono stati sempre l'anima del Parlamento e della Deputazione hanno colti i frutti dell'universale pregiudizio. I re, lontani o negligenti, hanno fatto mostra di non vedere ovvero non hanno veduto di fatto.[5]

While someone had recognized to the *Deputazione* both the role of guardian and together with the parliament the role of defender of the prerogatives and privileges of the Sicilian nation,[6] Tognini discredited its work and reduced its duties, comparing it to a royal magistrature without 'niuna facoltà di reclamare per la osservanza dei Capitoli'.[7]

Consequently, he didn't hesitate to approve the viceroy Domenico Caaracciolo's work, who asserted, 'con più avvedutezza e con minor violenza' respect to his predecessors and the kings, at the end 'avrebbe smascherata quella meretrice del Baronaggio Siciliano'.[8]

According to Luigi Boglino's hypothesis, Tognini's pages, that were

written and entrusted by the Bourbon government,[9] seemed to be efficient for the new political and constitutional order described in the Sicilian *charta* of 1812 that enacted the deletion of the *Deputazione*.[10]

In 1812 the ordinary and special parliament summoned and enacted the abolition of the Sicilian *Deputazione* as its permanent body, secular institution whose existence, in the Sicilian constitutional procedure, was linked to the raising of the legislative initiative of the parliament from the age of Alfonso. The legislative initiative was realized in *capitula regni*, approved by the king basing on the *gratiae* proposed by the parliament.[11]

If the constitution of 1812 marked the end of the Sicilian *Deputazione*, what were its beginning and its functions?

Let's try to summarize some news about it.

2. *The dispute about the birth of Sicilian Deputazione*

An anonymous handwritten essay of the eighteenth century entitled *Per l'illustrissima Deputazione del Regno* said that nobody of the 'Sicoli Scrittori', who had spoken about the topic, took the trouble of 'esaminar di proposito', so in a deeper way, what the author called 'la vera origine ed istituzione della carica dei Deputati del Regno'. So in his opinion, 'una verità così interessante, non essendo stata mai l'oggetto delle loro accurate ricerche, si è veduta abbandonata alla varietà delle opinioni, le quali l'hanno più tosto confusa che appalesata'.[12]

It's no time to examine the different hypothesis supported by some of the most famous Sicilian jurists, such as Garcia Mastrillo and Mario Muta who, for example, said that the birth of *Deputazione del Regno* had to be dated back to 1474, while some historians, like the canon Antonino Mongitore, Francesco Maria Emanuele e Gaetani, marquis of Villabianca, and Niccolò Palmeri, dated it back to 1446, or Francesco Serio e Mongitore who, by commenting the *Memorie Istoriche* of his uncle, dated its origin to 1296 during Federico II of Aragona's reign.[13]

However, it is important to say that in order to support their thesis, each of them quoted parliamentary deliberations, constitutions and *capitula regni* such as the famous *capitulum Cordi nobis* of Federico II of Aragona (*De generali curia semel in anno facienda*), the *capitulum* CI of king Giovanni (*Quod constituantur defensores in Regno pro defensione Capitulorum Regni*) and the *capitula* CDI (*De oblatione centum vigintiquinque millia florenorum*) and CDIII (*Quod in supradicta donatione nemo sit exemptus*) approved by Alfonso.[14]

Nevertheless those documents didn't quote the *Deputazione* but they testified only the existence of 'aliquos probos viros' chosen by the parliament so that they had temporary and limited tasks, particularly linked to the collection of *donativi*, like *secundum morem*

Hispaniae, *generales collectae* were called from 1446, in other words the contributions that the Sicilian Kingdom had to pay to the kings to defend and maintain the state from the age of Federico II of Swede.

The *donativi* were ordinary and special. The former, according to 'Relazione de' donativi, che fa il Regno di Sicilia al Re' written by Antonino Mongitore, were thirteen and from 11 October 1494 on 'furono imposti, sempre poi si sono prorogati ne' Parlamenti'.[15] While the latter were given to the king to face particular and urgent demands that could concern, for instance, the war management or the celebration of a wedding.

Only during the summon of the parliament in Palermo in 14 June 1567 it was established that 'ad unam rediguntur omnes Regni Deputatione'. From that date, according to a short 'nota facta, redapta, et registrata', by Alfonso Ruys, chancellor and *logoteta* of the kingdom,[16] the regular role of the *Deputazione* started.

Indeed, from that time, the 'multae' pre-existing *deputazioni*, 'per diversis gubernatae Deputatis', as many as the *donativi* used to manage, were gathered in a single and permanent body formed by twelve members,[17] whose tasks were defined by special measures. On 14 May 1571, for example, the way used to let the magistrature meet was enacted 'ut hoc Collegium in dies magis Regi, Regnique usui esse posset, dignumque tanti Magistratus decorum retineretur, in eam sententiam devenisse, operae pretium, et maxime necessarium fore, ut sequentia decreta fiant'.[18]

The adopted decision of 1567 was thought for practical purposes 'ut facilius, ac meliori ordine ad omnipotentis Dei, Suaque Catholicae et regiae Maiestatis servitium, Reiquae publicae regni praedicti beneficium',[19] aimed to put order in the complex and difficult sectors regarding the collection of *donativi*. But quite soon, that deliberation had a wider and more different role than the previous one, and so it deeply influenced the whole institutional structure of the Island modifying, in particular, the relationship between the monarchy and the parliament.

And so, for this reason, I think that document has to be considered like the official act of the birth of Sicilian *Deputazione del Regno*.

3. *'Forma della elezione ... durata dell'officio ... limiti della giurisdizione'*:[20] *formation and tasks of Sicilian Deputazione*

Basing on the model of *Diputación* or *Generalidad de Cataluña*,[21] Sicilian *Deputazione* was formed by twelve members, four for each branch (the military or baronial and ecclesiastic one, where the members of the feudal and ecclesiastical aristocracy had respectively a seat, and while the town property represented by the members of the

free towns) according to how the Sicilian parliament was divided.[22] The leaders of the three branches were members entitled while the other nine members were elected by the viceroy, although the canon Mongitore wrote 'nell'atto d'elezione si dice per costumato stile, fatti da' tre Bracci'.[23]

The *Deputati*, who had to be 'Regnicolae, et non exteri',[24] ruled for three years, the time between the summon of the ordinary parliament and the next one. When their term of office came to an end, they could be re-elected without limits.

On turn, each *Deputato* worked as a prior as well, in other words he was the president who had to coordinate all the activities of the magistrature, summon the meetings and provide to execute what was established by *Deputazione*. Every month, considering the seniority and the belonging branch (the ecclesiastic branch, basing on a severe formality, was the first one who named the prior, then there were the military and the property one), the *Deputati* took their turn in the office.[25]

Even the chancellor of the reign as secretary and notary took part at the meeting of the *Deputazione*, that usually took place ever Thursday.[26]

He always had to update the minute book that is the memorandum, the *actorum liber* (where the acts to execute were annotated) and the *liber literarum* (where the instructions, the letters and the distribution of the *donativi* sent to the several officers were enclosed). When the chancellor had to carry out these tasks, he worked together with a *luogotenente* and a *ministro di scrittura*.[27]

A nuncio had to inform the *Deputati* about the summons for the working sessions and to keep in order the meeting hall.[28] At first, the meetings took place in the church La Pinta in Palermo, but from 1575 in a hall of the royal palace. It can be useful to underline the fact that the decisions adopted not in the appointed place had no effects just like the decisions taken without the quorum formed by five members. In some serious occasions, the quorum could be formed by three members.[29]

According to what the note of 14 June 1567 established, the *Deputazione*, executive and permanent body of the parliament, had to provide for the collections of the *donativi*. It is necessary to remember that from 1570 the administration of some of them was taken away from *Deputazione* and was given to the *Tribunale del Real Patrimonio*, through three *percettori*, that were tax collectors, each for every administrative valley of the reign (Val di Noto, Val di Mazara and Valdemone).[30]

So the *Deputazione* had only the management of the *donativi* used for the building of the bridges, roads and towers. It had also the task

to pay the salary to the two rulers who had the seat for Sicily in the Supreme Council of Italy.

In order to accomplish the parliamentary deliberations and to divide the allocated amounts, the *Deputazione* arranged the *numerazione delle anime* and compiled the *riveli*.

While the former was a sort of census and it was important to know the number of the people in the reign, the *riveli* was used to verify the fiscal capability of each tax payers. After these data were gathered, it was possible the divide the taxes.

In order to do these tasks, the *Deputati* could be supported by some officers, such as the *razionale*, the *percettori* and the bursar.

The *razionale* had to coordinate all the activities linked to the collection of *donativi*, [31] such as the definition of the sum of money that the feudal towns, the property *universitates* and the ecclesiastic institutions had to pay or to compile and send the *significatorie*, acts similar to the modern memorandum containing the indications referring to the sum of money, the lasting of both the *donativi* and *tande*, a word used in the Iberian Peninsula to indicate the instalments of the *donatvi*. The collection of the *tande* was entrusted to the *percettori*. [32] The *tande* paid by the ecclesiastical branch was collected by a religious man called bursar or delegate who, basing on a measure enacted by Marcantonio Colonna in 1583, was indicated by the king or the viceroy.[33]

It is also necessary to point out that the *consultore*, the *procuratore fiscale*, the *commissario generale delle fabbriche* and the *capo maestro* worked together with the *Deputazione*.

Both the *commissario generale delle fabbriche* and the *capo maestro* had technical tasks. For example, the former did periodically (the documents speak about some months like March, June and September) inspections in the sites where the bridges were built. Besides, the *capo mastro* had to verify that the works were made regularly and he had to note possible anomalies concerning with both the quantity and the quality of the used materials. The *commissario*, together with the *capo mastro*, had to inform the *Deputati* about the working in progress.[34]

The *consultore* and the *procuratore fiscale* had other important tasks. The latter had to be informed about the pending trials concerning the *Deputazione* and he had to take note in an appropriate register.[35]

The *consultore*, named by the viceroy, was a jurisconsult who took part in the meetings of the *Deputazione* and he had an important role: he represented the *Deputazione* in the all the pending trials referring to the *donativi*.[36]

The arguments were frequent enough because whole local communities were used not to hesitate to present some requests to be exempted from payment of the taxes.

Just to give an example, it is necessary to remember the case that occurred after what the parliament summoned in Palermo in 1754 had decided on.

Respecting to the decision to give a special *donativo* of 'Scudi trentadue mila sei centoventisette, tarì due, e grana sette' paid 'dal corpo di tutte le Università del Regno tanto Demaniali, quanto Baronali, incluse in esse ancora tutte le Città franche',[37] Gaetano Maria Montalto e Palermo supported, in front of the *Deputati*, the 'Ragioni dell'Università, e Signori Baroni di Siracusa per esentarsi dalla contribuzione de' Donativi offerti nell'ultimo general Parlamento'.[38]

In order to support the request, the solicitor, asking that the town of Syracuse and its barons were 'esentata dalla contribuzione del Donativo .. del pari come ne era stata immune pel corso di cinque secoli, e prima ancora d'essersi inventati in questo Regno i primi Dazj',[39] enclosed the privilege which Federico III, on 5 October 1298, had used to exempt the town

> ab impositionibus, taxationibus, et solutionibus cuiuscunque pecuniae de caetero imponendae, et recolligendae in Sicilia, et alibi, tam pro armata nostri felicis extolli, quam pro aliis quibuscunque causis, et negotiis, quodque ipsi, sicut et haeredes eorum perpetuo a praedictis omnibus, et singulis sint exempti, liberi, et immunes, et ad ea aliquo tempore minime teneantur.[40]

We cannot know the implications of this particular event. However, it is sure that the complex system based on the collection of *donativi* could weigh only on some categories of subjects. For example, by reading a memorandum written after 1794, the anonymous writer complained about 'l'ingiustizia della esenzione di talune classi di contribuenti e dell'esser queste assoggettite ad un peso infinitamente minore di quello che dovrebbero portare'.[41]

These things were known by the royal *consultore* Saverio Simonetti who, in 1780s, criticized hardly that system by supporting the project proposed by the viceroy Caracciolo relative to the institution of both a modern land register, where all personal and state, feudal and free properties were registered, and a new fiscal plan that foresaw 'allibrarsi tutt'i beni, di farsi l'unione di tutt'i carichi, e dividersi il totale del peso a proporzione de' beni'. In his opinion it was a solution with which 's'allontana qualunque arbitrio, si chiude l'adito all'oppressione, e s'eguaglia la sorte di tutti'.[42] An innovative program that wasn't unfortunately realized.

The *Deputazione* had not only the administrative accounting functions but also, as it is possible to read in a document written by Giuseppe di Perna, chancellor of the kingdom, dated Messina, 16 May 1585, the task to check

> per l'osservanza di tutti Capitoli, Constituzioni, Grazie, e Privilegj concessi tanto in generale a questo fidelissimo Regno, come in particolare alli Prelati, Abbati, Baronaggio, e Città di Demanio; e faccino particolar instanza, e querela contra quelli, che havessero contravenuto, o contraverranno a detti Capitoli, Constituzioni del Regno, Grazie, e Privilegj, usando in ciò ogni rimedio.[43]

From now on, as Vittorio Sciuti Russi said, 'la tradizione costituzionale assegnò [to *Deputati*] la funzione di difensori dei privilegi del Regno e di garanti della loro osservanza da parte del sovrano e dei viceré'.[44] A role that Sicilian *Deputazione* had without missing the occasion to oppose to the reforming plan inspired to the principles of the monarchic absolutism that, developed particularly in the last twenty years of the eighteenth century and during the office of Caracciolo and Caramanico viceroys, tried to restrict or even cancel the privileges of the barons and the ecclesiastics. The contemporary Sicilian political writers mystified, considering it strictly linked to the protection and defence of the Sicilian nation. According to these events, for instance, it must be read the *Deputati*'s decision to advert the issue of two editions of 1717 and 1749 about the parliamentary acts, both of them anticipated by the canon Antonino Mongitore's *Memorie istoriche dell'antico e moderno uso del Parlamento appresso le varie Nazioni ed in particolare della sua origine in Sicilia*, that as Andrea Romano and Daniela Novarese rightly underlined, acquired a functions of memorandum, giving to the parliament the role of 'vessillo delle libertà e delle prerogative della "Nazione siciliana" di cui la Deputazione del Regno assurgeva ad estremo difensore',[45] in clear opposition to the concept of royal supremacy expressed by the bourbon monarchy.

4. *In conclusion*

The initial results of an analysis about the archives documentation and the sources collected in the volume *Ordinazioni e regolamenti della Deputazione del Regno di Sicilia* give us the idea of a body which, during its centuries-old existence dated back to 1567, had important prerogatives. These prerogatives identified it as permanent parliamentary representative, magistrature having jurisdiction, and guardian of the privileges of the kingdom.

A sort of ancient regime constitutional magistrature which the new order defined by the *charta* of 1812 gave no role.

Indeed, from 1st September 1813, according to what it is possible to read in the §. 2 of the third chapter of the part dedicated to the executive power and royal *placet*,[46] the *Deputazione del Regno*, that was necessary no longer after the abolition of the contribution system based on *donativi*, stopped to have its functions and so, from now on the king, through the Minister and the financial council, in short the

executive body, had 'l'amministrazione della rendita Nazionale'.[47]

Only during the new constitutional period occurred in Sicily in 1848,[48] a project presented by the Peer Chamber tried to restore, although with different tasks and functions, *Deputazione del Regno* invane.[49]

Notes

[1] You can read the text, with some changing and an appendix, also in Italian: V. Calabrò, 'Politiche di attuazione delle delibere parlamentari: i compiti della Deputazione del Regno di Sicilia (1567-1812)', *Atti della Accademia Peloritana dei Pericolanti. Classe di Scienze Giuridiche, Economiche e Politiche*, in printing.

[2] In the specific instance you can refer to G. Giarrizzo's, D. Novarese's, A. Romano's and V. Sciuti Russi's works about Sicilian parliament. On this subject see, for example, *I parlamenti di Sicilia. Atti del Convegno. Catania 23-24 March 1984* (Catania, 1984); V. Sciuti Russi, 'Costituzionalismo siciliano e centralismo piemontese in conflitto: i Parlamenti del regno di Sicilia e le "Memorie istoriche" di Antonino Mongitore (1717)', in *Assemblee di stati e istituzioni rappresentative nella storia del pensiero politico moderno. Secoli XV-XX* (Rimini, 1984), pp. 331-344; Id., 'L'idea pattizia del potere: il viceré duca di Osuna e il parlamento del 1612', in A. Romano (ed.), *"De curia semel in anno facienda". L'esperienza parlamentare siciliana nel contesto europeo. Atti del Convegno internazionale di studi. Palermo 4-6 febbraio 1999* (Milano, 2002), pp. 73-90; D. Novarese, 'Introduzione' to *Parlamenti generali ordinarij e straordinarij celebrati nel Regno di Sicilia dal 1494 sino al 1658*, anastatic reprint of the edition of Palermo 1717, edited by A. Romano (Soveria Mannelli, 2001), pp. XIX-XLIX; D. Novarese and A. Romano, 'Introduzione' to *Parlamenti Generali del Regno di Sicilia dall'anno 1446 sino al 1748*, anastatic reprint of the edition of Palermo 1749, edited by D. Novarese, A. Romano, C. Torrisi (Messina, 2002), pp. XIII-XXXII; D. Novarese and A. Romano, 'Introduzione' to *Parlamenti generali del Regno di Sicilia. Aggiunte ai Parlamenti ordinarij e straordinarij*, anastatic reprint of several pamphlets issued in Palermo from 1750 to 1810, edited by D. Novarese, A. Romano, C. Torrisi (Messina, 2003), pp. XIII-XXI.

[3] G. Scichilone, 'Origine e ordinamento della Deputazione del Regno di Sicilia', *Archivio Storico per la Sicilia Orientale* 4 serie, 4 (1951), pp. 83-114. You can also refer to C. Calisse, *Storia del parlamento in Sicilia dalla fondazione alla caduta della monarchia* (Torino, 1887), pp. 189-211; L. Genuardi, *Parlamento siciliano* (Bologna, 1924), pp. CXCIX-CCXIV; A. Baviera Albanese, *Diritto pubblico e istituzioni amministrative in Sicilia. Le fonti* (Roma, 1981), pp. 102-4; V. Calabrò, 'Introduzione' to *Ordinazioni e regolamenti della Deputazione del Regno di Sicilia*, anastatic reprint of the edition of Palermo 1782, edited by A. Romano (Messina, 2005), pp. VII-XXIX; Ead., 'Note sulla Deputazione del Regno di Sicilia', *Atti della Accademia Peloritana dei Pericolanti. Classe di Scienze Giuridiche, Economiche e Politiche* 72 (2003, but 2006), pp. 37-78.

[4] The note is issued in Calabrò, 'Note sulla Deputazione', pp. 70-78.

[5] Ibid., p. 75.

[6] About the meaning of the expression 'nazione siciliana' refer to M.A. Cocchiara, 'Nazione e Stato nella giuspubblicistica siciliana del primo Ottocento', in A. De Benedictis (ed.), *Costruire lo Stato, costruire la storia* (Bologna, 2003), pp. 59-101 that, with some changing and the title 'Sul concetto di nazione e Stato. Alcune posizioni della giuspubblicistica siciliana di primo Ottocento', you can also read in *Atti della Accademia Peloritana dei Pericolanti. Classe di Scienze Giuridiche, Economiche e Politiche* 69 (2003), pp. 73-119; Andrea Romano, 'Fra polemiche parlamentari e politiche editoriali: la costruzione politica della nazione siciliana tra Sette e Ottocento', paper presented during the conference *Tra nazione e nazioni. Le identità politiche in Italia tra Sette e Ottocento*, Napoli, 13-14 November 2009.

[7] Calabrò, 'Note sulla Deputazione', p. 73.

[8] Ibid., p. 74.

[9] On this subject, see what L. Boglino, *I manoscritti della Biblioteca comunale di Palermo* (Palermo, 1898), vol. II, p. 10, wrote.

[10] About the events linked to the birth of the Sicilian constitution of 1812, see E. Pelleriti, *1812-1848. La Sicilia fra due costituzioni* (Milano, 2000), pp. IX-LVI.

[11] On this subject refer to A. Romano, 'Introduzione' to *Capitula Regni Siciliae*, anastatic reprint of the edition of Palermo 1741, edited by A. Romano (Soveria Mannelli, 1999), vol. I, pp. xv ss. About *capitula Regni* and the other sources of the Sicilian law see C. Giardina, 'Le fonti della legislazione siciliana nel periodo dell'autonomia', *Archivio Storico Siciliano* 1 (1935), pp. 69-93.

[12] Palermo, Town Library (= PTL), ms. Qq.F. 280, *Per l'illustrissima Deputazione del Regno*, c. 3v.

[13] On this subject, let me refer to Calabrò, 'Introduzione', pp. xiv-xvi and to Ead., 'Note sulla Deputazione', pp. 47-9.

[14] The text of the *capitula* is issued in *Capitula Regni Siciliae*, vol. I, respectively pp. 48, 499-500 and 354-5.

[15] The quotation is taken from PTL, ms. Qq.H.120, n. 25, without numeration (= w.n.).

[16] This document is in the State Archives in Palermo (= ASP), *Deputazione del Regno* (= *DR*), 282, c. 2r. These documents are collected in 5398 pieces. The note, with some changing, is issued also in Scichilone, 'Origine e ordinamento', p. 110.

[17] 'Quia una tantum omnium constituat Deputati 12 pro Deputati creandi per ipsa tria Brachia regni pro Deputationis praesentis servitiis, accordati per ipsa tria Brachia ... et omnes aliae Deputationes intelligant, et sint ipso facto extinctae' (ASP, *DR*, 282, c. 2r).

[18] *Ordinazioni e regolamenti*, ff. 1-2. The quotation is on f. 1.

[19] ASP, *DR*, 282, c. 2r.

[20] PTL, ms. Qq.F. 280, c. 8v.

[21] Cf., as regards, I. Sánchez de Movellán Torent, *La Diputació General de Catalunya. 1413-1479* (Barcelona, 2004). About the influence of the catalan law on the Sicilian public law in general and on the structure of *Deputazione* in particular, see L. Genuardi, 'La influencia del derecho español en la instituciones publicas y privadas de Sicilia', *Anuario de historia del derecho español* 4 (1927), pp. 158-224; Scichilone, 'Origine e ordinamento', pp. 104-110; A. Romano, 'Influencias aragonesas en el Derecho público del Reino de Sicilia', *Initium* 1 (1996), pp. 129-145.

[22] Cf. M. Muta, *Capitulorum Regni Siciliae incliti Regis Ioannis commentariorum* (Palermo, 1627), f. 271, n. 9.

[23] The quotation is taken from *Parlamenti generali ordinarij e straordinarij*, p. 66.

[24] On this subject, see, for example, what G. Mastrilli, *De magistratibus eorumque imperio et iurisdictione. Pars II* (Palermo, 1616), cap. 15, nn. 69-70, f. 225 and Muta, *Capitulorum Regni Siciliae*, f. 271, n. 14, wrote.

[25] Cf. *Ordinazioni e regolamenti*, f. 1.

[26] Ibid., p. 5.

[27] Ibid., ff. 274 ss.

[28] Ibid., ff. 314-5.

[29] Concerning this, refer to the session held on 31 May 1629: *Ordinazioni e regolamenti*, ff. 10-11.

[30] On this subject refer to Genuardi, *Parlamento siciliano*, p. CCI, Scichilone, *Origine e ordinamento*, pp. 93-4 and Sciuti Russi, *L'idea pattizia del potere*, pp. 78-9, nt. 11. About *Tribunale del Real Patrimonio* see A. Romano, 'Tribunali, Giudici e Sentenze nel "Regnun Siciliae" (1130-1516)', in J.H. Baker (ed.), *Judicial Records, Law Reports, and the Growth of Case Law* (Berlin, 1989), pp. 211-301, in particular pp. 251 ss.; M.A. Cocchiara, *Istituzioni giudiziarie e amministrazione della giustizia nella Sicilia borbonica* (Milano, 2003), pp. 138-142 and the annexed bibliography.

[31] Cf. *Ordinazioni e regolamenti*, ff. 302-8.

[32] Ibid., ff. 279-284.

[33] Ibid., ff. 285-291.

[34] About the *commissario*'s and *capo maestro*'s tasks, cf. *Ordinazioni e regolamenti*, ff. 299, 309-314. You can read some reports about the construction of the bridges of the kingdom between 1583 and 1586 in ASP, *DR*, 261, cc. 1r-224v.

[35] Cf. *Ordinazione sopra l'ufficio di Procuratore della Deputazione del Regno dato al Magnifico Alessandro la Torre*, dated 16 July 1582, in *Ordinazioni e regolamenti*, ff. 298-9.

[36] 'Dovendosi questa [la Deputazione] aggirare, come si è detto, anche nelli affari contenziosi purché riguardino gli amministrati donativi, occorrea talvolta doversi ventilar litiggi, e proferir sentenze, le quali aveano bisogno del voto di un Giuriperito. Ecco, quindi, la necessità di crearsi un Consultore per accoppiarlo a quella laica Magistratura. Giudicarono, dunque, proprio i Viceregnanti di crear questo Ministro destinandolo per gli affari contenziosi della Deputazione, ed ecco la origine del Consultore della Deputazione, il quale non da questa, ma dal Viceré viene eletto, e da lui comunicata esercita la giurisdizione in tutte le giudiziarie pendenze, che riguardano i Donativi' (PTL, ms. Qq.F.280, c. 33v).

[37] You can read it in *Parlamenti generali del Regno di Sicilia. Aggiunte*, p. 21.

[38] Cf. G.M. Montalto e Palermo, *Ragioni dell'Università, e Signori Baroni di Siracusa per esentarsi dalla contribuzione de' Donativi offerti nell'ultimo general Parlamento arringate nell'illustrissima Diputazione del Regno* (Palermo, 1755).

[39] Ibid., p. V.

[40] Ibid., p. 3.

[41] The document is in the library of the Department of European and Mediterranean Studies of the University of Messina, pressmark SD. MS 38, w.n.

[42] You can read it in *Ristretto del voto del caporuota consultore Simonetti per la ripartizione de' donativi di Sicilia* (Palermo, sd.), p. 173.

[43] The document is issued in *Ordinazioni e regolamenti*, f. 26.

[44] Sciuti Russi, *L'idea pattizia del potere*, p. 79, n. 11.

[45] Cf. Novarese and Romano, 'Introduzione' to *Parlamenti Generali del Regno di Sicilia*, p. xxi.

[46] 'Restano quindi suppressi la Deputazione del Regno, ed il Tribunale del Real Patrimonio con tutte le loro dipendenze. *Placet; ma d'aver luogo dal primo Settembre 1813*': the quotation is taken from *Costituzione del Regno di Sicilia stabilita dal Parlamento dell'anno 1812, settima edizione palermitana* (Palermo, 1813), anastatic reprint edited by A. Romano (Messina, 1996), tit. II (*Potere esecutivo*), cap. III, §. 2, p. 125.

[47] 'Apparterrà a S.R.M. l'amministrazione della rendita Nazionale, e de' beni di ogni sorta, per mezzo del Ministro, e del Consiglio delle Finanze, con quelle condizioni che si diranno' (ibid., tit. II, cap. III, §. 1, p. 124). While the parliament, 'colla Real Sanzione', had the task to put new taxes, modify the previous ones and manage the properties and the incomes of the state. On this subject cf. ibid., tit. I (*Potere legislativo*), cap. II, §§. 1-2, p. 15.

[48] About the events linked to the birth of the Sicilian constitution of 1848, see Pelleriti, *1812-1848*, pp. LVII-CVIII.

[49] On this object refer to A. Pampelone, *Osservazioni sul progetto riguardante la instituzione della Deputazione del Regno* (Palermo, 1848).

Valeria Ferrari

Il mancato Parlamento nel regno di Napoli nel Decennio napoleonico (1806-1815)

'La sera de' 18 maggio Murat rientrò con breve escorta in Napoli, fe' l'altra pazzia di far affiggere sulle contrate della città una costituzione capo d'opera di orgogliosa imbecillità e a dì 20 fuggì'.[1] Con queste parole, nel 1821, il marchese Orazio De Attellis, antico giacobino e poi attivo carbonaro, commentava la tardiva decisione di re Gioacchino di concedere ai suoi sudditi, dopo tante esitazioni, una carta costituzionale. Un giudizio sprezzante, quello del settario molisano (che aveva peraltro collaborato attivamente col regime dei Napoleonidi durante il Decennio francese), ma che può essere facilmente compreso se collocato nel contesto in cui esso fu elaborato, ossia subito dopo il fallimento della rivoluzione napoletana del '20-'21,[2] per aver preso parte alla quale il De Attellis era all'epoca esule in Spagna, ove, in un suo scritto appena dato alle stampe dal titolo *L'ottimestre costituzionale delle Due Sicilie,* ripercorreva con grande amarezza gli eventi che avevano segnato la vita politica del Mezzogiorno nei cruciali anni che andarono dal crollo dell'Impero napoleonico allo scoppio del moto carbonaro del 1° luglio 1820.

Durante la breve stagione costituzionale napoletana, il testo della Costituzione murattiana – così come quello di numerose altre Costituzioni italiane e straniere redatte negli anni precedenti – divenne oggetto di attenzione e di riflessione soprattutto da parte di alcune testate giornalistiche che, fiorite in gran numero in seguito all'introduzione nel regno della libertà di stampa, diedero ampio spazio e risalto al tema costituzionale[3] al fine di comparare la Costituzione di Cadice di recentissima adozione con altre Costituzioni altrove elaborate in modo da evidenziarne i meriti intrinseci, nonché la maggiore adattabilità del testo spagnolo alla realtà socio-politica del Mezzogiorno.[4] Tra i vari giornali impegnati in tale dibattito, spiccò l'*Amico della Costituzione* che, non più benevolmente del De Attellis, definiva la Costituzione murattiana 'la transazione fallace del dispotismo moribondo col popolo',[5] mentre in un libello anonimo diffuso in quel periodo a Napoli allo scopo di gettare discredito sull'allora ministro dell'Interno, Giuseppe Zurlo, in odio ai carbonari perché deciso a difendere ad ogni costo quanto ancora restava della 'monarchia amministrativa' di murattiana memoria,[6] si giungeva ad affermare: 'leggete questa costituzione e vedete qual radice hanno i principii di dispotismo nel cuore di Zurlo, autore del-

la medesima, che non si fidò di proclamarne migliore, ne anche per l'ultima tavola di naufragio del despota cui egli serviva'.[7]

Durante la stagione costituzionale napoletana del 1820-'21, pertanto, la Costituzione concessa da Murat nel 1815 finì per divenire solo uno dei numerosi bersagli delle violente critiche nei confronti dell'intero sistema di governo dei Napoleonidi,[8] colpevoli *in toto* – secondo l'opinione di molti sostenitori del governo costituzionale – di non aver saputo dare risposte concrete ed esaurienti alle legittime aspirazioni liberal-costituzionali dei sudditi napoletani. Il Murat, pertanto, era accusato non soltanto di aver proceduto troppo tardivamente, e solo per salvare un trono ormai perduto, a concedere una Costituzione vicina ai *desiderata* della nazione, ma anche di non avere, deliberatamente e ingiustificatamente, dato attuazione a quella parte della Costituzione concessa dal suo predecessore, Giuseppe Bonaparte, relativa alla convocazione di un Parlamento nazionale. Del resto, anche di questa prima Costituzione del Decennio francese – ossia lo Statuto di Baiona del 1808[9] – i periodici liberali del tempo non mancavano di sottolineare la deludente impostazione generale. L'*Amico della Costituzione*, difatti, la definiva 'una larva di libertà, come la festa de' Saturnali' e, in particolare, non risparmiava una dura requisitoria nei riguardi dell'organo rappresentativo ivi previsto, osservando che, a causa dei suoi scarsi poteri, 'la nazione non ha alcuna legittima rappresentazione e non delibera, ma propone semplicemente al sovrano'; inoltre – proseguiva il periodico – 'non la nazione, ma alcuni corpi creati dal sovrano, con una bizzarra composizione, sono ancorati col nome di rappresentanza nazionale. La rappresentazione non è data a persone rivestite della fiducia e del mandato de' cittadini, ma sono creati cinque collegj, l'interesse e lo spirito dei quali si presume che possa contenere un voto uniforme al bene e all'interesse generale'.[10]

Passiamo dunque ad analizzare in dettaglio i contenuti di questa carta costituzionale con particolare riferimento all'istituto rappresentativo. Lo Statuto di Baiona, come tutte le altre Costituzioni introdotte negli Stati satellite della Francia napoleonica, era modellato sull'esempio della Costituzione della Repubblica Italiana del 26 gennaio 1802[11] e, pertanto, al pari quest'ultima, era costituito da un testo assai breve (75 articoli appena: assai meno di quelli previsti nelle Costituzioni del triennio repubblicano, come i 421 del progetto costituzionale della Repubblica Napoletana o i 378 articoli della prima Costituzione della Repubblica Cisalpina); la religione cattolica era dichiarata religione di Stato; non vi era alcun riferimento ai diritti inalienabili dell'uomo, mentre per ciò che atteneva all'ordinamento giudiziario e all'amministrazione periferica, si rimandava a quanto già disciplinato con legge ordinaria. In effetti, l'unico ele-

mento di novità rispetto al quadro politico-istituzionale posto in essere durante il regno di Giuseppe (1806-1808) era costituito, nello Statuto di Baiona, da un Parlamento nazionale cui erano dedicati i 30 articoli del titolo VIII. Esso avrebbe dovuto essere composto da cento membri divisi in cinque sedili: del clero, della nobiltà, dei possidenti, dei dotti e dei commercianti. I rappresentanti dei primi due ceti – nobili e clero – sarebbero stati nominati a vita dal re, così come i dotti (che il dettato costituzionale identificava nei 'membri delle Università e de' tribunali, uomini di scienze o distinti pel loro merito personale, sia nelle scienze, sia nelle belle arti'), anch'essi nominati a vita dal sovrano sulla base di una triplice lista compilata dalle Accademie, dalle Università, dalla Corte di Cassazione e dai tribunali d'appello. Eletti e non cooptati sarebbero stati solo i membri degli altri due sedili – quelli dei possidenti e dei commercianti – , ma non già direttamente dai cittadini, bensì attraverso dei collegi elettorali *ad hoc*. Di questi, i collegi elettorali dei possidenti, situati in ogni distretto con popolazione superiore ai 200.000 abitanti, sarebbero stati composti da cento membri nominati a vita dal re tra i duecento proprietari del distretto che pagavano maggiori tributi; i collegi elettorali dei commercianti, invece, sarebbero stati convocati a Napoli e in altre dieci fra le più popolose città del regno. Il collegio della capitale, composto da 200 membri fra mercanti, negozianti e commercianti 'i più distinti della città di Napoli' nominati a vita dal re, avrebbe scelto da solo la metà dei membri del sedile dei commercianti, mentre gli altri 10 collegi, composti da un minimo di 20 a un massimo di 30 individui, avrebbero nominato i rimanenti 10 membri. Le modalità elettorali previste dallo Statuto di Baiona, dunque, erano un'ennesima conferma del rigido criterio censitario già introdotto dalle norme relative all'eleggibilità per le cariche amministrative periferiche e rappresentavano, di conseguenza, il definitivo riconoscimento del ruolo d'interlocutore privilegiato che il regime dei Napoleonidi aveva attribuito – una volta cancellato ogni retaggio feudale – al nuovo ceto dei 'notabili',[12] sia nobili che borghesi, ora equiparati dal comune *status* di proprietari terrieri.

Quali erano i compiti previsti dallo Statuto di Baiona per tale organo rappresentativo? Essi erano illustrati in termini piuttosto vaghi dagli articoli 27-30 del titolo VIII, in base ai quali al Parlamento non era riconosciuta alcuna capacità propositiva, dovendo esso limitarsi a svolgere una mera funzione deliberativa sui progetti di legge discussi dal Consiglio di Stato; a quest'ultimo, viceversa, lo Statuto di Baiona riconosceva tutte le importanti attribuzioni già conferitegli dal legislatore fin dagli esordi del nuovo regime, tali da fare di tale organo – e non già dell'istituto rappresentativo – la ve-

ra chiave di volta dell'intero apparato politico-istituzionale posto in essere dai Napoleonidi. Inoltre, non per tutte le leggi era esplicitamente prevista l'approvazione del Parlamento, bensì soltanto per 'la ripartizione delle contribuzioni tra le province, i cambiamenti da farsi al codice civile o al codice penale, al sistema delle imposizioni, o al sistema monetario' (art. 27), così come 'i conti d'introito e di esito delle finanze e della cassa delle rendite' (art.29).

Tuttavia, nonostante l'impegno profuso dal governo murattiano per la formazione dei collegi elettorali dei commercianti e dei possidenti,[13] regolarmente convocati nel febbraio del 1811, il Parlamento nazionale non aprì mai i battenti. I contrasti sempre più aspri e frequenti con l'Imperatore – anche in merito all'esatta interpretazione di taluni punti dello Statuto di Baiona[14] – e le lunghe assenze del sovrano a causa delle campagne di Russia e di Germania furono alcune fra le ragioni per cui la promessa convocazione del Parlamento fu continuamente rimandata e, infine, mai attuata. Ma tale ingiustificata omissione contribuì in maniera decisiva, sul finire del Decennio, ad accentuare quella crisi del consenso al regime murattiano già latente da tempo a causa di vari ed eterogenei fattori che, com'è noto, avevano favorito la nascita e la proliferazione nelle province del regno della Carboneria,[15] che pur priva, ai suoi esordi, di un programma politico condiviso dalla totalità dei suoi adepti, si caratterizzava comunque per l'unanime desiderio di costoro di un'evoluzione in senso liberal-costituzionale del regime del Murat; sentimenti che l'emanazione, nel 1812, delle Costituzioni di Sicilia e di Spagna altro non aveva fatto che corroborare ulteriormente. Difatti, nonostante i due tentativi – entrambi falliti – di sollevazione sotto la spinta della setta compiuti in Calabria Citeriore nel 1813 e, l'anno successivo, nell'Abruzzo teramano, il Murat fu ancora a lungo sordo dinanzi alle richieste di una svolta in senso liberale del suo regime. Solo *in extremis,* infatti, come ultimo, disperato tentativo di salvare un trono di fatto già perduto, il Murat, fallito il tentativo di porsi alla testa di un movimento indipendentista e unitario,[16] decise infine di apporre la propria firma su un testo costituzionale: difatti, benché la Costituzione da lui concessa recasse in calce la data 'Rimini, 30 marzo 1815' (essa fu quindi manipolata ad arte al fine di renderla contemporanea a quella del celebre 'Proclama di Rimini': espediente più tardi definito dal Colletta, nella sua *Storia del Reame di Napoli*, 'tardo e ridevole sostegno di cadente trono'),[17] essa, in realtà, non fu ultimata prima dell'inizio della seconda decade di maggio – dunque dopo la sconfitta subita da Murat ad opera degli austriaci a Tolentino – e pubblicata a Napoli soltanto il giorno 18, due giorni prima della stipulazione del trattato di Casalanza che sancì, sotto la supervisione austriaca, le condizioni della re-

staurazione borbonica nel regno meridionale. E' presumibile, pertanto, che essa sia stata scritta frettolosamente, nel giro di pochi giorni appena, e che sia stata frutto di un lavoro svolto a più mani, nel quale sia il consigliere di Stato Pierre Joseph Briot[18] – comunemente indicato come colui che introdusse la Carboneria nel Mezzogiorno – sia, più verosimilmente, il ministro dell'Interno, Giuseppe Zurlo, potrebbero aver svolto un ruolo di rilievo. Questa Costituzione – mai entrata in vigore[19] e caduta nell'oblio nel giro di pochi anni – si componeva di 188 articoli che, per il loro contenuto, segnavano una discontinuità rispetto allo Statuto di Baiona e, in generale, rispetto al costituzionalismo napoleonico nel suo complesso. Essa, infatti – riecheggiando in vari articoli il contenuto della *Charte octroyée* del giugno del 1814 – garantiva la libertà d'opinione, la libertà di stampa, l'eguaglianza fra i cittadini, l'inviolabilità della proprietà privata e aboliva il diritto di confisca.

Rispetto alla legislazione francese del Decennio, caratterizzata da un forte controllo del governo centrale sulle amministrazioni comunali, particolarmente rilevanti apparivano le novità previste dal testo costituzionale. Esso, infatti, rendeva elettiva la carica di decurione; introduceva il principio dell'elezione dei sindaci da parte dei decurionati ('secondo le antiche prammatiche ed usi del regno', come specificava l'articolo 175) e istituiva in ogni provincia un'inedita figura di funzionario, quella del procuratore sindaco, il quale, nominato dal re su una terna votata dal corpo elettorale, sarebbe stato membro aggiunto del Consiglio d'Intendenza e del Consiglio Provinciale e incaricato di vigilare sull'andamento complessivo dell'amministrazione provinciale.

Passando a esaminare i poteri riservati dal testo costituzionale al monarca, questi risultavano essere particolarmente ampi. Al sovrano, titolare del potere esecutivo, era difatti concesso in via esclusiva anche il potere di iniziativa legislativa, nonché quello di sanzione e promulgazione delle leggi.

I titoli IX e X della Costituzione erano dedicati, rispettivamente, al Senato e al Consiglio dei Notabili, i due rami del Parlamento. Il primo avrebbe dovuto essere composto da un numero indeterminato di membri, di età non inferiore ai 30 anni, nominati a vita dal re fra le persone titolate, sei delle quali almeno avrebbero dovuto essere scelte fra gli arcivescovi e i vescovi del regno. L'articolo 98 stabiliva che il Consiglio dei Notabili avrebbe dovuto comporsi di deputati delle province, delle città, del commercio, dell'Università di Napoli e delle corti d'appello del regno. Le modalità previste per l'elezione dei deputati delle province e delle città – i quali dovevano avere un'età non inferiore ai 30 anni e un censo di almeno 40 ducati annui – erano alquanto complesse e disciplinate dagli articoli 99-

112 della Costituzione. Essi sarebbero stati eletti, per cinque anni, in parte dai sindaci di ogni distretto e da un elettore nominato *ad hoc* in ogni comune e in parte attraverso un sistema di suffragio indiretto basato sull'estrazione a sorte, dalla lista degli eleggibili, di 60 elettori incaricati di eleggere un deputato, con delle norme peculiari per la città di Napoli, cui sarebbe spettato il diritto di nominare sei deputati. I deputati del commercio, invece, sarebbero stati eletti da un collegio di 10 negozianti nominati a vita dal re su di una doppia lista presentata dalla Camera di Commercio di Napoli (art. 116); due deputati sarebbero stati scelti dalla maggioranza assoluta dei membri dell'Università di Napoli fra i propri docenti e, infine, ogni corte d'appello avrebbe nominato un deputato al di fuori del proprio ambito.

Quali compiti erano demandati al Parlamento? Essi erano piuttosto limitati: l'articolo 134 stabiliva che 'alcuna Camera può supplicare il re di prendere in considerazione oggetti legislativi, ed amministrativi, o anche affari particolari che si riferiscono ad interessi pubblici, come il mantenimento della libertà individuale, o del diritto di proprietà, o di ogni diritto garantito dalla Costituzione e dalle leggi. Ma su tali oggetti non possono le Camere farsi tra loro alcuna comunicazione, né prendere l'iniziativa per la redazione di alcun progetto di legge o di regolamento'; mentre l'articolo 135 attribuiva alle due Camere la facoltà di ricevere delle petizioni e d'interpellare dei testimoni al fine di 'proteggere i diritti di ogni cittadino'. Nell'ambito dell'*iter* legislativo, dunque, pur non essendo qui previste – come nello Statuto di Baiona – delle esplicite limitazioni in merito alle materie da esaminare, un ruolo piuttosto marginale era riservato all'organo rappresentativo, poiché limitato, di fatto, alla mera funzione di discussione e approvazione dei progetti di legge elaborati dal sovrano che sarebbero infine entrati in vigore soltanto in seguito alla promulgazione regia.

Volendo tracciare un bilancio finale, pur essendo le due Costituzioni dei Napoleonidi accomunate da un'analoga tendenza a sminuire la funzione parlamentare a favore della prerogativa regia, mettendo a confronto i due testi sotto un'altra angolazione, la Costituzione murattiana appare alquanto differente, nella sua impostazione generale, dallo Statuto giuseppino, dal quale essa prende le distanze soprattutto in virtù della concessione di talune fondamentali libertà civili, del tutto assenti nel testo del 1808, a cominciare dalla libertà di stampa, nonché per alcune significative modifiche apportate all'amministrazione periferica, quali il ripristino del principio elettivo per le cariche comunali. Radicalmente diverso appare poi il modello parlamentare presente nei due testi: nella Costituzione murattiana, pur essendo ancora presente il criterio

censitario quale requisito per l'eleggibilità (che è anzi elemento qualificante della rappresentanza elettiva – per la quale, non a caso, si utilizza l'espressione 'Consiglio dei Notabili' – essendo quest'ultima limitata al solo ceto proprietario cui il regime dei Napoleonidi aveva già affidato il monopolio delle cariche amministrative), non vi è infatti alcun riferimento alla rappresentanza cetuale d'antico regime cui invece lo Statuto giuseppino molto concedeva non soltanto prevedendo una ripartizione dell'organo rappresentativo in cinque 'sedili' (termine, questo, utilizzato, fino alla fine dell'*ancien régime*, per indicare il tradizionale organo di rappresentanza della nobiltà napoletana), ma stabilendo altresì che due di questi fossero riservati ai nobili e al clero (peraltro distinguendosi, su tale aspetto, dalla stessa Costituzione della Repubblica Italiana del 1802 che prevedeva soltanto i collegi dei dotti, dei possidenti e dei commercianti), scelta, quest'ultima, dovuta con ogni probabilità al tentativo di ampliare quanto più possibile la base di consenso al nuovo regime tenendo conto della realtà socio-economica del Mezzogiorno e coinvolgendo anche le forze tradizionali del regno meridionale, ancora numericamente ed economicamente rilevanti. Per contro, la Costituzione murattiana, pur nella sua indubbia inutilità pratica, giacché concessa da un sovrano ormai detronizzato, non mancava di alcuni elementi di interesse: essa non soltanto rappresentava un complesso tentativo di sintesi fra le diverse anime del gruppo murattiano, ma anche un definitivo riconoscimento del ruolo preminente acquisito dal notabilato provinciale all'interno dell'apparato istituzionale del regno. Proprio in virtù di quest'ultimo aspetto, che rendeva il contenuto di tale Costituzione del tutto coerente con il principio dell''amalgama' applicato nel regno meridionale dopo il ritorno della dinastia borbonica, essa avrebbe forse potuto avere una sua utilità, se mantenuta dopo la Restaurazione, nel favorire una graduale transizione verso forme più compiute di rappresentanza. Del resto, lo stesso *Amico della Costituzione*, pur così esplicito nel denunciare i limiti e le pecche della Costituzione murattiana – cui contrapponeva di continuo la forte ispirazione democratica che pervadeva il testo costituzionale gaditano del 1812 – il 22 agosto 1820 volle 'rendere il dovuto onore a' tentativi di Costituzione fatti dal 1806 al 1815' giacché – si legge nel quotidiano – 'quelli assuefecero l'orecchio del popolo alla dolcezza del vocabolo e predisposero il suo cuore al desiderio della cosa'.[20] Dopo la Restaurazione borbonica del 1815, difatti, il desiderio di un regime costituzionale non era più un vago sogno coltivato da una ristretta *élite*, ma si era ormai trasformato in opinione salda e condivisa, patrimonio comune di una consistente parte della popolazione meridionale.

Note

[1] O. De Attellis, *L'ottimestre costituzionale delle Due Sicilie* (Barcellona, 1821), citato da A De Francesco, *Rivoluzione e Costituzioni. Saggi sul democratismo politico nell'Italia napoleonica. 1796-1821* (Napoli, 1996), p. 138. Sulle vicende biografiche e sugli scritti del De Attellis, si vedano, in particolare, N. Cortese, *Le avventure italiane e americane di un giacobino molisano: Orazio De Attellis* (Messina, 1935) e L. G. Rusich, *Un carbonaro molisano nei due mondi* (Napoli, 1982).

[2] Sulla rivoluzione napoletana del 1820-'21, cfr., fra gli altri, M. Schipa, 'Cause e importanza della rivoluzione napoletana del 1820', *Archivio Storico per le Province Napoletane* (d'ora in poi *ASPN*), XLV (1920), pp. 110-127; B. Croce, *Storia del Regno di Napoli* (Bari, 1944 [3ª edizione]); G. T. Romani, *The Neapolitain Revolution of 1820-1821* (Evanston, 1950); P. Villani, 'La rivoluzione napoletana del '20-'21 ed un recente libro americano', in *ASPN*, LXXI (1950-'51), pp. 185-194; A. Morelli, *Michele Morelli e la rivoluzione napoletana del 1820-1821* (Bologna, 1961); A. Lepre, *La rivoluzione napoletana del 1820-'21* (Roma, 1967); M. S. Corciulo, *Una rivoluzione per la Costituzione. Agli albori del Risorgimento meridionale. 1820-'21*, (Pescara, 2009).

[3] Sulla stampa periodica del nonimestre costituzionale, cfr., soprattutto, E. Taliento, *Appunti storico-bibliografici sulla stampa napoletana durante le rivoluzioni del 1799 e 1820-'21* (Bari, 1920) e M. S. Corciulo, 'La stampa "costituzionale" durante la rivoluzione napoletana del 1820-'21', in Ead., *Una rivoluzione per la Costituzione*, pp. 93-102.

[4] Sull'applicazione nel regno meridionale della Costituzione gaditana, cfr. M. S. Corciulo, 'La circolazione del modello spagnolo in Italia (1820-1821)', in Ead., *Una rivoluzione per la Costituzione*, pp. 41-59.

[5] Cfr. *Amico della Costituzione*, n. XXII, 10 agosto 1820, p. 4 citato da De Francesco, *Rivoluzione e Costituzioni*, p. 144.

[6] Sull'argomento, cfr. V. Ferrari, 'The debate on administrative decentralization during the Neapolitan revolution of 1820-21', in *Parliaments, Estates and Representation*, 28 (2008), pp. 79-86.

[7] Cfr. *Notizie su la condotta politica di Giuseppe Zurlo (*Napoli, 1820 [seconda edizione]), ora in E. Gin, *L'aquila, il giglio e il compasso. Profili di lotta politica ed associazionismo settario nelle Due Sicilie. 1806-1821 (*Mercato S. Severino (SA), 2007), pp. 185-199.

[8] Cfr., al riguardo, M. S. Corciulo, 'Le critiche al Decennio francese nella stampa costituzionale napoletana del 1820-1821', in A. De Francesco (a cura di), *Da Brumaio ai Cento Giorni. Cultura di governo e dissenso politico nell'Europa di Bonaparte* (Milano, 2007), pp. 533-542 e ora in Ead., *Una rivoluzione per la Costituzione*, pp. 25-33.

[9] Sull'argomento, cfr. G. Cassandro, 'La costituzione del regno di Napoli sotto i Napoleonidi', in Id., *Lex cum moribus. Saggi di metodo e di storia giuridica meridionale (*Bari, 1994), vol. I, pp. 704-732; F. Mastroberti, 'Lo Statuto di Baiona: una Costituzione inutile?', in *Frontiera d'Europa*, 1995, n. 2, pp. 179-261; Id., *Da Baiona a Tolentino. Costituzioni e costituzionalismo nel regno di Napoli durante il decennio napoleonico (*Taranto, 2008).

[10] Cfr. *Amico della Costituzione*, n. XXII, 10 agosto 1820, p. 4 citato da De Francesco, *Rivoluzione e Costituzioni*, p. 144.

[11] In proposito, cfr., fra gli altri, C. Zaghi, *L'Italia di Napoleone dalla Cisalpina al Regno*, in AA.VV., *Storia d'Italia* (Torino, 1986), vol. XVIII, pp. 294-308.

[12] Sul notabilato nell'Italia napoleonica, cfr. A. Saitta, 'Appunti per una ricerca sui notabili nell'Italia napoleonica', *Critica Storica*, IX (1972), n.1, pp. 53-71; C. Capra, 'Nobili, notabili, élites: dal modello francese al caso italiano', *Quaderni Storici*, XIII (1978), pp. 12-42; A. Signorelli, 'I notabili: appunti sull'uso storiografico di una categoria incerta', in L. Ponziani (a cura di), *Le Italie dei notabili. Il punto della situazione* (Napoli, 2001), pp. 19-46; M. S. Corciulo, 'Notabilato e istituzioni napoleoniche: il caso della Terra d'Otranto (1806-1815)', in *Scritti in ricordo di Armando Saitta* (Milano, 2002), pp. 279-291; S. Levati, 'Notabili ed élites nell'Italia napoleonica: acquisizio-

ni storiografiche e prospettive di ricerca', *Società e Storia*, XXVI (2003), n. 100-101, pp. 387-405.

[13] Cfr. S. Martuscelli, 'Il collegio elettorale dei possidenti e dei commercianti in Terra di Lavoro sotto Gioacchino Murat. Note sulla struttura della società', *ASPN,* IV serie, vol. XV, 1976, pp. 323-342; A. Saladino, 'I collegi elettorali dei possidenti e dei commercianti del regno di Napoli per la formazione del Parlamento Nazionale del 1811. Contributo allo studio della formazione del ceto dirigente nell'Italia meridionale', in *Atti dell'Accademia nazionale di Scienze morali e politiche*, vol. LXVIII (Napoli, 1958), pp. 169-249.

[14] Particolarmente tesi furono i rapporti fra Napoleone e Murat in seguito all'emanazione da parte del re di Napoli del decreto del 14 giugno 1811 che imponeva l'acquisizione della cittadinanza napoletana ai cittadini stranieri che occupavano impieghi civili. Sulla vicenda, cfr., fra gli altri, Mastroberti, *Da Baiona a Tolentino*.

[15] Sulle origini della Carboneria e sulla sua diffusione nel Mezzogiorno, cfr., fra gli altri, L. M. Greco, *Intorno al tentativo dei carbonari di Citeriore Calabria nel 1813* (Cosenza, 1866); R. M. Johnston, *The Napoleonic Empire in Southern Italy and the rise of secret societies* (London, 1904 [rist. anast. New York, 1973]), 2 voll.; O. Dito, *Massoneria, Carboneria ed altre società segrete nella storia del Risorgimento italiano* (Torino-Roma, 1905); B. Marcolongo, *Le origini della Carboneria e le società segrete dell'Italia meridionale dal 1810 al 1820* (Pavia, 1912 [rist. anast. Bologna, 1983]); G. Leti, *Carboneria e Massoneria nel Risorgimento italiano: saggio di critica storica* (Genova, 1925); A. Mathiez, 'L'origine franc-comtoise de la charbonnerie italienne', *Annales historiques de la Révolution française*, 1928, pp. 551-561; P. Pieri, *Le società segrete ed i moti degli anni 1820-21 e 1830-31* (Milano, 1931); A. Ottolini, *La Carboneria dalle origini ai primi tentativi insurrezionali* (Modena, 1936); R. Soriga, *Le Società segrete, l'emigrazione politica e i primi moti per l'indipendenza* (Modena, 1942); N. Cortese, 'Le prime condanne murattiane della Carboneria', *ASPN,* LXXIII (1953-'54), pp. 297-309; Id., 'Il Murat e la Carboneria napoletana nella prima metà del 1814', in *Studi storici in onore di Gioacchino Volpe* (Firenze, 1958), vol. I, pp. 209-224; T. Di Domenico, *La Carboneria meridionale* (Salerno, 1980); G. Gabrieli, *Massoneria e Carboneria nel Regno di Napoli* (Roma, 1982); E. Gin, *Sanfedisti, carbonari, magistrati del re. Il regno delle Due Sicilie tra Restaurazione e rivoluzione* (Napoli, 2003); Id., *L'aquila, il giglio e il compasso*.

[16] Su tali eventi, cfr. A. Dufurq, 'Murat et la question de l'unité italienne en 1815', in *Mélanges d'Archeologie et Histoire* (Roma, 1898), t. XVIII, pp. 315-361; F. Lemmi, 'Gioacchino Murat e le aspirazioni unitarie nel 1815', *ASPN*, XXVI (1901), f. 2, pp. 169-222; M. H. Weil, *Joachim Murat. Roi de Naples. La dernière année du règne. Mai 1814-Mai 1815* (Paris, 1909-1910), 5 voll.; O. Dito, *La campagna murattiana dell'indipendenza d'Italia* (Milano-Roma-Napoli, 1911); L. Arezio, 'Talleyrand e Murat nella Restaurazione legittimista (secondo nuovi documenti)', *Nuova Antologia*, LXV (1930), pp. 332-350; D. Spadoni, 'La conversione italiana del Murat', *Nuova Rivista Storica*, XIV (1930), f. 3, pp. 217-252; J. Tulard, *Murat ou l'éveil des nations* (Paris, 1983 [nouvelle édition corrigée et augmentée, Paris, 1999]); S. De Majo, 'Generale francese, sovrano napoletano, patriota italiano: riflessioni sul personaggio Murat', in R. De Lorenzo (a cura di), *Risorgimento Democrazia Mezzogiorno d'Italia. Studi in onore di Alfonso Scirocco* (Milano, 2003), pp. 524-538; H. Zima, *Che cosa sarebbe avvenuto se Murat avesse vinto a Tolentino?* (Tolentino (MC), 2005).

[17] P. Colletta, *Storia del reame di Napoli* (Bruxelles, 1847), vol. II, p. 118.

[18] Su costui, cfr. soprattutto J. Godechot, 'P. J. Briot et la "Carboneria" dans le Royaume de Naples', *Calabria Nobilissima*, XII (1958), pp. 1-14; F. Mallet, 'Pierre Joseph Briot, Intendant de Calabre Citérieure (7. 7. 1807 – 7. 9. 1810)', in *Atti del secondo Congresso storico calabrese* (Napoli, 1961), pp. 99-107 e F. Mastroberti, *Pierre Joseph Briot. Un giacobino tra amministrazione e politica. 1771-1827* (Napoli, 1998).

[19] Invano, infatti, i generali Colletta e Carrascosa si adoperarono affinché nel trattato di Casalanza fosse sancito che tale Costituzione sarebbe stata conservata nel regno

dopo il ritorno dei Borbone. Cfr. Lemmi, 'Gioacchino Murat e le aspirazioni unitarie', pp. 209-210.

[20] *Amico della Costituzione*, n. XXXII, 22 agosto 1820, p. 6 citato da Corciulo, 'Le critiche al Decennio francese', p. 33.

Antonio Chiavistelli

Tra identità locale e appartenenza nazionale. Costituzioni e Parlamenti nell'Italia del 1848

1. *Un moto complesso*

Indagare sul rapporto tra identità locale e appartenenza nazionale nei parlamenti degli Stati italiani del 1848 conduce necessariamente a confrontarsi con il più ampio processo di costituzionalizzazione che dalla metà degli anni '40 investì quegli Stati e al cui interno, il varo di quei parlamenti, deve considerarsi come uno degli elementi di maggiore importanza. È, infatti, solo nel quadro di tale 'movimento costituzionale' che gli ordinamenti statali della penisola, nel 1848, accolsero per la prima volta parlamenti 'moderni' sul modello offerto dal liberalismo classico in voga nei paesi europei di consolidata tradizione costituzionale.[1] Il 1848 e le costituzioni di quell'anno – pur nella consapevolezza che il processo di costituzionalizzazione non inaugurò un parallelo processo di parlamentarizzazione – pertanto risultano per il nostro discorso ineludibili elementi di confronto.

Al di là di ogni considerazione di tipo metodologico, a consigliare l'angolazione 'costituzionale' sono poi le stesse dinamiche che condussero all'emersione di un'appartenenza 'nazionale' che andava oltre quell'identità regionale che fino ad allora era stata il limite più avanzato con cui si erano confrontate le molte aspirazioni sub-regionali legate alle piccole patrie locali della penisola. È, infatti, proprio in occasione del dibattito che precede la concessione delle carte costituzionali del 1848 che emerge in piena luce come l'ideario dei gruppi dirigenti regionali impegnati in un complicato processo di ammodernamento istituzionale contemplasse sia soluzioni di tipo sovra-regionali sia anche, e forse in maniera preponderante, aspirazioni legate all'affermazione della dimensione locale. Anzi, come vedremo meglio, la scelta del 'modello' liberal-censitario elettivo e rappresentativo, comune a tutte le carte della penisola, sembra farsi strada solo nell'imminenza delle concessioni costituzionali del gennaio-marzo 1848, dopo che per mesi il dibattito interno ai vari Stati si era invece svolto attorno alla migliore forma da dare ad una 'costituzione tradizionale', storica, onde adeguarla alle nuove esigenze avanzate dall'opinione pubblica.

Identità locale e appartenenza nazionale, cioè, ancora alle prime settimane del 1848, apparivano criteri quasi perfettamente alternativi non solo per i circoli di corte impegnati a contenere le effervescenze della sfera pubblica mobilitata nella richiesta di profonde riforme

agli assetti vigenti ma anche per coloro che sul versante opposto, all'interno di quella sfera pubblica, si erano imposti come autentici *opinion leader*.

Il trapasso alla nuova forma di Stato, originato dalla concessione costituzionale apriva ovunque una stagione in cui, anche e soprattutto per dare concreta attuazione alle istituzioni parlamentari – tra le più importanti del moderno sistema costituzional-rappresentativo ottocentesco –, quel dibattito sui modelli 'stranieri' o indigeni si incentrava proprio sui principi di identità locale e appartenenza nazionale; intesi entrambi come principi-cardine per inverare quella rappresentanza 'centrale' che pur con aspirazioni diverse – corti e sudditi, governanti e governati – vedevano al vertice delle nuove istituzioni. La vicenda quarantottesca offre quindi numerosi spunti d'interesse e si presta a una riflessione sul significato che assumeva il tema della riforma dello Stato e sulla percezione di questo come espressione di una comunità di soggetti uniti da un comune spirito di appartenenza.

In tutti gli Stati della penisola, infatti, una messe significativa di pubblicazioni testimonia l'interesse che quel problema suscitava nella nascente opinione pubblica. E, allora, una ricognizione all'interno del 'discorso' che a partire da quella pubblicistica prese forma, ci pare possa rivelarsi di una qualche utilità a ricostruire l'immaginario 'istituzionale' del pubblico allora mobilitato. In particolare, l'osservazione ravvicinata di quel materiale consente di identificare diversi 'modelli'[2] di Stato (e di rappresentanza) circolanti all'interno della nascente opinione pubblica.[3]

2. *Modelli e forme di rappresentanza*

Ebbene, un primo 'modello' che si afferma nel 'discorso' della Restaurazione, è quello che possiamo definire *cetual-municipale* che trovava proprio nel recupero delle antiche libertà municipali e locali il principale elemento caratterizzante.[4] Strettamente collegato, e da quello derivato, risulta il modello del *municipalismo nazionale* che attingeva ancora alla forte propensione per il livello municipale, nondimeno, rispetto al precedente, conteneva una maggiore ricaduta nazionale, accompagnandosi, infatti a soluzioni che, partendo da virtuose costituzioni municipali, proponevano una sorta di parlamento confederale[5] che desse riconoscimento anche all'appartenenza nazionale. Un altro modello che circolava almeno dagli anni '30 dell'Ottocento è quello *democratico-repubblicano* con una rappresentanza nazionale elettiva a suffragio universale, nella sua declinazione italiana legato alle intuizioni di Giuseppe Mazzini.[6] E, come è ovvio troviamo anche – e non potrebbe essere altrimenti visto che sarà poi quello universalmente seguito in tutti gli Stati della penisola –, un modello che possiamo definire *censitario-liberale* e che, derivato dall'archetipo libera-

le classico, con l'approdo ad una rappresentanza elettiva e individuale proponeva il definitivo abbandono delle forme a base municipale e delle rappresentanze variamente corporate.

Il modello censitario-liberale offriva pieno riconoscimento al singolo individuo che, per il tramite del diritto elettorale, lasciava lo *status* di suddito per acquisire quello ben più gratificante di cittadino. Lo Stato 'censitario-liberale', dunque, secondo i suoi sostenitori, tra i quali dalla fine del 1847 il conte Cavour,[7] non era più il contenitore di assemblee variamente rappresentative dei diversi livelli territoriali e/o cetuali (come nelle riflessioni dei sostenitori dei primi due modelli) bensì il regolato insieme di organi costituzionalmente definiti, intestatari dei tre poteri (legislativo, esecutivo e giudiziario) nel cui contesto le elezioni, acquisivano una valenza fondativa.[8] Non mancarono, poi, anche proposte ibride come quella che pare plausibile definire della *monarchia popolare*.[9] Questa, attingeva ai contenuti del modello liberale, di cui riproponeva il ruolo centrale della corona distinguendosi però per la forte connotazione popolare, quando non addirittura 'populistica',[10] a causa della quale i suoi sostenitori rivendicavano una poco probabile 'costituzione pattizia' che unisse direttamente il re e il popolo lasciando proprio il parlamento in una non ben definita zona d'ombra.

3. *Dal locale al nazionale: l'approdo alle costituzioni 'liberali'*

Pur nella grande varietà di proposte che circolavano all'interno della sfera pubblica risulta in pieno giorno che i due principali riferimenti ideali del discorso sui parlamenti erano costituiti appunto dalla dimensione locale e da quella nazionale. La prima, rappresentata dal modello che abbiamo definito cetual-municipale, in particolare sembrava – almeno fino alla seconda metà del 1847 – sedurre ampi segmenti dell'opinione pubblica e inclinava nella sua versione aggiornata, verso una struttura gerarchica di rappresentanze territoriali ottenute 'senza elezione'[11] e basate in ultima analisi sul municipio.[12]

Agli inizi del 1848, insomma, – va sottolineato con forza – la dimensione locale appariva ancora alla base di ogni riflessione sulla riforma dello Stato e l'idea di una costituzione non era pienamente percepita nei suoi valori 'costitutivi' della nazione bensì come strumento per razionalizzare le strutture frastagliate e irregolari delle monarchie regionali.[13] La monarchia inglese, quella francese nella versione più aggiornata dal regime di luglio e la carta belga del 1831, apparivano ancora agli occhi dei 'costituenti' della penisola, non tanto dei modelli ai quali ispirarsi per rifondare lo Stato, quanto soprattutto degli esempi evocativi di una razionalità interna che si pensava di imitare nelle rispettive patrie seguendo una via indigena.[14] Ascoltiamo allora qualche voce di questo coro: *La Lega italiana* di Genova agli inizi del 1848 notava infatti che 'volendo creare una legge che componga in modo vera-

mente acconcio e durevole la forma governativa di uno Stato, la prima cosa si è di fondarla sopra basi schiettamente nazionali'[15] e 'non […] imitare le costituzioni straniere'.[16] Analogamente Augusto Aglebert, animatore del bolognese *Il Felsineo* sosteneva: 'confessiamo chiaramente che alla ricostituzione dei Governi italiani [vorremmo] […] un ideale di Costituzione diverso da quella Francese'.[17] Anche da Napoli si osservava che 'l'esempio, com'era sempre stato di tutte le opere davvero straordinarie [era] già nato in Roma con i liberi municipi [...] modello per lo stato più bello e maestoso, per lo stato italiano; al quale gli altri stati costituzionali [dovevano] uniformarsi'.[18]

Ma se questo – in estrema sintesi – era verosimilmente il panorama dell'immaginario costituzionale della penisola agli inizi del 1848, appare di grande interesse notare come proprio in un brevissimo arco di tempo, nei giorni compresi tra la fine di gennaio e la metà del febbraio 1848, sia nelle prospettive dei governanti sia nelle aspettative dei sudditi mobilitati il discorso sulla riforma dello Stato abbia cambiato repentinamente direzione. L'idea 'premoderna' di una rappresentanza a base territoriale e locale veniva infatti definitivamente abbandonata a favore di progetti redatti in tutta fretta ispirati a quella modellistica europea fino a pochi giorni prima considerata solo un generico riferimento culturale. Tale svolta, che come vedremo, presentava nei vari Stati, oltre che tratti propri, anche tratti comuni, permette comunque di osservare da un'ottica inedita alcuni caratteri delle mentalità collettive coinvolte da questo radicale passaggio allo Stato moderno.[19]

Un esame delle tappe fondamentali che nei vari Stati italiani segnano il passaggio alla nuova forma di Stato permette di valutare specificatamente il carattere 'allogeno' delle carte concesse e di cogliere da vicino la rapidità dei tempi con cui si consumò tale svolta così decisiva per tutto il processo di costituzionalizzazione della penisola.

Va detto poi che quel dibattito apertosi sul tema della riforma dello Stato, si prolungò oltre la stessa concessione delle costituzioni rinnovandosi attorno alle leggi elettorali che dovevano dare corpo alle generica formula di 'governo rappresentativo' contenuta nelle carte concesse; dibattito quest'ultimo che ripropose l'irrisolta contrapposizione tra locale e nazionale[20] soprattutto in materia di rappresentanza e parlamento.

Le carte costituzionali della penisola – è noto – mostravano una matrice comune ricalcando abbastanza fedelmente la modellistica bicamerale francese con contaminazioni di matrice belga. Tali carte, che si presentavano per lo più come brevi e laconici documenti,[21] definivano una forma di governo costituzionale, ove il sovrano manteneva la maggior parte dei poteri ed erano lo specchio delle preoccupazioni dei 'costituenti' regionali appunto desiderosi di esaltare le prerogati-

ve dei sovrani più che di impostare completamente dei nuovi apparati statali. Il potere legislativo, in tutte le carte era riconosciuto oltre che al re, anche al parlamento che, in tutti casi osservati, comprendeva accanto ad una camera alta vitalizia e di nomina regia, una camera elettiva su base individuale e nazionale – elemento questo che, di fatto, le qualificava a livello europeo.

Sebbene le varie carte costituzionali regionali attingessero a fonti simili ed avessero strutture molto vicine tra di loro, ai fini di una più precisa lettura dell'ideario su cui riposava il processo di costituzionalizzazione nostrano ci pare non inutile osservare come in esse furono trattati alcuni degli istituti fondamentali e *in primis* quelli parlamentari.

4. *I luoghi della rappresentanza: camere e 'bicameralismi regionali'*

Una delle novità più significative era, del resto, rappresentata proprio dal parlamento. A tale riguardo si deve osservare che, seppure tutti i parlamenti regionali avessero assunto struttura bicamerale, una tale impostazione all'inizio del moto costituzionale era tutt'altro che scontata. A Napoli, infatti, dove nei gruppi liberali più sensibili era ancora forte la suggestione per 'l'ottimestre costituzionale'[22] del 1820, erano in molti a vagheggiare un parlamento monocamerale ispirato al modello spagnolo del 1812. Paolo Romano Bozzelli, che pure aveva vissuto direttamente quella breve ma intensa parentesi costituzionale, tuttavia, chiamato dal sovrano alla stesura della carta costituzionale per il regno, preferì ispirarsi ai modelli francesi fissando fin dall'articolo 1 la forma di governo 'monarchia ereditaria costituzionale sotto forme rappresentative' precisando che il potere legislativo risiedeva complessivamente nel re e nel 'Parlamento nazionale composto di due camere l'una dei pari e l'altra dei deputati' (art. 4).[23]

Lo Stato della Chiesa, dal nostro punto di vista, si presenta come un caso molto interessante per la particolare organizzazione degli ordinamenti vigenti che prevedevano già un organo collegiale, il sacro collegio, al vertice delle istituzioni e che tra gli altri aveva il delicato compito di eleggere il pontefice.[24] Il problema che si poneva riguardava la collocazione di questo istituto, strategico e influente, nell'ambito dell'ordinamento che si andava creando.[25] Le posizioni delineatesi nell'opinione pubblica furono da subito abbastanza nette e il dibattito, come sempre rilanciato dai molti interventi sui giornali e *pamphlet,* si orientò su tre posizioni diverse: la prima, che si ispirava ai modelli classici proponeva una camera alta composta di soli laici finalizzata all'espulsione degli elementi ecclesiastici. La seconda aspirando invece ad un temperamento dello spirito antiecclesiastico proponeva una camera alta con soggetti laici e porporati di nomina papale; la terza posizione rifiutava recisamente l'idea di una camera alta che, si dice-

va, aveva la sua ragion d'esistere solo nell'Inghilterra dei *Lords*. Nondimeno, la scelta dei commissari di Pio IX andò verso una soluzione atipica e che di fatto dava al parlamento pontificio un'inedita struttura a 3 camere. La carta del 14 marzo fino dall'articolo 1, infatti, stabiliva: 'il S. Collegio dei cardinali [...] è Senato', precisando che questo, nella forma del concistoro segreto, conformemente all'articolo 52 ('quando ambedue i Consigli hanno ammessa la proposta di legge, sarà questa presentata al Sommo Pontefice e proposta nel Concistoro segreto. Il Pontefice udito il voto dei cardinali, dà o niega la sanzione') si poneva al di sopra delle altre due camere. Oltre a questa senatoria così peculiare furono 'istituiti due Consigli deliberanti per la formazione delle leggi, cioè l'Alto consiglio ed il Consiglio dei deputati' (art. 2). I componenti dell'Alto consiglio nominati a vita e in numero illimitato, erano scelti dal pontefice tra i cittadini cattolici, compresi in 6 categorie di fatto relative ai ceti più alti della società (artt. 19-20). Il Consiglio dei deputati si componeva invece di membri eletti in ragione di un sistema fortemente censitario che faceva di tale assemblea un ristretto organo di autorappresentazione notabiliare.[26] Anche in Piemonte e nel granducato di Toscana l'assetto da dare al parlamento fu oggetto di molte attenzioni. In entrambi gli Stati, tuttavia, mancando la spinta 'democratica' che a Napoli aveva sostenuto le posizioni a favore del monocameralismo e non sussistendo i vincoli che invece limitavano l'operato dei prelati romani, il dibattito attorno alla struttura bicamerale si svolse entro binari più tradizionali attingendo alla polemica, già da tempo in corso nella penisola, sull'opportunità dell'adozione di modelli stranieri in luogo di una 'costituzione storica'.[27] Nondimeno, in entrambi gli Stati, la decisione finale andò a favore dell'istituzione di un senato non elettivo,[28] di nomina regia e vitalizio affiancato alla camera dei deputati elettiva.

Appare poi evidente che, nella percezione non sempre consapevole di molti dei protagonisti di quei giorni, l'istituzione del parlamento bicamerale era dettata o dalla volontà di riprodurre un assetto secondo la logica del governo misto[29] o di quella del governo bilanciato[30] e di fornire un ulteriore appoggio ai sovrani che avevano 'subito' la presenza di quelle camere elettive che di certo costituivano uno degli elementi qualificanti l'intero snodo costituzionale quarantottesco.[31] E, ci pare che proprio nel dibattito sulla configurazione dei parlamenti possa rintracciarsi il nucleo vivificante lo spirito del Quarantotto costituzionale. A tale riguardo, comune a tutte queste era la determinazione della cittadinanza politica su base fortemente censitaria. Nella carta napoletana, senza fissare il numero dei deputati, si definivano agli artt. 55 e 56 i criteri per l'acquisizione dei diritti elettorali (attivi e passivi).[32] Esplicita invece la carta toscana che, all'articolo 30 stabiliva: 'il possesso, la capacità, il commercio, l'industria conferiscono al

cittadino toscano il diritto di essere elettori' rimandando per la specifica disciplina ad una futura legge elettorale.[33] Dettagliata anche la disciplina elettorale dello statuto romano: gli articoli 23-25 dichiaravano elettori i sudditi con età maggiore di 25 anni compresi in una delle 9 categorie sociali indicate, tutte delineanti gli strati medio alti della società. Lo statuto piemontese era invece estremamente laconico: l'articolo 39 si limitava ad affermare che 'la Camera elettiva [era] composta di deputati scelti dai collegi elettorali conformemente alla legge' cui rinviava; sul parlamento però già l'articolo 7 del proclama albertino dell'8 febbraio aveva anticipato che la seconda camera sarebbe stata 'elettiva sulla base del censo'. In termini di rappresentanza passiva se la carta toscana era molto esplicita precisando con l'articolo 31 che 'ogni elettore al Consiglio generale [era] eleggibile al medesimo purché abbia l'età di trenta anni compiti e possesso o dimora stabile nel distretto elettorale',[34] generica appariva invece la carta napoletana che all'articolo 57 stabiliva ancora il criterio censuale al quale aggiungeva delle categorie di capacità con l'articolo 58.[35] Lo statuto dello Stato della Chiesa, era invece piuttosto preciso prevedendo, come nel modello francese, il criterio censitario e indicando perfino l'ammontare del censo imponibile più alto che per l'elettorato attivo (3000 scudi) e della tassa diretta (100 scudi) necessari per essere eleggibili. Lo statuto piemontese, invece, anche in materia di rappresentanza passiva, rimandava alla futura legge elettorale che, pubblicata il 17 marzo successivo, si segnala per l'estrema ampiezza riconoscendo che 'chiunque [poteva] essere eletto Deputato purché in esso [concorressero] i requisiti [età maggiore di 30 anni e godimento dei diritti civili e politici] voluti dall'articolo 40 dello Statuto'[36] e dunque non richiedendo alcun requisito per essere deputati.[37]

5. *Tra locale e nazionale: la rappresentanza nelle carte del 1848*

Di un certo interesse risulta poi soffermarsi sulla regolamentazione della rappresentanza nel suo complesso, così da osservare come nelle diverse realtà regionali, veniva percepito il moderno principio della cittadinanza nazionale formalmente sancito dalle carte concesse. Si tratta, insomma, di vedere se l'instaurazione dei parlamenti sul modello liberale classico aveva portato con sé anche l'adozione del moderno concetto di rappresentanza individuale. Da questo punto di vista si rileva che se l'articolo 50 della carta napoletana affermava inequivocabilmente che 'i deputati rappresentano la nazione e non le provincie ove furono eletti' e ancora più specifica appariva la disciplina piemontese che nell'articolo 41 oltre a ricordare che 'i deputati rappresentano la nazione in generale, e non le provincie in cui furono eletti' precisava anche che 'nessun mandato imperativo può loro darsi dagli elettori'. Nel testo toscano come in quello romano, invece, non

solo mancavano simili disposizioni ma all'articolo 31 era stabilito che ogni elettore era al tempo stesso eleggibile solo e solamente se con 'possesso o dimora stabile nel distretto elettorale'. Norma questa, che lascia più di un dubbio sull'effettiva ricezione da parte dei commissari granducali del moderno principio di rappresentanza.

A ben vedere però, questo equivoco di fondo tra opzione locale e nazionale continuava ad affliggere anche gli altri Stati regionali ove lungo tutta la breve esperienza statutaria si realizzò una prassi costituzionale incerta e friabile e dove dunque i vari ceti dirigenti locali faticarono non poco a convertirsi definitivamente in élites nazionali. Anche nello Stato della Chiesa, del resto, una parte consistente dell'opinione pubblica rimpiangeva: 'se gli avvenimenti non fossero incalzati, se il moto fosse stato più lento, forse si potevano svolgere lentamente le istituzioni ideate: forse la rappresentanza nazionale [...] e limiti al potere si potevano determinare in una foggia diversa dalla forestiera, in una foggia tutta nostra';[38] precisando poi che sarebbe stato senz'altro più utile: 'l'organizzare una centralità rappresentativa politica appoggiandola sovra le rappresentanze comunali e provinciali, [e sul] municipio liberamente [...] cristianamente costituito […] che da diecinove secoli è fonte di vita e redenzione pel genere umano'.[39]

6. *Conclusioni*

Purtroppo l'assenza di una prassi di lungo periodo ci impedisce una comparazione sull'evoluzione degli assetti materiali delle costituzioni e dei parlamenti italiani.[40] Già alla metà del 1848 – come è noto – gli assetti costituzionali vennero travolti dalle ripercussioni interne delle vicende belliche nazionali cui i vari governi costituzionali, con la sola eccezione del Piemonte, si mostravano incapaci di dare risposte soddisfacenti.

Negli Stati dell'Italia centrale e meridionale è anche da tale difficoltà a percepirsi come ceti dirigenti moderni e costituzionali che derivò la crisi dell'intero movimento moderato, scavalcato dal democratismo che sul finire 'dell'anno mirabile' ebbe anche una *chance* di governo – si pensi all'esperienza della repubblica romana di Giuseppe Mazzini ed a quella toscana di Giuseppe Montanelli. Proprio all'interno di queste due esperienze durate lo spazio di pochi mesi trovò – per la prima volta – concreta applicazione il principio del suffragio universale applicato a quello della cittadinanza nazionale. Sia la costituente toscana sia quella romana videro infatti eletti soggetti dell'intera penisola e a Roma, dove l'esperienza repubblicana ebbe più certa applicazione, tali principi trovarono anche il suggello costituzionale nella carta repubblicana del luglio 1849 che all'articolo 1 riconosceva la cittadinanza a tutti gli italiani che avessero soggiornato per soli sei mesi nello Stato romano. Due esperienze, quest'ultime, sim-

boliche e che, sebbene spazzate via da una seconda restaurazione, lasciarono una traccia indelebile nell'immaginario di tutti sudditi della penisola, traccia che sarebbe tornata utile a tutti i sudditi italiani qualche anno dopo quando, nell'Italia del suffragio ristretto, prese forma il dibattito sulle nuove formule di rappresentanza e sul suffragio universale.[41]

Note

[1] Per un quadro generale cfr. A.G. Manca, W. Brauneder (a cura di), *L'istituzione parlamentare nel XIX secolo. Una prospettiva comparata* (Bologna-Berlin, 2000).

[2] Il ricorso alla categoria del 'modello' per la lettura del dibattito politico-istituzionale nell'Ottocento è stato recentemente proposto da F. Rugge, 'I "modelli costituzionali"', in F. Mazzanti Pepe (a cura di), *Culture costituzionali a confronto. Europa e Stati Uniti dall'età delle rivoluzioni all'età contemporanea* (Genova, 2005), pp. 55-60.

[3] Per una ricostruzione più ampia del 'discorso' sulla rappresentanza in Italia tra Sette ed Ottocento mi permetto di rinviare a A. Chiavistelli, 'Rappresentanza', in A.M. Banti, A. Chiavistelli, M. Meriggi, L. Mannori (a cura di), *Atlante culturale del Risorgimento. Lessico del linguaggio politico dal Settecento all'Unità,* (Roma-Bari, 2010).

[4] L'idea non era nuova e, anzi, già Vincenzo Cuoco, a partire dall'inizio dell'Ottocento, aveva proposto una serie di rappresentanze intermedie, fino a quella centrale, a partire dalla base municipale. Cfr. V. Cuoco, 'Frammenti di lettere a Vincenzio Russo', in Id., *Saggio storico sulla rivoluzione napoletana del 1799* (Firenze, 1926 [a cura di N. Cortese]), pp. 364-382.

[5] Cfr. ora L. Mannori, 'Modelli di federalismo e suggestioni americane nel costituzionalismo risorgimentale', in Mazzanti Pepe (a cura di), *Culture costituzionali a confronto*, pp. 337-378.

[6] Un primo tentativo costituzionale ispirato dalle posizioni di Giuseppe Mazzini si ebbe infatti, intorno agli anni '30, quando un gruppo di esuli stese un *Progetto* per una 'Repubblica democratica una ed indivisibile' ove l'assemblea nazionale legislativa era il risultato di un sistema elettorale basato sul suffragio universale maschile individuale ripartito su cinque gradi. Questi corrispondevano, partendo dal livello più basso, ai comizi nazionali (artt. 28-36) ai collegi parrocchiali (artt. 37-41), ai collegi comunali (artt. 42-53) ai collegi provinciali (artt. 54-60): 'Progetto di costituzione per l'Italia fatta libera ed indipendente all'anno 1835', pubblicato in 'Appendice documentaria', in M.G. Melchionni, *Uno statuto per l'Italia nella strategia rivoluzionaria degli esuli. 1831-1833* (Pisa, 1991), pp. 95-132; 99-103.

[7] In piena stagione costituzionale, egli già aveva esortato 'l'Italia centrale ad abbandonare la funesta idea d'innalzare sull'ordinamento dei Consigli comunali una consulta deliberativa'; e, proprio contro ogni ipotesi municipale ammoniva: 'se i deputati debbono essere eletti dai Consigli comunali, questi si preoccuperanno più che di qualunque altra cosa delle elezioni politiche, e quindi di mantenere i deputati nella dipendenza loro', fino a 'a stabilire il mandato imperativo, condannato, qual sistema pernicioso e funesto, da tutti i pubblicisti illuminati': C. Cavour, 'La Legge elettorale 1. Diritto politico e diritto amministrativo', in *Il Risorgimento*, [Torino], 12 febbraio 1848, n° 40. Ed anche C. Cavour, *Tutti gli scritti* (Torino, 1976 [a cura di C. Pischedda, G. Talamo]), vol. I, pp. 1091-1093.

[8] Cfr. tra gli altri P. Peverelli, *Comenti intorno allo Statuto del Regno di Sardegna* (Torino, 1849); ed anche D. Carutti, *Dei principi del governo libero e saggi politici* (Firenze, 1861). Utili i recenti L. Cedroni, La *rappresentanza politica. Teorie e modelli* (Milano, 2004), pp. 11, 37-70; G. Duso, *La rappresentanza politica. Genesi e crisi del concetto* (Milano, 2003), pp. 55-62.

[9] Per una più ampia analisi della modellistica istituzionale del primo Ottocento mi permetto di rinviare a A. Chiavistelli, *Dallo Stato alla nazione. Costituzione e sfera pubblica in Toscana dal 1814 al 1849* (Roma, 2006), pp. 181-198.

[10] Inteso con intenzioni avalutative e escludendo qualsiasi riferimento alle proposte politiche che saranno proprie del movimento populista di origine novecentesca.

[11] Così infatti teorizzava il toscano Leopoldo Galeotti, *Della riforma municipale*, pp. 58-62. Ma, cfr. anche Id., *Delle leggi e dell'amministrazione della Toscana* (Firenze, 1847).

[12] Cfr. M. Meriggi, 'Centralismo e federalismo in Italia. Le aspettative preunitarie', in O. Janz, P. Schiera, H. Siegrist (a cura di) *Centralismo e federalismo tra Otto e Novecento. Italia e Germania a confronto* (Bologna, 1997), pp. 49-63.

[13] Alcuni tra gli osservatori più avvertiti avevano del resto già da tempo sottolineato che 'comune tra le parti d'Italia [era] il vizio del municipalismo, verme antico il quale [aveva] roso le radici dell'indipendenza nazionale'. *I popoli e i governi d'Italia nel principio del 1847. Considerazioni d'un solitario* (Losanna, 1847), p. 33.

[14] Vincenzo Gioberti stesso commentava: 'le nostre riforme, i nostri statuti non sono come la belgica costituzione un effetto del movimento che portò sul trono di Francia la seconda linea dei Borboni', concludendo poi: 'non diamo retta agli sconsigliati, che vorrebbero indurci a copiare servilmente gli esempi dei Francesi; giacché facendolo non che imitare la virtù loro, ce ne scosteremmo nel modo più evidente'. V. Gioberti, *Delle condizioni presenti e future d'Italia* (Londra, 1848), pp. 52-54. Anche Antonio Rosmini ammoniva: 'Italiani! Nell'ora della vostra rigenerazione non seguite questa falsa via: non vi avvilite ad imitare [lo] straniero': A. Rosmini, *La costituzione secondo la giustizia sociale con un'appendice sull'unità d'Italia* (Milano, 1848), pp. 5-6. Questa opera messa all'indice già nel 1849, conobbe durante l'anno 1848 una notevole diffusione e venne pubblicata nei vari stati preunitari per cura di vari editori, talvolta con l'aggiunta di documenti inediti dello stesso autore.

[15] *La Lega italiana*, [Genova], n° 13, 9 febbraio 1848.

[16] *Ibidem*. Sempre il giornale genovese, commentando la concessione dello statuto fondamentale nel granducato osservava che 'in Toscana ove il sentire italiano [era] più antico [...] si voleva far argine a tanta invasione straniera. Ma il torrente [trascinava] tutti e i giornali di colà [cominciavano] a chiedere essi medesimi una costituzione sull'andare francese'. *La Lega italiana*, n° 18, 18 febbraio 1848.

[17] *Il Felsineo*, [Bologna], n° 24, 23 febbraio 1848.

[18] *Il Lucifero*, [Napoli], n° 4, 15 febbraio 1848.

[19] Efficace la ricostruzione offerta ora da P. Schiera, *Lo Stato moderno. Origini e degenerazioni* (Bologna, 2004); cfr. anche L. Blanco, 'Fra storia e storiografia. A trent'anni da "Lo Stato moderno"', *Storia Amministrazione Costituzione*, *Annale ISAP*, XVI, 2008, pp. 185-206.

[20] Esemplare di questa sovrapposizione F. Linati, *Nuova teoria del sistema rappresentativo* (Torino, 1848).

[21] Lo statuto fondamentale toscano si componeva di 83 articoli ripartiti in 9 titoli; quello del regno delle Due Sicilie comprendeva 89 articoli divisi in 8 'capi' più una clausola derogatoria e le disposizioni generali. Lo statuto albertino constava di 84 articoli suddivisi in 8 titoli, mentre lo statuto fondamentale dello stato della Chiesa contava 69 articoli ripartiti in 8 capitoli.

[22] Su tale esperienza e sugli sviluppi istituzionali del processo risorgimentale utile risulta A. De Francesco, 'Ideologie e movimenti politici', in G. Sabbatucci, V. Vidotto (a cura di), *Storia d'Italia. Le premesse dell'Unità* (Roma -Bari, 1994), pp. 229-336; ed ora M. S. Corciulo, *Una rivoluzione per la costituzione. Agli albori del Risorgimento meridionale. 1820-'21* (Teramo, 2010).

[23] La camera alta trovava qui disciplina nel 'capo' II (artt. 43-48). Era vitalizia e composta in numero illimitato da senatori, maggiori di 30 anni, scelti dal re tra 11 categorie sociali e di 'capacità' tutte delineanti gli strati più alti della società. Degna di nota la modifica apportata dalla seconda legge elettorale del 5 aprile 1848 per volontà del

ministero liberale retto da Carlo Troya e che ambiva a connotare in senso maggiormente 'rappresentativo' il parlamento introducendo la norma secondo la quale anche i senatori, pur rimanendo di nomina regia, avrebbero dovuto essere indicati (in terne) dagli stessi elettori al momento della elezione dei deputati. Tale misura ebbe però vita breve, infatti, già il 24 maggio, Ferdinando II annullava tale norma richiamando in vigore la prima legge del 29 febbraio ispirata a principi censitari più elitari.

[24] *Il Nazionale* [Napoli], n° 14, 20 marzo 1848. Sul foglio napoletano che vedeva la partecipazione di Silvio Spaventa, infatti, si notava che 'il governo Romano [teneva] piuttosto della repubblica che della monarchia, poiché la repubblica dalla monarchia differisce in ciò che nella prima il sovrano potere è esercitato da una persona morale, mentre nella seconda è esercitato da una persona fisica [...] ora nella Costituzione Romana l'autorità romana appartiene al Pontefice ed al Sacro Collegio simultaneamente' per concludere che 'la Costituzione Romana tende[va] un'insidia a se stessa in favore del potere Cardinalizio': *Ibidem*.

[25] Così il giornale dei progressisti fiorentini: 'la Roma dei Papi, che rappresentava pur dianzi il principio della nobiltà, congegnato in una strana mistura di spirituale e temporale, di divino e di umano, ha pur dovuto atteggiarsi a seconda del genio e dei bisogni del tempo' anche se in conclusione osservava anch'esso che 'onde giungere alla completa separazione d'un potere dall'altro [temporale e ecclesiastico] [...] crediamo che rimanga ancora non poco da fare'. *L'Alba* [Firenze], 21 marzo 1848, n° 176.

[26] Il foglio di Genova, commentando la carta romana riteneva 'assai pericoloso che le Camere non possano raunarsi in tempo di Sede vacante. [...] [Poiché] se questo tempo per qualsiasivoglia cagione durasse de'mesi e (che non è impossibile né sarebbe nuovo) anche degli anni, la nazione [dovrebbe] stare tanto tempo priva del suo governo rappresentativo, con manifesto pericolo d'esser nuovamente tratta a reggimento assoluto'. *La Lega italiana*, n° 44, 20 marzo 1848.

[27] Per un quadro generale sulle riflessioni relative all'istituzione di una camera alta, cfr. N. Antonetti, *Gli invalidi della costituzione. Il senato del regno 1848-1924* (Roma-Bari, 1992). Sulle tensioni sviluppatesi, in Piemonte, nei confronti di tale istituto, cfr. M. E. Lanciotti, *La riforma impossibile* (Bologna, 1993).

[28] In un confronto tra la disciplina del senato operata nello statuto toscano e in quello piemontese, *Il Lucifero* napoletano osservava che il testo albertino 'in una cosa importantissima è certamente di gran lunga superiore, nella solenne riconoscenza del merito al diritto della pubblica rappresentanza [...] imperocché laddove il toscano concede il diritto di sedere in senato oltre agli uomini di un merito straordinario [...] a qualunque professore di università, e a' principali possidenti [...] lo statuto del Piemonte ha solo concesso a' primi il diritto di senatori. Imperocché dovendo il senato costituire una ferma e serena preminenza di senno [...] questa preminenza intellettuale, ispirante fiducia ossequiosa, certamente nelle persone notevolissime per sé medesime è naturale che si ritrovi e non in chiunque abbia ricevuto, senza di quella o la distinzione dei gradi, o il favore della fortuna'. *Il Lucifero*, n° 12, 14 marzo 1848.

[29] Ossia governo, congiunto del 're, [dei] grandi e [del] popolo': C. Balbo, *Della monarchia rappresentativa in Italia* (Firenze, 1857).

[30] Per la "necessaria la istituzione di una terza potenza che si ponga moderatrice fra l'assemblea popolare ed il potere regio": L. Fiorentini, *Lo statuto spiegato al popolo con una appendice sul diritto elettorale* (Brescia, 1861[4]), p. 37.

[31] Come notavano alcuni: 'il Senato senza il Consiglio generale (i deputati) non è nulla: non è il Senato, ma il Consiglio generale che ha la vera rappresentanza del popolo o della nazione'. *La costituzione toscana spiegata al popolo* (Firenze, 1848), p. 19.

[32] Tuttavia il principio fortemente elitario preoccupava molto, infatti: 'tutti [erano] spaventati dal grido sparso che nel [...] progetto di legge elettorale il censo degli eleggibili era fissato a ducati seicento di rendita. Il che farebbe che in ciascuna provincia non trovereste venti persone capaci di rappresentare il paese, le quali sarebbero infeudate alla camera de' deputati, e questa sarebbe dello stesso colore della camera de' pari': *Il Lucifero*, n° 5, 18 febbraio 1848.

[33] Un opuscolo toscano però subito polemizzava: 'non deve aver diritto a nominare un rappresentante o ad esserlo altroché chi possiede qualcosa? Dunque il merito per il governo il merito sta tutto nel possedere qualcosa? Dunque chi nulla possiede non ha diritti? Dunque una gran parte di popolazione […] deve essere contata per nulla e si deve supporre che non abbia diritti da difendere e da tutelare?': *La costituzione. Parole al popolo* (Firenze, 1848). Per un'analisi complessiva sulla prima esperienza elettorale toscana mi permetto di rinviare a: A. Chiavistelli, 'Spirito municipale e cittadinanza nazionale: la legge elettorale toscana del 1848 alla prova', *Storia Costituzione Amministrazione*, Annale ISAP, VII, 1999, pp. 61-90.

[34] Caratteristica della quale Gino Capponi, capo carismatico dei 'costituenti' toscani, faceva motivo di vanto nella sua corrispondenza con l'amico Cesare Balbo: 'l'imbroglio di tutte le leggi elettorali sono gli avvocati delle cause perse e i medici senza malattie. Questo inconveniente può crescere tra noi, che si è fatto di tutti gli elettori eligibili; principio però ch'io tengo fermo, perché se non vi fidate di quegli elettori, dovevate farne altri, e le restrizioni alla eligibilità cadono in aristocrazia'. G. Capponi, *Lettere di Gino Capponi e di altri a lui* (Firenze, 1882[raccolte e pubblicate per cura di A. Carraresi]), vol. I, p. 378.

[35] Anche su tale argomento molto critico appariva il foglio napoletano che sottolineava una forte discriminazione a favore dei proprietari di terreni e di capitali. Cfr., *Il Lucifero*, n° 9, 3 marzo 1848.

[36] Per un quadro d'insieme sulla legislazione elettorale dal Piemonte preunitario all'Italia liberale si veda: *Le grandi leggi elettorali. 1848-1993* (Roma, 1994).

[37] A riguardo del numero dei deputati, la carta napoletana senza indicare una quota fissa, stabiliva un criterio proporzionale al numero degli abitanti risultanti dall'ultimo censimento in ragione del rapporto di 1 deputato ogni 40.000 abitanti (art. 54) che per la parte continentale nelle prime elezioni si tradusse in una camera di 164 deputati in carica per 5 anni. Nel granducato di Toscana, ove tutti gli elettori erano al tempo stesso anche eleggibili nel distretto di domicilio, i deputati erano 86 e restavano in carica per 4 anni; in seguito al motuproprio del 17 giugno che 'ai soli fini elettorali' annetteva anche le popolazioni della Garfagnana, della Lunigiana con Massa e Carrara, furono costituiti altri 7 collegi, portando così a 93 il numero complessivo dei deputati. Anche sul numero lo statuto albertino rimandava alla legge elettorale che a sua volta, all'articolo 64 rinviava ad una tabella (B) annessa al testo e indicante la ripartizione del territorio in 203 collegi uninominali. I deputati piemontesi restavano in carica 5 anni. Lo statuto romano invece fissava la durata della deputazione in 4 anni e la consistenza della camera elettiva in un numero da stabilirsi nella legge elettorale in proporzione di 1 eletto ogni 30.000 abitanti (art. 22).

[38] *Il Felsineo*, n° 21, 16 febbraio 1848.

[39] *Il Felsineo*, n° 24, 23 febbraio 1848.

[40] Per un'analisi delle complesse dinamiche tra il governo e il parlamento durante la breve esperienza costituzionale toscana si veda Chiavistelli, *Dallo Stato alla nazione*, pp. 291-358. Cfr. anche A. Chiavistelli, L. Mannori, 'The Tuscan Statute of 1848. Background and Genesis of a Constitution', in H. Dippel (ed), *Executive and Legislative Powers in the Constitution of 1848-49* (Berlin, 1999), pp. 7-33.

[41] Tra gli altri si vedano i saggi contenuti in P.L. Ballini (a cura di), *Idee di rappresentanza e sistemi elettorali in Italia tra Otto e Novecento* (Venezia, 1997).

Joseba Agirreazkuenaga, Eduardo Alonso Olea, Mikel Urquijo[1]

Representative Assemblies and Taxes. The Making of the 'Taxation Agreement' ('Concierto Económico') of the Basque Country (1839-1937)

Introduction

Taxation is the expression and the life blood of power, political power in particular, and the faithful reflection of the balance of social forces. The formation and creation of the Representative Assemblies in European countries, was closely linked to the levying of taxes.[2] 'No taxation without representation' was the slogan in the thirteen American colonies in the period 1763-1776.[3] James Otis, Boston politician expressed: 'taxation without representation is tyranny'.[4]

Taxation is connected with the creation of the modern states and of political-administrative bodies of different ranks and levels. The formation of the nation-state and the evolution of its tax system are concurrent phenomena.

From the 'Ancien Régime' to the present day, we could say that we have moved from a plural system of taxation, exclusively concerned with coercive tax collection, to single tax systems or tax systems whose scoped is reduced to the local and regional scale. These propose equity in imposition and a redistribution of income or to provide stimulation to the productive system and consumption.

The crisis of the Ancien Régime made it possible for the liberal revolution to develop in the European states, through different processes of transition. A common characteristic was the establishment of a new concept of organisation of the tax system. The disappearance of the privileged bodies made it possible for all of the citizens to become fiscal subjects and therefore tax payers. The application and spread of direct taxation on property and economic activities was to be another characteristic of the new tax system. The new social actors tried to establish their class criteria. In the early XIX century the local municipal bodies were becoming progressively more indebted.

In this context a civil war broke out in Spain (1833 – the first Carlist War), which had a special impact in the Basque Country, where the Carlists were able to consolidate a broad area under their control. The war ended in the Basque Country in 1839 with the signing of the Bergara Agreement and the mediation of British representatives. As a result of this agreement discussions were held in the Spanish Parliament about adjusting the *foral*[5] political constitution of

the Basque territories to the Spanish liberal constitution that had been in force since 1837. The result was the law of October 25th 1839 and the political and juridical principles of the Basque *foral* system in effect became constitutional in the Spanish framework. The general result of the war was the establishment of a liberal regime, as the social, legal and economic principles on which the *Ancien Régime* had been based were replaced by liberal constitutional principles. But, at the same time, in the Basque Country, a self-government power was consolidated derived from its own constitution, the *foral* constitution. The modification of the *foral* system in the light of the Spanish constitution was left pending.

It was in this context that the liberal tax reform, started by Mon and continued by Santillán, was formulated and put into effect. In '*Foral* Spain', to use the terminology of the map by Torres Villegas[6] (1852), the provinces of Navarre, Alava, Biscay and Gipuzkoa, a differentiated system of tax relations was created within the framework of the Spanish liberal state. A Jacobin state-centralism, considered in legal terms, emerged as the dominant criterion of the Spanish government. The new liberal bourgeoisie had enriched itself by acquiring disentailed properties during the civil war. The local and provincial treasuries were subordinated to the state treasury on the one hand, but, on the other, they were under the control of the reformed dominant group, formed by the land-owning aristocracy and the new agrarian bourgeoisie. Tax fraud and the concealment of wealth at the local levels were characteristics of the new system in Spain. The political and economic elites at the regional and local levels controlled the application of the new tax system. An example of this was that the new state was unable to enforce the carrying out of the land registry, which served to reveal a certain real weakness, which overlapped with its legal weakness, and with direct military intervention. There was a strengthening of the state alongside the weakness of the new Spanish civil nation that was struggling to emerge. There was no correspondence between the *de jure* situation and the *de facto* situation. Outstanding in that phase was the phenomenon of the consolidation of intermediary political bodies between the strictly local ones and the new state, such as the *Foral* Provincial Governments (*Diputaciones*) articulated from the provincial General Assemblies (*Juntas Generales*).

On the other hand, the increase in the powers of the local treasuries turned out to be fictitious, since there was no growth in income as the council properties had been lost or squandered. The local treasuries were obliged to increase their incomes by taxing consumer articles and adding surcharges to state taxes.

Today, the *foral* treasuries have a fully autonomous political and juridical framework for the fiscal and financial management of the pub-

lic resources of the Basque Country. Spain is a specific case in the contemporary history of unitary states. Recently, the European Court had to issue a ruling on the contestations made by Spanish autonomous communities bordering on the Basque Country. It is the first time that a European Court in the framework of the European Union has passed judgment on the system of *foral* treasuries.[7]

The Case of the Basque Country

The most specific political and fiscal construction of the Basque Country in the transition to the liberal regime, and also in the transition from the Franco dictatorship, is its fiscal and treasury system: the *foral* treasuries.

How were the *foral*-provincial treasuries organised and strengthened in the crisis of the Ancien Régime? This is not a question dating to the liberal revolution. R. Lopez Atxurra[8] has already sketched out the emergence and evolution of a patrimonial treasury that was transformed into a taxation treasury in the XVII century. He distinguishes between the tax system established by the seignior or king, on one side, and, on the other, that constructed by the representative body of the community, the General Assembly [*Juntas Generales*]. Neither institution had a tax monopoly, instead there was a permanent concurrence and competition between different tax systems. The Catholic Church also had its own tax system within the Monarchy.

Between 1794 and 1801 the *foral* tax administration underwent considerable expansion in order to finance the debts contracted during the War of the Convention of 1793-1794.[9] The *Señorio* (Seigniory of Biscay) began to assume new functions, increasing its power and moving towards the creation of a growing system of tax monopoly, a path similar to that followed on a different scale by the nation-states that were heirs to the absolute monarchies. The *Fuero* of Biscay, 1527 (Title 1, Law IV), limited the application of the tax system of Castile. The seignior, the king, had his own incomes and the community likewise provided itself with its own system. Thus on the threshold of the liberal revolution, within the constellation and concurrence of treasuries and tax powers (Crown, Church, the Consulate of Bilbao, local bodies, guilds and professional associations…), a treasury was consolidated that was linked to, and directed by, the General Assembly of Biscay.

During the XIX century, solid treasuries were consolidated Biscay, Gipuzkoa, Alava and Navarre;[10] these treasuries occupied an intermediate position between the central state and the municipalities. The existence of a tax system dependent on the General Assembly, that is, the political community founded on municipal representation, was what initiated and enabled the survival, consolidation and ex-

pansion of the provincial treasury, called the *foral* treasury. This made possible the formation of a *foral public* administration, which, in parallel with the Spanish state system, increased its influence during the XIX century.

As J. Fontana has indicated[11] it seems necessary to abandon that historical viewpoint codified by diligent civil servants and bureaucrats, according to which the guarantee of equality, solidarity and social progress was closely linked to the process of bureaucratic centralisation and state policy. Higher taxes does not necessarily signify modernisation of the state, unless the nature and repercussions of public spending are considered in detail. Concepts such as modernisation and progress must be made operational with new analytical categories, such as income distribution, fiscal pressure, progressive taxation, contribution to economic, social and cultural growth, social services, etc.

From this perspective, the *foral* treasuries can be analysed in their relationship and articulation with the new treasury of the liberal state. But also, as systems that contributed to the construction of substate projects within the liberal state. It is thus worth measuring the social and economic efficacy of a practically sovereign *foral* treasury, in the framework of loyalty to the new liberal Spain, that is, the formula contained in the theory of 'agreements' must be updated. In parallel, foral politics functioned as a meeting point for recomposing Basque society in the middle of the XIX century, following the liberal/carlist political division.

In spite of his enthusiasm for state uniformity, Cánovas del Castillo (President of the Spanish Government in 1876, the final year of the Carlist civil war) finally agreed to an Agreement [*Concierto*] or economic-treasury pact, because the state, which was inspired by *Jacobinism*, had a weak and alien presence in the Basque Country in 1877-78, apart from its brute coercive strength. However, amongst the Basque political elite, the legitimacy of Spain as a nation was conceived within the framework of a multi-state vision of the Monarchy. F. Sagarminaga and other leaders frequently appealed to the examples of the Austro-Hungarian Empire, the Swiss Confederation or the Scandinavian dual monarchy and the Monarchy of the United Kingdom.[12]

Dissolution of the Representative Assemblies and the 'Economic Agreement' (1877-1937)

While the abolition of the *fueros* has always been dated to July 21st 1876, with the introduction of the obligation of the Basque provinces to contribute to the national undertaking in terms of men (levies) and money (taxes), in reality the disappearance of the Representative Assemblies and the *foral* Provincial Councils did not come into effect un-

til 1877. The Foral Council of Biscay was dissolved on May 5th 1877 and replaced by an interim Provincial Deputation, appointed by the Civil Governor and made up of personages with a long experience in the *foral* administration and who were, of course, in favour of reaching an understanding with Cánovas on the application of the law of July 21st 1876. The agreement culminated in 1878 with the coming into effect in the Basque provinces of the general 'Economic Agreement [*Concierto Economico*]' or Tax Agreement.

Economic Agreement. Definition and Evolution (1878-1937)

The President Canovas del Castillo would permit a continuation of the *foral* administrative system for self-government but with the novelties of military service and the payment of taxes. Such an agreement had been sought since April 1876, but without success due to the determined opposition of the *intrasigents* in Biscay. But finally, on May 5th 1877, the *foral* Council of Biscay was definitively dissolved by Cánovas and later, in November of 1877 the *foral* Councils of Gipuzkoa and Alava followed the same path. But it was necessary an agreement to incorporate the Basque provinces into the general 'Economic framework' or Agreement of Spain. This expression from the introduction to the Royal Decree of February 28th 1878 gained wide acceptance, and, from the early 1880s onwards, the new specific system of economic-fiscal relationship between the new Basque Provincial Councils and the State was known as the Administrative Economic Agreement or, in short, the Economic Agreement.

The Economic Agreement is defined as a government arrangement – it did not acquire a rank higher than that of Royal Decree – that established an annual quantity, the quota [*cupo*], that each Basque *foral* Provincial Council would have to pay to the Treasury Ministry equivalent in value to certain taxes (the so-called negotiated taxes), whose collection the state renounced. The Provincial Councils would meet these sums with resources proceeding from the tax mechanisms or their own incomes, with no obligatory relation to the negotiated taxes; the only limit was the international agreements (from 1906 onwards) and, logically, they could not created new taxes. The generic agreement had a variable duration, from eight years in 1878 to twenty-five years in 1926.

The Provincial Councils had no obligation to obtain money from the negotiated taxes, hence they did not become mere delegates or subrogates of the Ministry. But they were responsible for paying the annual quota from their own incomes. They were free to collect, or not to collect, the negotiated taxes, and if they did so it was also up to them to apply tariffs at their discretion. Each Provincial Council opted for its own model of funding (within a general framework common to the

Basque Country), which not only separated it from the Treasury Ministry, but also from the other two Provincial Councils. Agreements on tax coordination amongst the three Provincial Councils, or even with Navarre, would have to wait until the 1920s.

On the other hand, the Economic Agreement did not only contain agreements of a fiscal nature; it also respected the economic and administrative attributes that the Provincial Councils 'had been exercising'. Such attributes were never established, which was both an advantage and a problem. The problem: there was no legal text to consult in case of doubts or disputes between different spheres of the administration. The advantage: it could always be adduced that some power had been exercised by the Provincial Council or by a Municipal Council since the distant past. Thus there were fiscal and administrative conflicts.

The renewals of the Economic Agreement, which differentiated it from the Agreement of Navarre [*Convenio*], had two origins. In some cases due to the expiry of a pre-established economic agreement, such was the case with the renewals of 1887, 1906 and 1926, or else due to changes established in the fiscal regulations of the state (1894). On some occasions there were partial modifications – without substantially altering the content of the Agreement except the quota (1898, 1900) – either due to changes in the regulations (1898-1900-1904) or to the simple programmed increase of the quota between one agreement and another (1916). The increase in the quantities agreed on, the quota, often resulted in total or partial variations in the negotiated taxes. For example in 1900, with Villaverde's reform, the Industrial Contribution tariffs were transferred to the new Utilities tax, in such a way that the quotas had to be altered to include these tariffs, and to include other tariffs contained in the new tax. Thus, to the extent that partial changes or renewals occurred, there was an increase in the number of agreed taxes, as well as in the figures themselves

Different considerations must be made with respect to the quantities of the quotas. In the first place, there was no absolute correspondence between the real potential for tax collection and the quotas. The calculations, when these were made (1878 or 1887), were always approximate ones, because the usual practice was to adjust increases in the taxes according to liquid (cash) income, which is what was really negotiated.[13]

The quantity finally paid every three months by each Provincial Council to its respective Treasury delegation followed a calculated theoretical quota minus certain discounts – another basic element distinguishing the Economic Agreement from the Navarran Agreement – based on the expenditure of the Provincial Councils on their economic and administrative functions, an expenditure that in the

rest of the country fell to the state. Such were the expenditure on building and maintaining roads, maintaining the respective provincial police forces (*Miqueletes*, *Forales* and *Miñones*), besides the discounts for the costs of tax-collecting. These discounts, frozen from 1887 onwards, meant that the quantities effectively paid were less than those appearing in the Royal Decrees renewing the Economic Agreement. Between 1878 and 1881, the sums paid by the Provincial Councils to maintain the Church and clergy of their respective provinces were added, so that in reality the Provincial Council of Biscay paid the central treasury a little over 300,000 pesetas annually. Compared with the figure of the theoretical quota of over one million, the difference was considerable. However, with the freezing of the discounts from 1887 onwards, and the increase in the quotas in the different renewals, the former represented an increasingly smaller saving.

The Economic Agreement had a direct administrative result. This was an administrative autonomy directly linked to economic autonomy. The possibility of setting the negotiated taxes and new indirect taxes on consumption, enabled the Provincial Councils to have their own income, collected by themselves or by the Municipal Councils. They used this income to cover their own expenditure, which involved not only the quotas but also their own running costs and the services they had to fund (roads, schools, police, hospitals, etc.). In short, although the use of the prerogative attributes afforded by the Economic Agreement could be the subject of argument amongst different political parties or areas of social sensibility (municipal control or a high proportion of indirect taxation), it is evident that the system in itself, once its potentiality and permanence from the 1880s onwards had been demonstrated, enjoyed a broad consensus in the provinces.

With the Civil War, (1936-1939) and the alignment of the politicians of the provinces of Biscay and Gipuzkoa in the republican camp, the Provincial Councils continued their work of tax collection while the new Basque Government concentrated more on the field of political economy (currency, prices, etc.).

After the fall of Bilbao, in June 1937, the Government of general Franco repealed the Economic Agreement and built a rigid centralised state. The justification was bad use made of the Economic Agreement and that Biscay and Gipuzkoa had opposed Franco, 'thus responding to that exceptional generosity with treason' (Decree-Law of June 23rd 1937. B.O.E. 24th June 1937). Alava – and Navarre – continued with their system, although from 1940 onwards with an increasing proximity to the general Treasury regulations.

Besides the loss of power with respect to its treasury, the abolition of the Economic Agreement also brought for the Provincial Council of

Biscay the loss of its prerogative attributes, roads (652 km of the 1,182.23 km it managed), etc. In another regulation, dictated by the general in command of the Army of the North, the provincial police forces of Biscay (*Miñones*) and Gipuzkoa (*Miqueletes*) were dissolved for their collaboration with the republican side.

Notes

[1] University of the Basque Country. Centro de documentación del Concierto Económico y las Haciendas Forales. http://www.ehu.es/ituna

[2] M. Herb, 'Taxation and representation', *Studies in Comparative International Development (SCID)* New York Volume 38, Number 3 / September, 2003, pp. 3-31.

[3] W. S. Carpenter, 'Taxation Without Representation' *Dictionary of American History*, Volume 7 (1976); F. H. M. Grapperhaus *Taxes, Liberty and Property. The Role of Taxation in Democratization and National Unity. 511-1787* (Amsterdam, 1989).

[4] D. A. Smith,*Tax Crusaders and the Politics of Direct Democracy* (New York, 1998), pp. 21-23

[5] J. Agirreazkuenaga, 'Organisation, composition and Working ot the "Parliament" of Bizkaia during the Liberal Revolution. 1793-1876', *Parliaments, Estates & Representation.* 15, 1995, pp 101-115. J. Agirreazkuenaga, 'Memory of collective identity and Law: on the category of "Historical Constitutional Law" (Customs and Law, Rights and Law) and its administration in the Basque Country', *Textos de História. Revista da pos-graduacao em História da UNB.* 10, números 1/2, 2002, pp. 59-80.

[6] F. Torres Villegas. *Cartografía hispano-científica o sea los mapas españoles en que se representa a España bajo todas sus diferentes fases* (Madrid,1852).

[7] 'Article 87(1) EC is to be interpreted as meaning that, for the purpose of assessing whether a measure is selective, account is to be taken of the institutional, procedural and economic autonomy enjoyed by the authority adopting that measure. It is for the national court, which alone has jurisdiction to identify the national law applicable and to interpret it, as well as to apply Community law to the cases before it, to determine whether the Historical Territories and the Autonomous Community of the Basque Country have such autonomy, which, if so, would have the result that the laws adopted within the limits of the areas of competence granted to those infra-State bodies by the Spanish Constitution of 1978 and the other provisions of Spanish law are not of a selective nature within the meaning of the concept of State aid as referred to in Article 87(1)'. EC.JUDGMENT OF THE COURT (Third Chamber). 11 September 2008. Case C-428/06 to C-434/06. Official Journal of the European Union. 2008/11/08.

[8] R. Lopez Atxurra. *La administración fiscal del Señorio de Vizcaya. 1630-1804* (Bilbao, 1999).

[9] Ibidem.

[10] Navarre was a kingdom with its own institutional structure. In 1841 it became a province with fiscal and administrative self-government with the *Ley de modificación de los Fueros de Navarra. 16.8.1841*

[11] J. Fontana, 'Modernización y progreso: Política y hacienda del Despotismo Ilustrado', in E. Fernández de Pinedo y Fernández, *Haciendas forales y Hacienda Real : homenaje a Miguel Artola y Felipe Ruiz Martín* (Bilbao, 1990), p. 113-121.

[12] J. Arrese, *Descentralización universal o el Fuero Vascongado aplicado a todas las provincias, con un exámen comparativo de las instituciones vascongadas suizas y americanas* (Madrid, 1873); F. Sagarminaga. *El gobierno y el régimen foral del Señorío de Vizcaya desde el reinado de Felipe II hasta la mayor edad de Doña Isabel II* (Bilbao, 1891-1892), 8 vols.

[13] On the negotiations of the Economic Agreement see E.J. Alonso Olea, *El Concierto Económico (1878-1937). Orígenes y formación de un Derecho histórico* (Oñate, 1995).

Elena Roselló Chérigny

La redacción del artículo 2º del R.D. desamortizador de Mendizábal: ¿una 'excepción a la regla' o un problema de efectividad del Derecho?[1]

No se puede dar comienzo al presente artículo sin antes precisar que un estudio en profundidad en referencia al texto del artículo 2º del Real Decreto desamortizador de Mendizábal y a cuantas circunstancias lo abrazan, es inexistente.

La lectura de unos Acuerdos tomados por el Ayuntamiento de Barcelona pocos meses antes de la promulgación del Decreto Mendizábal, en los que se resolvía pedir al Estado, alegando 'interés general' la cesión de una serie de edificios y solares que pertenecieron a antiguos conventos quemados o desalojados, me condujo a plantear la hipótesis de que la avalancha de peticiones que pudo recibir el Gobierno tras la quema de conventos que se produjo en 1835 en toda la Península, pudo tener la suficiente influencia como para que se incluyera en la ley una norma de contenido excepcional como el art. 2º.

Y aunque la conclusión final a la que se llega, obedece a un sinfín de deducciones llevadas a cabo a partir del análisis de todo un conjunto de situaciones y de problemas planteados a partir de un estudio concreto de caso (el de Barcelona), a las que el derecho fue dando soluciones según las ideas y las normas disponibles en cada momento concreto, la conclusión que se obtiene, sólo se entiende sí se sitúa en un momento histórico en el que todavía no están doctrinal y legalmente determinados numerosos conceptos jurídicos, que hoy no plantearían el más mínimo problema de comprensión.

La 'bullanga' del 25 de Julio de 1835 tuvo como resultado la quema de la mayoría de conventos ubicados en la Rambla de Barcelona.

El 21 de febrero de 1836 apareció publicado en la 'Gaceta de Madrid' el Real Decreto desamortizador de fecha 19 del mismo mes en cuyo artículo segundo se leía lo siguiente:

> 'Se exceptúan de esta medida general los edificios que el Gobierno destine para *servicio público*, o para...
>
> El mismo Gobierno publicará la lista de los edificios que con estos objetos deban quedar excluidos de la venta pública'.[2]

La medida general que refiere el art. 2 es la del art. 1 que declara 'en venta todos los bienes raíces de cualquier clase, que hubiesen pertenecido a las comunidades y corporaciones religiosas *extinguidas*, y los demás [bienes] que hayan sido *adjudicados* a la nación por cual-

quier título o motivo, y también todos los que en adelante lo fueren desde el acto de su adjudicación'.

Antes de responder la pregunta que da titulo a esta comunicación, es obligado analizar el significado de una expresión, que aunque vaga, podemos afirmar ha hecho fortuna cual es la de 'servicio público'. No cabe duda, el artículo 2º del Real Decreto de Mendizábal excluía de la venta una serie de bienes que en un futuro iban a integrar la categoría de bienes de 'dominio público'. Pero no definía qué debía entenderse, por servicio público.

Los edificios mencionados por el art. 2º, en su mayoría conventos destruidos o ya desamortizados y no subastados y por tanto aún vacantes, fueron considerados como afectos al 'servicio público', lo que significaba que se les estaba dotando con la regla de la 'inalienabilidad' en tanto se dedicasen realmente a aquellos fines. Pero también, quizás leyendo entre líneas, cabría tener presente que, es en esos momentos, y bajo esas coyunturas, cuando se empezó a identificar el término 'servicio público' con las tareas o funciones de los diversos ramos de la Administración.

Por tanto, fue ese 'uso público' general que se pretendió dar a los 'edificios', lo que pudo determinar que los ayuntamientos lograran obtener la concesión de bienes de la 'Nación', o mejor dicho, pertenecientes a la Nación, para instalar servicios tales como hospitales, escuelas, consistorios o mercados entre otros.

Pero, ¿qué se debe entender como 'bienes de la Nación' en las alboradas del derecho Administrativo, si términos como 'dominio público', 'servicio público' e incluso 'obra pública' tienden a confundirse y aún no han logrado la sustantividad que hoy poseen? Esto es algo que de ninguna manera puede establecerse con verdadero rigor, y sólo el momento histórico ofrece la respuesta.

Por otro lado, y en relación al concepto jurídico que se baraja, los bienes de dominio público englobaban realidades de muy distinta naturaleza, lo que significa que bienes que no poseían los mismos caracteres esenciales, se hacían entrar de una forma artificial, en esa categoría de bienes a los que por razones de interés general, importaba beneficiar o salvaguardar.

Según el profesor Lalínde[3] 'el concepto es realmente confuso y además existen según manifiesta Henri Damenthon[4] tres categorías: las de dominio público natural, a disposición de todos; la artificial, por necesidades del público, y la determinada por ley, sustraída al uso público, pero que por interés superior se le hace escapar al derecho privado'.

La segunda categoría, el dominio público artificial por necesidades de las personas, es la que interesa analizar, aunque enlazando necesariamente con la tercera en tanto en cuanto pueda determinarla la

ley, y es de suponer que es la que refiere el artículo 2º del Real Decreto.

Retrocediendo de nuevo al texto del artículo 1º, es inevitable fijar la atención en tres palabras: 'extinguidas', 'adjudicados' y 'motivo' ('por cualquier titulo o motivo'). Los dos primeros refieren lo mismo: bienes que pasan a engrosar el patrimonio de la Nación, en cuanto al tercero va más allá de la desamortización exclusivamente eclesiástica. ¿Se debe entender pues, que también los edificios que menciona el artículo 2 pasan a engrosar los bienes de la Nación, es decir los excluidos de la venta? Y sí esto es así, ¿se deberían considerar estos bienes como bienes desamortizados?

Si se concibe un bien desamortizado como aquél que primero ha sido incautado, que ha pasado a engrosar el patrimonio de la Nación (legalmente o de *facto*) y que se ha vendido en pública subasta, desde luego, los edificios que refiere el artículo 2 no entran dentro de esa categoría, porque no cumplen el tercer requisito.

¿Qué llevó al Gobierno Mendizábal a legislar en tal sentido? ¿Fue el artículo 2 fruto de una discusión, de un debate, se concibió a partir de alguna legislación preexistente, o fue un parche de introducción necesaria en una ley para regular situaciones que de *facto* venían dándose?

Para responder, primero se debe retomar la cuestión ya planteada, sobre qué se entiende como "bienes de la Nación" en un momento tan convulso. Momento en que se hace imposible distinguir entre bienes patrimonio de la corona y bienes patrimonio del estado. El 25 de Abril de 1834 el Ministerio de Fomento expidió un Real Decreto mandando crear un 'Establecimiento'[5] en que *'se proporcione a los pueblos los recursos que necesiten para la ejecución de obras públicas'* ¿Deberían incluirse dentro del término *recursos* también los edificios, o mejor dicho, el Real Decreto está haciendo referencia a los bienes urbanos? Por el contenido de las demandas que llevan a cabo los Ayuntamientos, cabe responder afirmativamente.

A principios del siglo XIX y, más aún, durante el período de vigencia del Estatuto Real, se otorgaba el calificativo de 'servicio público' a las actividades más diversas. De tal forma que al hacer valer el concepto a modo de cajón de sastre, es fácil observar que tanto podían pertenecer a esta categoría la posta de correos, los ferrocarriles, la regulación sobre el agua, el derecho de paso sobre un puente o la construcción de un mercado.

Emplear el término 'servicio público' tan a la ligera, sin casi ninguna precisión técnica, trajo consigo que éste, muchas veces apareciera unido también al de 'obra pública'. Baste, para demostrarlo, la indefinida interpretación que seguro se dio al R.D. de 25 de Abril de 1834, y que tal y como se ha apuntado, indujo al consistorio barcelonés y

probablemente a muchos otros municipios a solicitar la cesión de los edificios pertenecientes a los conventos quemados o desocupados. Porque, precisamente esa interpretación ambigua, reflejaba, que en las solicitudes, se estaban identificando, no sólo 'servicios' y 'obras' públicas sino que ni tan siquiera se planteaban dudas sobre quién ostentaba el dominio sobre los bienes que demandaban, incluyéndolos todos, dentro del término '*recursos*'.

De la lectura de la norma y las solicitudes se induce al instante que las peticiones, más tarde dirigidas a la Reina, no eran más que una mera reproducción del Preámbulo de la ley. Así, por ejemplo, las ideas que resuenan en las frases …dar ocupación constante a las clases laboriosas, las cuales en algunas épocas del año suelen carecer de trabajo, viéndose expuestas a los rigores de la miseria origen también de crímenes que es justo precaver… y que aparecen en dicho Preámbulo, son prácticamente idénticas a las peticiones de los ayuntamientos …pero creciendo cada día el número de éstos que está pidiendo trabajo, y aproximándose la estación más penosa del año, es imposible ya continuar como hasta ahora y se hace absolutamente indispensable discurrir nuevos medios…, lo que en definitiva hace pensar que se trata de argumentos que intentan definir indirectamente la categoría de servicio público, basada en la idea de utilidad pública o de interés general. Y, aunque su intención no es definir ningún concepto jurídico, se observa que están fundadas en la inteligencia de que la Nación ya ha obtenido previamente el dominio sobre esos bienes.

No puede calificarse de descuido jurídico el hecho de que no aparezcan definidos estos conceptos, más bien debería atribuirse a que en aquellos momentos las ideas eran más políticas que jurídicas, de difícil aprehensión o definición legal. Es decir, se empezaban a barajar conceptos que todavía estaban en blanco y que el progreso y la voluntad de cada ley fue modulando sucesivamente.

La titularidad del dominio por parte de la Nación, no apareció reflejada en la norma hasta un año más tarde, cuando se presentó en las Cortes un proyecto de ley relativo a las adquisiciones del Estado, basado en una Orden de 20 de Octubre de 1834 relativa a las adquisiciones a nombre del Estado de bienes semovientes, muebles e inmuebles, derechos y prestaciones. En el artículo 1º de la Ley de 9 de Mayo de 1835 se decía textualmente que:

> 'Corresponden al Estado…
> Primero. Los que estuviesen vacantes y sin dueño conocido por no poseerlos individuo ni corporación alguna'.

La norma, que consideraba el dominio eminente por parte del Estado, establecía cuales eran los bienes, pero no por mor de qué procedimiento habían pasado a formar parte del Real Patrimonio. Con lo

cual, la respuesta que dio la Ley fue en cierto modo incompleta.

De los Acuerdos tomados por el Ayuntamiento de Barcelona entre los meses de Julio de 1835 y hasta la promulgación del Decreto Desamortizador del siguiente febrero, se intuye que las solicitudes de cesión de edificios pertenecientes a conventos quemados, si bien adoptaban la retórica del Preámbulo de la norma de 1834, legalmente se cimentaban, (aunque eso tampoco lo refieran los escritos en ningún momento, ya que es de destacar que curiosamente, ninguna de las demandas contiene fundamentos jurídicos), en la ley de mayo de 1835. Afirmación que se deduce de una conveniente y oportuna inserción documental obrante entre los folios 664 y 665 del Volumen correspondiente a los Acuerdos del año 1835,[6] consistente en un ejemplar de la publicación oficial de la Ley en la Gaceta de Madrid nº 142 de 22 de Mayo de 1835.

Las peticiones de cesión obrantes en los libros del Ayuntamiento barcelonés dirigidas tanto a la Reina como a otras autoridades son numerosas, y todas ellas tuvieron lugar pocos meses antes de la promulgación del Decreto Desamortizador. Así, por ejemplo, entre los meses de Agosto y Octubre de 1835 el Consistorio barcelonés tomó acuerdos en referencia a este tema en casi treinta ocasiones. Es del todo demostrativo un *Acuerdo*[7] de mediados del mes de Agosto de 1835 en el que, en relación a los conventos desocupados, y en virtud de una Instrucción expedida por el Ministerio del Interior el día 4 del mismo mes, el Ayuntamiento acordaba que 'puede hacerse cargo de los edificios y demás que resulte existente de su procedencia [procedencia, hace referencia a los conventos desocupados del clero regular]'. Así, el día 21 de Agosto, *Acuerda*[8] solicitar a S.M. el convento de Capuchinos[9] y 'otros que se consideren necesarios', y acaba la minuta argumentando que se pidan todos los conventos. De la misma forma que reiteraba la solicitud de cesión de los Capuchinos, de de Sant Joseph, de Trinitarios, de Agustinos, Dominicos, etc. etc…

Pero, ¿a qué se debía tanta repetición de unas mismas demandas? La Comisión de Arbitrios de Amortización encargada en un principio de poner en venta los efectos de los conventos, para con el producto, poder cuidar de la manutención de los religiosos, recibió, según consta en un *Acuerdo* del Ayuntamiento de 25 de Agosto, un Oficio por el que:

> '…se disponga inmediatamente que el referido Sr. Intendente en unión con el Comisionado de dichos arbitrios en esta Provincia, y de acuerdo con las Autoridades competentes se haga cargo de todos los conventos y monasterios abandonados o cerrados, y de sus bienes, rentas y demás efectos, recibiendo por inventario los que hubieren sido ocupados por el Ayuntamiento o sus Comisionados que deberán cesar en el acto,[10] para que reuniendo los productos de cuanto corresponde a las Comunidades pueda la Di-

> rección General cuidar de la manutención de sus religiosos con la decencia que S.M. desea y previniendo en su consecuencia al referido Sr. Intendente, al Ecmo. Ayuntamiento, disponga que los Comisionados nombrados por el mismo se pongan desde luego de acuerdo con las oficinas de arbitrios y amortización a fin de que a la mayor brevedad tenga puntual cumplimiento de la calendada Real Orden y que al efecto se le pasen notas de los Comisionados y de los Conventos ocupados'.[11]

En cumplimiento de la Real Orden, el Ayuntamiento decidió nombrar una 'Comisión de Conventos' el día 29 de Agosto, compuesta por tres vecinos del Barrio,[12] días más tarde, la Comisión, según consta en otro Acuerdo, procedió a la entrega de cuantos 'efectos se han salvado', a la Real Hacienda.

La inexistencia de un registro de bienes nacionales por un lado, y la existencia por el otro de infinidad de peticiones de cesión de los mismos, cursadas a la propia Nación, hacen pensar, ya no sólo en la vigencia de la Ley de 9 de Mayo de 1835, sino en su real y efectiva aplicación, y en la aceptación por parte del Ayuntamiento de la pertenencia de los edificios quemados al patrimonio nacional. Ahora bien, una cosa son las peticiones de cesión y otra las respuestas. Éstas, hoy, todavía no se han encontrado, ni en los libros del Ayuntamiento. Sin embargo, las ocupaciones se llevaron a cabo de '*facto*' y el Ayuntamiento procedió a la realización de obras para adecuar los conventos a los servicios públicos propuestos.

Estas actuaciones de *'facto*', sobre todo durante la Regencia, no fueron una excepción a la regla, sino más bien la regla general. No es casual pues que el 13 de diciembre de 1835, el embajador inglés en Madrid, escribiera a su hermano:

> '…Pero el principal error que cometéis, tú y otros extranjeros es creer que el pueblo español está esclavizado o tiranizado. No hay en Europa un pueblo tan libre. Las instituciones municipales españolas son republicanas; en ningún país existe tan verdadera igualdad. El pueblo se rige por unas cuantas costumbres antiguas, le importan poco las leyes y los decretos reales y hace más o menos lo que le apetece…'.[13]

En Junio de 1835, el conde de Toreno asumió la Presidencia del Gobierno. En Julio se produjeron una serie de conspiraciones y la famosa quema de conventos. A Toreno, se le escapaba el control de la situación política: necesitaba de Mendizábal para dar nuevos aires de popularidad a su gobierno. Durante el mismo mes de junio Mendizábal fue nombrado Ministro de Hacienda y a finales de agosto entraba en España. Poco antes de su llegada y coincidiendo con el día en que se produjo la quema de conventos en Barcelona, vio la luz un Real Decreto por el que, se suprimían los monasterios y conventos que no tuvieran doce religiosos profesos, así como los que en un futuro queda-

ran en tal situación. Esta política desamortizadora de Toreno según el profesor Alejandro Nieto[14] no obedece ni a razones preconcebidas ni a una política coherente (como sucedería luego), sino a causas meramente coyunturales. Esta política condujo a que los bienes muebles e inmuebles se vendieran inmediatamente en pública subasta sin indicar su destino final, aunque este destino fue la amortización de la Deuda Pública. Dichas medidas afectaron a 900 conventos, pero en ningún momento cabe pensar que ello supusiera un intento de extinción de las órdenes, sino simplemente un trasvase de frailes de un lugar a otro para dejar bienes vacantes. El 11 de Octubre, ya con Mendizábal en el Ministerio de Hacienda, se publicó otro R. D. que refiriendo al de 25 de Julio en su Preámbulo, expresaba textualmente en su artículo 6º lo siguiente:

> 'Los monasterios y conventos que, aunque no sean de los que deban quedar suprimidos, se hallaren cerrados en la actualidad por cualquiera causa que sea, permanecerán en el mismo estado hasta que con la debida concurrencia de las Cortes se acuerde lo que más convenga'.

Los términos en que se pronunció este artículo, hacían referencia y por tanto era de aplicación directa, a aquellos conventos que fueron incendiados. Lo que venía a legitimar de nuevo la insistencia del Ayuntamiento en la solicitud de cesiones, que por otro lado, se habían instado a partir de esa fecha.

Con tales antecedentes se llega cronológicamente a la figura de Mendizábal y a su Decreto Desamortizador, que aunque no fue ni el primero ni el último, hay que decir que si fue el decreto desamortizador por antonomasia, y aunque apareció como consecuencia de un sinfín de actuaciones anteriores, interesa, sobre todo, por su carga ideológica. Al margen de la carga ideológica, el objetivo principal de Mendizábal fue la disminución de la Deuda. Siendo la única excepción en su articulado, precisamente la del artículo 2º.

No es posible hablar de una discusión en Cortes del texto de la ley, no la hubo. El Decreto puede considerarse como un producto que brotó de una situación, pero al que le otorgó la forma de manera exclusiva un solo hombre: Mendizábal, no el Legislativo.

El 20 de diciembre de 1835 el Consejo de Ministros acordó pedir a las Cortes un 'Voto de Confianza'. El día 21 el propio Mendizábal leía a los diputados su texto. El Estatuto Real, vigente en esos momentos, había introducido un régimen parlamentario que, aunque con ciertas cautelas, porque no lo recogía así textualmente, exigía que el Gobierno a fin de conseguir y conservar el poder, contase, no sólo con el apoyo y la confianza del Monarca sino también de las Cortes. Y uno de los procedimientos para ejercer ese control parlamentario fue el de la Contestación al Discurso de la Corona. Discurso que se utilizó por las

Asambleas como medio para examinar la política del Gobierno, manifestando su aprobación o disconformidad a la misma, la cual había sido ya expuesta al inicio de la legislatura en el Discurso de la Corona.

Pero, ¿cómo fue posible que Mendizábal llevase a cabo su política desamortizadora, de qué instrumentos legales disponía? Durante la etapa de vigencia del Estatuto Real se configuraron lo que vinieron en denominarse 'delegaciones legislativas' más conocidas con el nombre de 'votos de confianza'. Para definir este fenómeno, baste reproducir las palabras de Martínez de la Rosa durante la Sesión Parlamentaria de 24 de febrero de 1835:

> 'Siempre que el Estamento, tratándose de una facultad que tiene en sí, se desprende de ella y la deposita en los agentes responsables del poder, por la confianza que les merece, éste es un voto anticipado de confianza'.[15]

El voto solicitado por Mendizábal, aunque no fue el primero, fue sin duda el que más ha trascendido. En el texto, el Ministro requería medios para acabar con la guerra civil. El propósito de esta técnica no era otro que el de obtener autorización para legislar con urgencia, en momentos en que las circunstancias políticas así lo exigían, soslayando posibles trabas parlamentarias y escapando, además, a la lentitud de los procedimientos legislativos por vía ordinaria. La peculiaridad de estas delegaciones era que obligaban a presentar en la legislatura siguiente, las medidas que se hubieran tomado pero en forma de proyectos de ley para, así, poder ser debidamente discutidos en Cortes. Esta idea, introducida por Martínez de la Rosa con el fin de ordenar Ayuntamientos y Diputaciones y acomodarlos a la nueva legalidad del Estatuto Real, fue considerada en un principio inconstitucional, pero tras las oportunas discusiones, los dos Estamentos (Próceres y Procuradores) decidieron conceder la delegación. Delegación que autorizaba al Gobierno a regular por medio de Decretos una materia que en realidad debía ser objeto de regulación legislativa. La solicitud del voto de confianza no constituyó, desde luego, sorpresa alguna a las Cámaras. Había sido anunciado en el Discurso de la Corona y aprobado en el de Contestación. El 21 de diciembre, se presentó un proyecto de ley que contenía el famoso voto de confianza, el cual, se aprobó y sancionó con fecha 16 de enero de 1836, tras largas discusiones.

El artículo 3º de esta ley configuraba una fórmula tan amplia e imprecisa que llevaba a pensar en algo más allá. En realidad, parece no distinguir entre delegación legislativa y otorgamiento de plenos poderes. Así lo manifestó el propio Martínez de la Rosa en los debates parlamentarios, cuando advertía que esa redacción investía al Gobierno de una 'dictadura administrativa',[16] o el conde de Toreno que pensaba que se estaba estableciendo una 'dictadura económica'[17] puesto que se facultaba a los Ministros para que 'hagan lo que se quiera, y en los

términos que parezca, y por tiempo bastante indefinido'. Un día más tarde, Perpiñá, resumiendo, manifestó que 'se dice en el proyecto que no hará uso del voto de éste modo ni del otro, pero no se dice cómo se hará…',[18] pero, ¿cuáles eran los términos del artículo?

> 'Se autoriza del mismo modo al Gobierno de S.M. para que pueda proporcionarse cuantos recursos y medios considere necesarios al mantenimiento y sostén de la fuerza armada y terminar dentro del más breve término posible la guerra civil. El Gobierno no podrá proporcionarse estos medios en nuevos empréstitos ni en la distracción de los bienes del Estado destinados o que en adelante se destinaren a la consolidación o amortización de la deuda pública, cuya mejora procurará asegurando la suerte de todos sus acreedores'.

Visto el transcurso de las discusiones y el resultado ¿qué interpretación se debería dar a tanta retórica congresista? Desde luego parece disfrazado, por no decir de pura hipocresía política, el discurso de los Parlamentarios. El 16 de Noviembre de 1835, ellos mismos habían aplaudido un Discurso al que luego respondieron con idénticos cumplidos y en el que se decía exactamente lo mismo que en el artículo tercero de la ley de voto de confianza y que para más redundancia había sido redactado por la misma persona, pero en definitiva, por todos es sabido el ambiente político que rodeó todo el proceso:

> 'He depositado mi confianza en los Ministros que veía honrados con la Nación. Si los representantes de la Monarquía española que rodean en este momento el Sello de mi amada Hija, los favorecen igualmente con la suya, espero que *sin nuevos empréstitos* ni *aumento de contribuciones* se hallarán recursos, no sólo para terminar la guerra de los facciosos y hacer frente a las demás obligaciones del Estado, sino también para mejorar la suerte de sus *acreedores*, así nacionales como extranjeros, y fundar sobre bases sólidas *el crédito público*'.[19]

El 16 de Enero de 1836, la Reina sancionó la ley. El 25 de Enero, y por efecto de los Reales Decretos antes citados de 25 de julio y de 11 de octubre de 1835, Mendizábal propuso otro Decreto por el que según se manifestaba en su propio Preámbulo se 'desea dar aplicación y destino útil a los edificios que han resultado vacantes por efecto de aquellas dos normas citadas'. Era la Dirección General de Rentas y Arbitrios de Amortización la que en esos momentos tenía a su cargo el destino de los edificios vacantes, sin embargo se disponía que, dichos bienes fueran puestos a disposición de una Junta (de nueva creación) compuesta por el Gobernador civil de la Provincia, del Corregidor de la Corte y de tres individuos que se nombraran en representación de los acreedores del Estado. Se facultaba a que dicha Junta pudiera proponer para su aprobación 'el destino que mejor convenga dar a cada uno de los edificios', según su capacidad y situación, así como las

obras de reforma, demolición y construcción que sean necesarias, para llegar a tener, cuarteles, hospitales, cárceles, nuevas calles, plazas, mercados, etc, es decir nuevos, o mejores 'servicios públicos'. En ningún momento se apuntaba en dicha norma el término o concepto 'servicio público' y sin embargo de nuevo aparecen confusos o mejor dicho de forma muy ambigua. La norma según su artículo 1º, parecía promulgada exclusivamente para la villa de Madrid, y sin embargo, no fue ese el ámbito de aplicación que establecieron las otras dos normas, con lo cual apareció una incongruencia legislativa.

El 19 de febrero en uso de la autorización que le concedía la Ley, Mendizábal dictó el Decreto Desamortizador. La revisión de las Actas del Consejo de Ministros no descubre deliberación alguna del mismo respecto de la redacción del articulado ya que se limitan a recoger la trascripción exacta del texto. Quizás entre dentro de la lógica que no las hubiera. Al fin y al cabo el Decreto no deja de ser una más que inevitable consecuencia de innumerables actuaciones anteriores. Por eso, encontrar una redacción tan bien destilada induce a pensar que detrás de ella existió un muy meditado proyecto, y no sólo político, social y económico, sino personal.

El objetivo de Mendizábal fue la disminución de la Deuda Pública, producir un alza en la cotización de valores y así, después poder emitir más Deuda Pública a más alto precio y de esta forma financiar la guerra y evitar la bancarrota del Estado. El dinero ya no se podía obtener por la vía de los impuestos ordinarios ni por la venta de bienes nacionales, con lo que sólo le quedaba el aval de los bienes del clero. Debiendo tener en cuenta además, que no cabían ya más empréstitos internacionales, tal y como se expresó en el Discurso de la Corona y en el artículo 3º de la Ley de voto de confianza.

¿Sustituyó la política desamortizadora la política de los empréstitos internacionales? Se podría considerar. Aunque no hay que olvidar el largo flirteo que durante aquellos años había mantenido el Gobierno con la posibilidad de la desamortización.

Con anterioridad a la solución del Voto de Confianaza, la idea inicial de Mendizábal fue obtener un préstamo de Inglaterra para financiar la guerra. Préstamo que había negociado ofreciendo a los ingleses una serie de ventajas comerciales. Tratos, que por otro lado, no suponían novedad. El embajador inglés en Madrid, Villiers, ya había mantenido conversaciones con el conde de Toreno en Agosto de 1835, en el sentido de permitir a Gran Bretaña que fijase los derechos de aduana que deseara a cambio de obtener ayuda suficiente para ganar la guerra y restituir la autoridad del Gobierno. Las negociaciones con Mendizábal fueron aún más allá, ya que éste estaba incluso dispuesto a sacrificar la industria catalana del algodón por una victoria definitiva. Y concertó un tratado secreto con Villiers. Pacto que la Reina

gobernadora abortó al conocerlo en todos sus términos. Las estipulaciones que contenía el tratado consistían básicamente en que el gobierno británico debía garantizar el pago de los dividendos semestrales de un préstamo de dos millones de libras esterlinas, los cuales se considerarían como un adelanto sobre los aranceles aduaneros del algodón británico.

No debe sorprender que el Tratado no se firmara y que el propio Lord Palmerston enviara toda su documentación de regreso a Madrid y no quisiera quedarse con ninguna copia. Baste para entenderlo, leer el contenido de la nota[20] que acompañaba a la documentación:

> 'El Tratado en cuestión, no se hace sino en dos partes, primero la anticipación de doscientos millones, y segundo la introducción de los algodones. El Gobierno Inglés, no da los millones, sino a la Casa de Rotchild, y los garantizan los negociantes ingleses: estos doscientos millones son *cedidos a la Casa Mendizábal* quien solo juega en este negocio, y que lo hace de este modo, para hacerla forzosa a la Reyna en cualquiera ocasión; cuyo plan es orroroso, pues es poner a S.M. un dogal al cuello para que no se pueda desacer de Mendizábal cuando le acomode, pues pedirá el reintegro antes de su salida de los doscientos millones que suenan como suyos después de haber arruinado a Cataluña, lo que es muy perjudicial y espuesto en estas circunstancias'.

y advertir que segrega oportunismo. Que obedece a una pretensión personal del propio Mendizábal de crear, para sí, unas circunstancias que le permitieran asegurar la Presidencia del Gobierno, aún y a costa de sacrificar la industria catalana.

Después del fracaso de la política de empréstitos, y ante la urgente necesidad de dinero, no debería extrañar que fuera el propio Mendizábal quien descartase nuevos endeudamientos tanto en el Discurso de la Corona como en artículo 3º de la Ley que le otorgaba el Voto de Confianza, y hallara la alternativa en la toma de una decisión drástica como fue la desamortización. ¿Cómo se explica sino que se dictara una norma tan radical y de tan gran profusión, sí hasta el momento, como se ha visto, se había venido desamortizando, entre comillas, pero con un ritmo mucho más templado?

Desde luego, la gran carga ideológica que revierte el Preámbulo del Decreto de 19 de febrero, enmascara del todo y no deja traslucir los verdaderos motivos que pudieron llevar al ministro a dictar la norma.

En cuanto al artículo 2º, debería considerarse como un punto y aparte, en el contexto que se ha descrito porque, es, sin lugar a dudas, una excepción a la regla. Su propio contenido tiene unas raíces bien distintas a las del resto de la Ley. Y dio pie a que se produjeran unos resultados diferentes de los que derivaron de los expedientes desamortizadores que después se iban a tramitar. Introdujo por primera vez el concepto de 'servicio público' aunque no lo definió. Y es por lo tan-

to, el punto de partida en la evolución de unos conceptos que se irán desarrollando a lo largo de todo el siglo XIX y que llegarán a nuestros días perfectamente diferenciados.

Por último y volviendo al principio:

¿Qué llevó a Mendizábal a legislar en tal sentido? ¿Fue fruto el artículo 2º de una discusión, de un debate, se concibió a partir de alguna legislación preexistente, o fue un parche de introducción necesaria en una ley para regular situaciones que de facto venían dándose?

Se acepte o no la teoría de que el Decreto Desamortizador era el último cartucho que le quedaba a Mendizábal. El voto de confianza le permitió *resolver sin debate* parlamentario o simplemente ministerial, la Desamortización, lo que no deja de ser una auténtica muestra de radicalismo. Prueba de ello es que no existe ni un sólo documento que recoja un borrador, o notas previas a su redacción en el Consejo de Ministros. Con las Cortes disueltas y en disposición de amplios poderes, remató aquello que empezó Toreno.

Y con las normas de 25 de abril de 1834; la ley de 9 de Mayo de 1835; el decreto de 25 de Julio de 1835 del Ministerio de Fomento; el sinfín de Acuerdos tomados por Ayuntamientos antes de febrero de 1836; los innumerables escritos de petición de cesión de edificios por parte de los consistorios; el Real Decreto de 11 de Octubre de 1835; la Ley del Voto de Confianza de 16 de enero de 1836; el Real Decreto de 25 de enero de 1836; las quemas de conventos, los movimientos junteros, una incertidumbre política, social y sobre todo económica, la imprecisión de conceptos, de necesidades, es decir, con toda una inacabable lista de elementos, además aparentemente contradictorios, se obtienen todos los ingredientes necesarios para introducir la excepción del artículo 2º del decreto desamortizador.

Notas

[1] Este trabajo se inscribe dentro del proyecto de investigación *'El derecho histórico en los pueblos de España: ámbitos público y privado (siglos XI-XXI)'* MEC, Referencia SEJ 2006-1501-C01-01 i de GC, Referencia 2005SGR117.

[2] La lista de los edificios que menciona el segundo párrafo del artículo 2º, nunca fue publicada.

[3] J. Lalínde Abadía, *El Dominio Público como paralogismo histórico en España* (Madrid, 1974), p. 451.

[4] H. Damenthon, *Traité du domaine de l'Etat* (París, 1964), p. 21.

[5] J. Escriche, *Diccionario razonado de legislación y jurisprudencia* (Madrid, 1874), p. 869. *'Debe entenderse por establecimiento: ley, ordenanza o estatuto'.*

[6] AHCB, Ayuntamiento Borbónico. ACUERDOS 1835, sig. 1D-I-135 y 136. ff. 664 y ss.

[7] Ib. Folio 610.- *'Conventos Desocupados'*: Ayuntamiento. ACORDÓ: que el Cuerpo Municipal encargado de poner en salvo todo lo posible de los conventos evacuados del

clero regular, pueda hacerse cargo de los edificios y demás que resulte existente y de su procedencia.

[8] Ib. Folio 646.

[9] En el mes de Septiembre el Ayuntamiento reiteró el Acuerdo de petición del que fue Convento de Capuchinos y esta justificó la petición, en la necesidad de convertir dichas dependencias en Biblioteca Pública. AHCB. Ib. Folio 764.

[10] ¿Cabría entender que cuando esta Real Orden dispone que los Ayuntamientos o sus Comisionados deberán cesar en el acto de *ocupación*, no lo hace sólo por las causas que se ven ahí escritas, sino también en el intento de evitar una posible adquisición de la propiedad por vía de prescripción adquisitiva o usucapión? Seguramente que sí.

[11] AHCB. Ib. Folios 664-665

[12] AHCB. Ib. Folio 677

[13] P. Janke, *Mendizábal y la instauración de la monarquía constitucional en España. 1790-1853* (Madrid, 1974), p. 198.

[14] A. Nieto, *Los primeros pasos del Estado constitucional* (Barcelona, 1996), p. 491.

[15] Diario de Sesiones 24 de febrero 1835, p. 1669.

[16] D. S. 28 diciembre 1835, p. 160.

[17] D. S. 29 diciembre 1835, p. 172.

[18] D. S. 30 diciembre 1835, p. 183.

[19] D. S.16 de noviembre 1835, p.7.

[20] Archivo General de Palacio, Sección Reinados, Fondo, Fernando VII, Caja30, Expediente 8 nº 2.

Milan Hlavačka

Selbstverwaltung des Königreichs Böhmen als Vorstufe der staatlichen Souveränität?[1]

1. *Einleitung*

Bestandteil der sog. Februar- oder Schmerlingverfassung vom 21. Februar 1861 war die Landesverfassung, unter anderem die Landesverfassung für das Königreich Böhmen. Diese Verfassung behielt auch nach dem Erscheinen der Dezemberverfassung im Jahr 1867 ihre Gültigkeit. Diese Anordnung wurde 1862 durch Gesetze über die Gemeindeselbstverwaltung ergänzt, die in den einzelnen Kronländern im Verlauf der nachfolgenden Jahre realisiert wurden. Diese Rechtsnormen schufen für einige Jahrzehnte nicht nur die rechtliche Grundlage der faktischen Landes-, Bezirks- und Gemeindeselbstverwaltung, sondern sie wurden auch zu einem bedeutenden Konfliktfeld latenter und zeitweiliger Kämpfe, die zunächst den Charakter staatsrechtlicher, später politischer Kämpfe für die Demokratisierung der Landtag- und Reichsratswahlordnungen annahmen und letzlich den Charakter nationaler Kämpfe bekamen, denn die Wahlen, die Landeskompetenzen, besonders die Landesfinanzen konnten zur politischen Druckausübung gebraucht oder mißbraucht werden. Der doppelte nationale Landescharakter Böhmens und ab Mitte der achtziger Jahre des 19. Jahrhunderts besonders die politische und ökonomische Expansion des tschechischen Ethnikums schufen mit Hilfe politischer und wirtschaftlicher Mittel die Voraussetzungen dafür, das demographisch schwächere Ethnikum zu majorisieren, welches dann zu allen zur Verfügung stehenden Verteidigungsmitteln. Gegenstand dieser Untersuchung wird nicht der eigentliche Prozeß der Schaffung der Landesgesetze sein, sondern jene 'Willensbildung', wenn ich hier den deutschen Terminus benutzen darf, also jenen Anteil an der örtlichen Macht, die durch die Landesahngelegenheiten, die Landeskompetenzen und die eigentliche kommunale Selbstverwaltung geschaffen wird, konkret in Böhmen vertreten durch den Oberstlandmarschall, den Landesausschuß und die Bezirks- und Gemeindevertretungen.

2. *Selbstverwaltung versus staatliche Verwaltung*

Die tschechische Politik in Verbindung mit dem historischen Adel gab Ende der 60er Jahre die Hoffnung nicht auf, daß es ihr nach dem ungarischen Muster gelingt, die territoriale Selbstverwaltung in einen politischen und Machtfaktor von höherer Landesbedeutung um-

zuwandeln. Die Bemühungen, die Selbstverwaltung für andere Zwekke auszunutzen, als die, die ihr manchmal ein unklar formuliertes Gesetz zuteilt, waren schon seit Ende 1865ersichtlich, als in Böhmen (aber nicht in Mähren und in Schlesien) die Bezirksvertretungen ins Leben gerufen wurden. Die Selbstverwaltungskörperschaften der höheren Gebietsganzheiten verwandelten sich sehr schnell in Organisatoren des nationalen Widerstands gegen die Wiener Zentralisierung und später gegen den österreichisch - ungarischen Ausgleich und die Dezemberverfassung. Diese Bemühungen erreichten in den Jahren 1868 bis 1870 (also nach Antritt des Dualismus) und später nach den mißlungenen tschechisch – österreichischen Verhandlungen /den sog. Fundamentalartikeln/ in den Jahren 1872 bis 1877 ihren Höhepunkt. Damals verblieb der Großteil der tschechischen Abgeordneten in passiver Resistenz nicht nur dem Reichsrat, sondern auch dem tschechischen Landtag gegenüber und nur die Bezirks – und Gemeindevertretungen, in denen die Mehrheit der national tschechischen Abgeordneten auch eine außerordentlich bedeutsame Rolle spielten, wurden deren einzige bedeutende politische Tribüne.

Die Selbstverwaltung hatte damals also schon ihre eigenen Regeln, ihr eigenes Ethos, daß die Gesetze einhält und keinen so schnellen Veränderungen unterliegt wie die Regierungssysteme und deren örtliche Verwaltungen. Wesentlich an diesem Protest war aber vor allem der Umstand, daß es sich um eine untereinander isolierte Aktion der tschechischen Bezirksverwaltungen handelte, welche die Regierung entweder ignorieren oder allmählich liquidieren konnte und dies ganz exemplarisch durch das Löschen eines Widerstandsherdes nach dem anderen. Am Ende des Jahrhunderts werden die tschechischen Selbstverwaltungen aber so stark sein, daß sich die Staatsbürokratie nicht mehr zur Wiederholung dieser Taktik entsschloss.

3. *Fazit der Erforschung der Rolle der Selbstverwaltung für die Erneuerung der Tschechischen staatlichen Souveränität in Thesen dargestellt*

1.These:

Die Selbstverwaltung füllte in den Jahren 1861 bis 1913 in gewissem Sinne ein staatsrechtliches Vakuum aus, denn sie war einer der Träger des staatsrechtlichen und nationalen Bewußtseins, was u.a. gerade durch die Zweigleisigkeit der Cisleithaner öffentlichrechtlichen Verwaltung ermöglicht und erleichtert wurde. Den Tschechen fehlte zu dieser Zeit die natürliche Beziehung zum eigenen Staat. Der böhmische Staat war für sie zwar ein sehr nahes, aber vorläufig unerreichbares Ideal, das vorläufig nur an das Königreich Böhmen und den österreichischen Staat gebunden war. Die österreichische Staatsbürokratie wurde zwar mehr oder weniger als Fremdkörper und als

Objekt der ständigen Verdächtigung wahrgenommen, denn sie blokkierte die Durchsetzung der tschechischen Eigenständigkeit auf jede Art und Weise. Die Selbstverwaltung konnte so dem tschechischen homo politicus die natürliche Beziehung zur nächstgelegenen Selbstverwaltungs- und zugleich nationalen Macht ersetzen oder herausbilden und ein Gefühl der staatsbürgerlichen Verantwortung wenigstens im Rahmen der lokalen politischen Verhältnisse schaffen. Vergessen wir nicht, daß besonders die Gemeinde- und Bezirksselbstverwaltung für jeden Einwohner Böhmens immer auch kommunikativ zugänglich war, denn im Unterschied zum Beispiel zu den Bezirkshauptmannschaften und Statthaltereien, aber auch zum böhmischen Landtag oder dessen Landesausschüssen waren sie mehr oder weniger einsprachig.

2. These:

Die tschechische Selbstverwaltung schuf sich im Rahmen einiger Jahrzehnte ihrer Existenz eine selbstständige politische Mikrowelt, wo eigene Formen des zivilrechtlichen, Verwaltungs- und politischen Handelns entstanden und auch eine sehr pragmatische, geradlinige und aufrichtige Haltung zur tschechischen Staatlichkeit respektive zeitgemäß ausgedrückt, zur Eigenrechtlichkeit, Eigengesetzlichkeit und Eigenständigkeit des Königreichs Böhmen geschaffen wurde.

3.These:

Die Selbstverwaltung in Böhmen wies eine tschechische und deutsche Parallelität auf. Das gegenseitige Nicht-Kommunizieren und die Isoliertheit der tschechischen und deutschen Selbstverwaltungskörperschaften auf niedrigstem Gemeindeniveau und dem mittleren Bezirksniveau vertiefte sich beständig und trug sehr bedeutend zur geistigen und materiellen Spaltung des Landes und schließlich auch zur beidseitigen Überzeugung bei, daß für die Entfaltung der der eigenen politischen und konkreten wirtschaftlichen und nationalen kulturellen Aktivitäten die Zusammenarbeit mit den Deutschen überhaupt nicht erforderlich sei.[2]

4. These:

In den letzten Jahrzehnten vor dem ersten Weltkrieg kam es zu einer bemerkenswerten Veränderung der Beziehungen unter der zivilen emanzipierten Gesellschaft und der Exekutive, also der Regierung und der ihr unterstellten Verwaltungsorgane. Ich nehme an, daß gerade die Selbstverwaltung, respektive die Tätigkeit der Selbstverwaltungskörperschaften diese Veränderung initiierten. Gerade auf diesem vorläufig wenig erforschten, aber ganz prinzipiellen 'Feld der Bürgeraktivität' könnte die Antwort gerade auf die Frage nach den Ursachen dieser kardinalen psychomentalen Veränderung gefunden werden. Der staatsbürgerlich und staatsrechtlich reife Bürger begann die politischen und staatsrechtlichen Limite des monarchi-

stisch und konservativ angelegten Staates zu überschreiten und begann sich vor allem auf seine eigenen geistigen und materialisierten Kräfte zu verlassen.

5. These:

Die Selbstverwaltung schuf die permanente Bereitschaft des Landes nicht nur zum zivilen kommunalen, sondern auch zum höheren staatlichen Leben. Die Keime der späteren 'Beamten - Kaderreserven' des Volkes ohne Staat und der späteren republikanischen Verfassungsinstitutionen der tschechischen respektive der tschechoslowakischen Staatlichkeit bildeten sich schon geistig und materiell in diesem Zeitraum heraus, was indirekt und nicht nur symbolisch die Benennungen einiger späterer Verfassungsinstitutionen der Republik belegen (z. B. der Tschechische Nationalrat, der mit seinen Wurzeln gerade in den Zeitraum nach 1900 reicht).

6. These:

Die Nationalisierung der lokalen Macht hatte in den angespannten innenpolitischen Krisen Cisleithaniens ernste Konflikte mit der Staatsmacht zur Folge, z. B. Ende der 60er Jahre im Zusammenhang mit den staatsrechtlichen Kämpfen, im Jahr 1897 im Zusammenhang mit der Badini - Sprachverordnung oder im Jahr 1900 im Zusammenhang mit den Jungtschechen - Obstruktionen des Cisleithanischen Parlamentarismus nach dem Widerruf dieser Sprachverordnung und auch in den Jahren 1905 bis 1906 im Zusammenhang mit der Durchsetzung der Wahlreform in das Abgeordnetenparlament des Reichsrats. Diese Konflikte fanden seitens der Selbstverwaltungskörperschaften Ausdruck z. B. in der Sabotierung der Ausübung der rechtlich nicht verankerten oder unklar formulierten sog. übertragenen Wirkungskreise der Gemeinden. Diese 'staatsfeindlichen Aktionen' schufen das soziale und psychomentale Milieu, in dem es schnell in einer Zeit der ernsten innenpolitischen und internationalen Krise (Erster Weltkrieg) zur prinzipiellen Veränderung der Ansichten nicht nur der politischen Eliten der tschechischen Gesellschaft über die unmittelbare staatsrechtliche Zukunft kommen konnte.

7. These:

Besonders die Prager Gemeindeverwaltung spielte knapp vor dem Ausbruch des Ersten Weltkriegs eine ganz neue Rolle, und das nicht nur nach innen in das tschechische Milieu hinein, sondern vor allem nach außen, also ins Ausland. Dieses Phänomen der statutarischen und internationalisierten Exklusivität Prags im Rahmen der tschechischen Selbstverwaltung und dessen Rolle im Zeitraum vor dem Ersten Weltkrieg bleibt eine dringliche Forscheraufgabe. Es ist schon jetzt offensichtlich, daß die mehr oder weniger zielbewußte Tätigkeit der Prager Selbstverwaltung respektive des Prager Stadtrats, im internationalen Maßstab tschechische Eigenständigkeit durchzusetzen,

schon vor dem Jahr 1914 viele Erfolge verzeichnete (Eröffnung der russischen, französischen, deutschen, britischen, belgischen, italienischen und amerikanischen Konsulate, Repräsentation der Hauptstadt Böhmens auf Weltausstellungen, Besuche von Gästen mit Rang und Namen in Prag anläßlich verschiedener nationaler Feiern und Ausstellungen, Gründung der tschechisch-französischen Presseagentur). Prag, respektive die Prager Gemeinde, fungierte so nach außen als einzige gewählte politische Körperschaft der tschechischen Gesellschaft.[3]

8. These:

An der Tätigkeit der Selbstverwaltungskörperschaften läßt sich konkret die Durchsetzung der zivilen Prinzipien im Leben der tschechischen Gesellschaft verfolgen. Dieser Realisierungsbereich der zivilen Selbstverwaltungshandlungen und des Verhaltens hatte die Herausbildung der sog. bürgerlichen Selbstverwaltungseliten (Karel Adámek, František Schwarz, Josef Herold), der Selbstverwaltungstheoretiker (Albím Bráf, Bohuš Rieger, Karek Čížek, Rudolf Wunsch), deren Presseorgane (Samosprávná obzor [Selbstverwaltungshorizont], Obec [Gemeinde], Obecní radce [Gemeinderatgeber], Obecní starosta [Gemeindevorsteher]), Interessenverbänden (Svaz českých měst [Tschechischer Städtebund], Svaz českých samosprávných okresů [Bund der tschechischen Selbstverwaltungsbezirke], Jednota samosprávných sdružení [Einheit der Selbstverwaltungsbeamten]) und Fachbibliotheken zur Folge. Die Analyse dieser sozialen Erscheinungen, besonders dann die Entstehung der tschechischen bürgerlichen Eliten und die Herausbildung des lokalen bürgerlichen und oftmals auch republikanischen Bewußtseins (die Selbstverwaltung läßt sich auch gehoben definieren als Inseln der republikanischen 'Protodemokratie' im monarchistischen Meer), sollte auch zur Aufhellung des reibungslosen Übergangs der tschechischen bürgerlichen Gesellschaft zum staatlichen Leben und zur staatlichen Eigenständigkeit im Oktober 1918.

AnmerKungen

[1] Dieser Artikel entstand im Rahmen des Forschungsprojektes MSM 0021620827, dessen Träger Philosophische Fakultät der Karlsuniversität in Jahren 2005 – 2011 ist.

[2] Der einzige Forscher, der sich langfristig für die Thematik der Nationalisierung der Selbstverwaltungen in Mähren interessiert, ist der Brünner Jiří Malíř. In diesem Zusammenhang sei besonders aufmerksam gemacht auf dessen Studie 'Die Gemeindeselbstverwaltung und nationale Problematik in Mähren vor dem Jahre 1914. Zehn Anmerkungen zum Kampf um die Rathäuser der mährischen Städte, in: Nationaltetenprobleme in der Geschichte der Städte. Sammelband der Beiträge der Konferenz anläßlich des hundertsten Jubiläums der tschechischen Verwaltung der Stadt Prostějov in Prostějov in den Tagen vom' 22.-23.September 1992, Prostějov 1993, S. 75 - 78 und Nationalisierung der Gemeindeselbstverwaltung und Limite der Demokratisierung der

Kommunalpolitik vor dem Jahr 1914 am Beispiel Mährens, Documenta Pragensia XIV, Prag 1997, S. 73 - 93.

[3] Vgl: Jiří Kořalka, Evropský význam Prahy jako metropole národa bez státu (Die Bedeutung Prags als Metropole einer Nation ohne Staat) in: Praha - Čechy - Evropa (Prag - Böhmen –Europa) 110 Jahre kulturelle, wirtschaftlicheund politische Metropole Mitteleuropas. Publikation zur Ausstellung, Prag 2003, S. 88 - 9.

Dalibor Čepulo

Croatian Autonomy and Ministerial Impeachment from 1868 to 1918: Model and Reality[1]

1. *Introduction*

Ministerial impeachment, i.e. the formal procedure by which a minister is charged with unlawful activity in his official capacity, and can be sanctioned by removal from office, was considered one of the basic constitutional institutions in continental European countries during the 19th century. Impeachment was seen as an instrument through which representative diets could control ministers, who were appointed by and subjected to the king, and safeguarded his interests – political responsibility of ministers at that time was unknown or, in a very few countries, still in an early formative phase. Impeachment was considered a compromise device through which the bourgeoisie, who had reached a balance with the aristocracy as represented in the diets, could restrain the power of the king's governments without a radical turnover of the political system. In fact, it was a conservative-liberal solution that was particularly suitable for countries with weak diets that could hardly remove ministers from office on the basis of bad governance. Because of this the introduction of impeachment became one of the principal demands of liberal movements in continental Europe, inspired as they were by English parliamentarianism, as well as by the French revolutionary model of impeachment of 1791. The political breakthrough of liberal ideas resulted in the introduction of constitutions, in a number of countries, which usually provided for the principle of ministerial responsibility, which at that time implied responsibility for violations of law. The institutionalisation of impeachment particularly flourished in the 1860s and 1870s.[2] However, impeachment was not considered simply as an opportunity for constitutionally based repression. With the exception of revolutionary France, it played the role rather of a value-oriented, symbolic institution with *a priori* effect, which saw parliament with a middle class majority as the source of political power and sovereignty, and as a check to the king's power. In most countries, impeachment was not applied in practice at all or it was applied only exceptionally.[3]

In Croatia-Slavonia, the legal responsibility of the *Ban* (the head of the executive) to the Diet (the *Sabor*) was proclaimed in 1868 and regulated in 1874. But in Croatia-Slavonia, impeachment appeared in the specific structural and political context that was primarily

determined by the autonomous position of that territory in the Kingdom of Hungary. Because of this, the form and the role of impeachment in Croatia-Slavonia had specific and complex features. An analysis of that institution in the context of historical reality can shed light on the functioning of the autonomous Croatian political system, as well as complement an understanding of similar political systems, and the institution of impeachment in general.

2. *Croatian autonomy, the structure of power, and demands for responsible government, to 1868*

Croatian political identity dates back to the emergence of the principality in the 9th century which became the Kingdom of Croatia in the 10th century. At the beginning of the 12th century, the empty Croatian throne was occupied by the Hungarian Arpád dynasty after the compromise reached between the new king and the Croatian aristocracy. Croatia preserved its own aristocracy and institutions and was ruled as a distinct territory from Hungary. The institutional basis of Croatian autonomy was comprised of the Ban, the highest executive official and deputy to the king, and the legislative Sabor. A Croatian delegation participated in the Hungarian Diet, and the laws enacted there were enforceable in Croatia and Slavonia, unless they had been vetoed by the delegation.[4]

The medieval Croatian kingdom consisted of the regions of Dalmatia, Croatia and Slavonia, but the continuity of autonomous institutions was preserved only in the single administrative area of the Kingdoms of Croatia and Slavonia; the south coastal region of Dalmatia was annexed by Venice at the beginning of the 15th century, and from 1797 to 1918 was part of Austria.[5] In the nation-building process of the 19th century the denomination Croatia-Slavonia (as well as Croatia-Slavonia-Dalmatia) interchanged with the denomination Croatia.[6]

The Croatian-Hungarian union, which for centuries was based on constitutional harmony and feudal solidarity, developed into competing national tensions in the first half of the 19th century. Hungary attempted to degrade an already diminished Croatian-Slavonian autonomy, which was seen as a challenge to the unity of the Hungarian state. The Croatian national movement defended existing traditional and legitimate rights, but also looked to building a more complete Croatian political independence on modern principles. Because of this, one of the principal demands of the Croatian national movement was the establishment of a Croatian (autonomous) government. This demand appeared most explicitly in the political programme of 1832, and since then continued to be one of the central goals of the national movement.[7] However, it was

probably just before 1848 that the demand for *responsible* government appeared.[8] The most probable reason for this discrepancy was the novelty of the principle of 'responsible government' at that time; another reason might be the concentration on establishing an autonomous government in the first place, while demand for its control might seem less important and perhaps too provocative.

The Hungarian-Croatian disputes culminated in March 1848 when the Hungarian Diet unilaterally reduced Croatian-Slavonian power; Ban Jelačić and the Sabor reacted by proclaiming a break with all constitutional bonds with Hungary. The petition of rights of the Croatian national movement from March 1848 explicitly demanded the introduction of a government accountable to the Sabor.[9] In 1849, the Sabor's legislative committee drafted the law on the State council which provided for ministerial impeachment and the collective responsibility of the government, following the model of the Hungarian law of 1848,[10] but that draft was not enacted because the Sabor, which had been dissolved in 1848, was not convened again.

After the crush of the Hungarian revolution in 1849, a centralised system was established in the whole Monarchy; both Hungary and Croatia-Slavonia were turned into imperial 'crown-lands' and administered from Vienna. After the end of Bach's absolutism in 1860, Croatian institutions were partly restored (the Sabor and the counties) but the territory continued to be ruled by central government from Vienna. The short-lasting Sabor of 1861 and the Sabor of 1865-67, both dissolved because for political reasons, demanded the establishment of a Croatian-Slavonian government accountable to the Sabor, but the King ignored both demands.[11]

The provisory constitutionalism ended with the adoption of the Austrian-Hungarian Compromise of 1867, which divided the Monarchy into two halves. The sub-dual Croatian-Hungarian Compromise that followed set up a stable basis for Croatian autonomy in the framework of the Hungarian state.

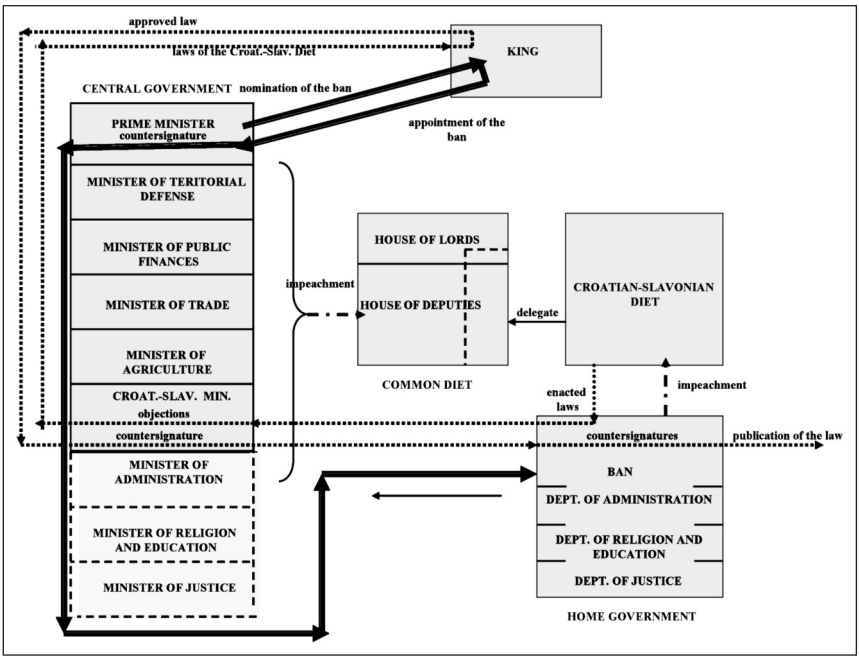
3. *The Croatian-Hungarian Compromise of 1868 and government in Croatia-Slavonia*

The Croatian-Hungarian Compromise was concluded between the Hungarian Diet and the Sabor, with the majority of the pro-Hungarian Unionist Party supported by the government in Budapest. The opposition National Party withdrew from the Sabor, protesting against electoral law imposed by a king; it also opposed the Croatian-Hungarian Compromise as an unconstitutional act adopted by an unconstitutional Sabor which had been elected on the basis of unconstitutional law.

The Compromise delimited both common and autonomous competences, granting Croatia autonomy in governance and administration, religion and education, and a judiciary with its own legislature (the Sabor), Home government with the Ban accountable to the Sabor, and its own judiciary with a Supreme Court (established in 1862). The Common Diet and the Central Government were in fact a slightly modified version of the Hungarian Diet and the Hungarian Government. The structure and composition of these bodies, with only minor Croatian participation, granted unchecked Hungarian dominance.[12]

The main institutional mechanisms in favour of the Hungarian position were: a) the Ban was appointed by the king at the proposal and with the consent of the Hungarian Prime Minister; b) Croatian delegates participated in both chambers of the Common Diet, but they were an insignificant minority possessing only individual votes; c) the Croatian-Slavonian Minister charged with Croatian affairs was an ad hoc member of the Central Government responsible to the Common Diet and did not rely in any sense upon Croatian institutions; d) all public finances were defined as part of common competences, so the Sabor did not have any financial instruments; a quota of 45% of the taxes collected in Croatia-Slavonia was allotted to the Croatian-Slavonian budget; e) laws enacted in the Sabor were sent to the king by the Ban through the Croatian-Slavonian Minister (i.e. via Central Government) who could complain to the king that the Croatian laws breached common competences or violated common interests – in practice, the king always accepted the arguments of the stronger party i.e. of the Central Government, and withheld approval (sanction) of contested Croatian laws. Approved laws were countersigned by the Croatian-Slavonian Minister and by the Ban. A similar procedure existed regarding the preapproval of draft laws, except that countersignatures were not needed – a procedure which was not regulated by the Compromise but by king's order, and one which was therefore not transparent to the public. Because of the possibility of Hungarian influence, the Croatian government and the Sabor had to estimate in advance the likelihood of successfully enacting, or even proposing, an autonomous law.[13] In addition to this, the political situation in Croatia-Slavonia and in Hungary also affected the political and legal actions of the relevant actors.

The Croatian-Hungarian Compromise: structure of power



Thus, although the Croatian-Hungarian Compromise granted extensive Croatian autonomy it also allowed indirect control by Budapest. However, in spite of such constraints, the Compromise set up a stable constitutional framework for Croatian-Slavonian autonomy, which was a precondition for building modern institutions.

The autonomous Home government was constituted in 1869. It consisted of three departments: for governance and administration, religion and education, and the judiciary. In 1914, the fourth department of national economy was created, derived from the department of governance and administration. It was a presidential government – the Ban was president of the government and the head of all departments, and only he countersigned the laws approved by the king, after they had been countersigned by the Croatian-Slavonian Minister in Budapest.[14]

The Law on the Establishment of Home Government of 1869 provided for the enactment of special laws to regulate the responsibility of the Ban and the department heads. However, the actual pro-Hungarian government formed by the Unionist Party avoided drafting such a law fearing that it could turn against the government.[15] The law on the Ban's responsibility was drafted in 1871 by the, at that time, moderately Unionist government – but the Central Government neutralised the proposal by postponing its decision on the draft in the

process of pre-approval, probably fearing that such law could strengthen Croatian autonomy.[16]

4. *Liberal reforms and the Law on Responsibility of the Ban of 1874*

The public's dissatisfaction with the Compromise, and with the policy of the Unionist Party, resulted in the victory of the National Party at the polls in 1872. The National Party set a course for political compromise with the Central Government, and its member Ivan Mažuranić was appointed Ban. His government immediately initiated an extensive set of liberal reforms that regulated the responsibility of the Ban, granted judicial independence, rationalised the organisation of the judiciary and the administration, granted freedom of the press, and introduced modern criminal procedure and the jury trial for publishing offences, etc. These reforms were at first tolerated by the weak central government in Budapest, but were slowed down and blocked after the coming to power of the Hungarian liberal nationalist Kálmán Tisza, who ruled from 1875 to 1890. The Ban Mažuranić withdrew in 1880 faced with the impossibility of ruling.[17]

The Law on the Responsibility of the Ban and the Department Heads of the Autonomous Provincial Government was one of the first and the most important of the mentioned laws. The law was based upon the Austrian law on ministerial responsibility of 1867,[18] with procedural modifications that were necessary because of the unicameral structure of the Sabor as distinct from the bicameral Austrian Parliament. In both laws, responsibility was based on a violation of law committed in office, but the scope of reasons for the indictment of the Ban was a lot narrower, and focused on the protection of Croatian autonomy and the Croatian-Hungarian union; in contrast to that, Austrian ministers could be indicted for any serious violation of law committed in office deliberately or by negligence. The position of the Ban was also protected by a more complicated procedure of indictment. In both cases the sanction was impeachment; however, if elements of penal responsibility existed then the indictment and verdict in Austria could also include reasons and sanctions from the Penal Code, whereas in Croatia-Slavonia the two responsibilities and procedures were strictly separated, which put the Ban in a de facto privileged position regarding the factual potential of his influence on the judges of competent courts.

The Ban could be indicted on the grounds of a deliberate, serious offence committed in his official capacity in the context of fundamental state law, and particularly of the Croatian-Hungarian Compromise, or law related thereto. He could also be indicted for deliberately causing severe damage, or deliberately causing severe danger to, the 'constitutional independence of the kingdom of Croatia and Slavonia in

the union with Hungary or to the union itself'.[19] Negligence was not indictable. Heads of departments of the Home Government were responsible to the Sabor only subsidiarily, i.e. they were responsible for the execution of the Ban's legal orders, unless they gave notice in writing of their objection. In relation to a breach of their official duties they were, in a disciplinary sense, responsible to the Ban.[20]

Sanctions for the Ban were disciplinary only in a political sense – removal from office and a permanent bar from holding public office, or dismissal from office. As regards elements of criminal or civil liability, the Ban could be tried or sued only before a competent court, and in 1884 judicial independence from government was permanently suspended, broadening the space for the indirect influence of the government on the judiciary.[21]

The Ban's responsibility belonged to the type of responsibility processed before the High Court, with characteristic procedure and adjudication; this type of responsibility was characteristic for Central European and Balkan states.[22] In the case of Croatia, as elsewhere, it comprised a combination of juridical and political elements.

Complicated procedure was based on the model of general penal procedure from the Austrian Penal Procedure Code of 1873; an adapted Croatian version was enacted in the Sabor in 1875.[23] The procedure began in the Sabor with the initiative of 20 deputies to be passed by a majority of votes; it continued with the preparation of the indictment, and with the decision on indictment to be passed with a two-thirds majority of all deputies.

The procedure then continued before the special Court of the Kingdoms formed by the Sabor at the beginning of each new session; its only and exclusive jurisdiction was to decide on the Ban's responsibility. The court was a considerably modified version of the Austrian *Staatsgerichtshof*,[24] adapted to meet specific features of the Croatian political system. The broader composition of the court consisted of the 12 highest judges of the competent courts (judges of the Table of Seven, i.e. the Supreme Court; presidents of the Ban's Table, i.e. the Higher Court; and the county courts in the two largest towns of Zagreb and Osijek) and 12 citizens 'skilled in law' who were not deputies in the Sabor. The senate in each particular case consisted of at least 12 members equally representing both mentioned groups (judges and laymen) selected by the free disposition of the parties or by lot. The main trial was oral and public, the Ban could have a solicitor, adversarial elements were more stressed in the procedure, and the judgment was based on the free evaluation of evidence. The commission of three judges prepared the case in no longer than six months, during which time the Ban was obliged to halt his official activities. During that time the Sabor could cancel the indictment with a two-thirds ma-

jority of all deputies. The senate passed verdict with a two-thirds majority of judges' votes (at least 10 judges had to be present in each phase of the process). Appeal was not possible but the king could 'rehabilitate' an indicted Ban with the consent of the Sabor.[25]

As regards the legal nature of the Ban's responsibility, it could be said to have had elements of disciplinary responsibility regarding the nature of sanctions, criminal responsibility regarding procedure, constitutional responsibility regarding the nature of protected values and bodies participating in the procedure, as well as a political dimension regarding the political implications of the indictment.[26]

Parliamentary debate and reactions in the press of the time showed that the reformers were aware that, in reality, it was not be easy to implement such law. But they insisted on the symbolic and moral value of the law, whose main purpose was not repression *a posteriori* but effectiveness *a priori*. They insisted that checks in proceedings and the complicated procedure were necessary in order to filter superficial and politically motivated initiatives, and decisions that could trigger a constitutional crisis or block the work of government.[27] The Croatian press greeted the law by stressing its symbolic and moral-political characteristics, which were important for strengthening autonomy, but it also expressed disappointment regarding the narrow scope of the Ban's responsibility and the merely administrative, rather than political, position of the heads of departments.[28]

A small liberal-democratic opposition in the Sabor criticised the law as useless and impossible to implement in the legal and political framework set down by the Croatian-Hungarian Compromise. They alleged that the Ban would remain politically dependent on Central Government, and that he would maintain a strong influence on political life in Croatia and on deputies in the Sabor – whose two-thirds majority was needed for his indictment.[29] On the other hand, the Hungarian press expressed the fear that Croats would implement the law on responsibility of the Ban in a way that would endanger the unity of the Hungarian state[30], while the Austrian press welcomed parliamentary development in Croatia-Slavonia, but also expressed the expectation that it would raise tensions with Hungary.[31]

5. *Responsibility of the Ban in practice*

In fact, the decision on indictment of the Ban was never passed in the Sabor in spite of a great number of serious violations of Croatian autonomy, particularly during the governance of the Ban Karoly Khuen-Héderváry from 1883 to 1903.[32] Only two initiatives were raised in 1885 and in 1907 but they both failed. The first initiative was raised against Ban Khuen-Héderváry, though there was not the smallest chance that it would be accepted in a Sabor whose majority was

controlled by the government. The Ban was charged with ordering that certain documents from the Croatian Land Archives be transferred to the Hungarian Archives, by which he violated his competences as provided for in the Croatian Law on the Land Archives, and caused severe damage to Croatian autonomy considering the importance of these documents. The initiative did not get enough votes and the Sabor's debate on this issue ended with confusion during which the Ban was kicked in the back by one deputy. The press expected the Ban to withdraw because, according to the 'code of honour', he was humiliated by being kicked; in fact, it was not unimaginable that the Ban's withdrawal would have set a precedent for the development of political responsibility. However, Khuen-Héderváry denied that he was kicked at all, while the majority in the Sabor repealed the immunity of the two deputies involved in the incident, both of whom were later sentenced to prison.[33] The other case was against Ban Aleksander Rakodczay in 1907. He was charged with omitting to prevent the king's approval of the law of the Common Diet which introduced Hungarian as the official language in the Hungarian State Railways which operated in Croatian-Slavonian territory; this law indirectly and seriously violated the Croatian-Hungarian Compromise. The State Railways were part of the common jurisdiction so the Common Diet was competent to regulate on issues related to them. However, the Croatian-Hungarian Compromise declared the Croatian language as (the only) official language in Croatia and Slavonia, so the mentioned law breached the Compromise. It was an obvious conflict of competences, but the body that could have decided on the issue did not exist, and the Ban's political protest to the king was the only instrument by which the Croatian side could react to such a breach of competences by the Common Diet. The Sabors's proposal for a revision of the Croatian-Hungarian Compromise of 1872 demanded the establishment of the Court of Royalties that would decide on a conflict of competences between the Hungarian and Croatian diets – the latter proposal was inspired by the model of the Austrian *Reichsgericht*[34] – but it was bitterly rejected by the Central Government.[35] However, this time the initiative for indictment had much better chances since a majority of the Sabor's deputies in fact formed an effective opposition to the government. This was the main reason for the king dissolving the Sabor immediately after the initiative was submitted to the plenum, so the attempt failed at the very beginning.[36]

Even though it is probably not possible to estimate accurately the preventive efficiency of such an institution, it can be said that, in the case of Croatia, it proved rather inefficient considering the large number of violations of Croatian autonomy, and the authoritative style of rule of the Bans.

Political responsibility of the Ban never materialised in Croatian parliamentary practice, neither did there exist a normative, and even less a factual, ground for such a notion. Interpellation in the Sabor did not imply taking a vote of no-confidence, while the voting down of the government's budget proposal did not result in the removal of the Ban from power; he could continue to rule with individual ordinances due to the fact that his executive competences were not fully regulated.[37] In fact, the wording of the law on the responsibility of the Ban allowed for the interpretation of his responsibility on the grounds of the (political) inappropriateness of his official actions;[38] however, the political reality was completely inappropriate for a claim on such grounds to be implemented.

6. *The Ban as minister?*

An important question implicit in the role of the Ban is whether such a position could be seen to represent the position of a minister at all. Ban Mažuranić was eager to build the position of his government as a real parliamentary government, and submitted several proposals to the Central Government in that direction, notably: the proposal that the Ban be entitled 'the Ban-Minister of the Land'; that he be appointed without the participation of the Hungarian prime-minister; that the right of countersignature of Croatian laws should belong exclusively to the Ban, while the countersignature of the Croatian-Slavonian Minister should be abolished; and that the heads of the deputies should become more independent and directly responsible to the Sabor. However, the Central Government insisted on the provincial status of Croatia and Slavonia, and rejected such initiatives either on the basis of formal arguments or by explicit exposition that the Croatian Sabor was only a provincial assembly with extended jurisdiction, whereas the Ban was a high administrative official, the governor, with disciplinary responsibility; for these reasons, regulations that upgraded these institutions to the status of parliament and real government were not acceptable.[39]

However, the institutional position of the Ban was much closer to that of minister than that of governor for two main reasons: first, the Ban's responsibility was fully contained within the Croatian autonomous political system without any institutional possibility of external influence; second, the Ban's position was coordinated with the position of the Croatian-Slavonian minister as well as with other ministers of Central Government. It could also be said that both the Croatian-Slavonian Minister and the Ban had a right of countersignature; that the Croatian-Slavonian Minister could not intervene in the Ban's official proposals to the king; that the Ban's proposal of the Sabor's laws for the king's approval and the minister's complaint were theo-

retically equal; that the procedure of the Ban's responsibility before the Sabor was typical for ministerial responsibility, drafted on the basis of the Austrian model. In addition, the extensive competences and the legal-political position of the Ban in the Croatian political system, as well as his traditional legitimacy, indicate a constitutional, and not simply an administrative, dimension to his functions. The legal-political dependence of the Ban on the Hungarian prime minister – regarding the procedure of his appointment - was equal to the position of any other minister in the Hungarian government appointed through the same procedure. In fact, the Ban's political position was even more autonomous than that of the Hungarian ministers: the latter were responsible to the Hungarian Diet where the Prime Minister could politically influence deputies, while the Ban was responsible to the Sabor which was beyond the direct influence of the Hungarian Prime Minister. Thus, the institutional position of the Ban could be said to be that of a minister.[40]

However, the political reality was different. In spite of the Ban's responsibility to the Sabor, as well as his extensive competences and virtually autonomous position, all Croatian Bans after 1880 focussed their attention more on the Central Government than on the Sabor; this was due to the overall framework of relations set down by the Croatian-Hungarian Compromise, and the structure of political power.

Another consequence of such a legal and political context was that the position of the deputies' heads did not develop towards a *de facto* political status, in spite of the fact that important persons from Croatian political and cultural life occasionally occupied these positions. In a different scenario, the position of the Ban would probably have developed into the position of *de facto* prime minister. However, department heads remained purely administrative officials due to their not having a right of countersignature; because of this, the collective responsibility of the government could not develop either.[41]

7. *Conclusion*

The institution of the Ban's responsibility was a specific version of ministerial impeachment whose particularity was determined by the autonomous position of Croatia-Slavonia. The institute of the Ban's responsibility shared standard normative features of legal ministerial responsibility, but it also had certain specific variations and functions. The specificities were determined by the semi-open structure of the Croatian political system, and by political ambiguity in relation to Budapest consisting of tensions between dependence and independence.

The Ban's responsibility lay at the crossroads of constitutional law, disciplinary law, penal law and politics; it belonged to the type of re-

sponsibility processed before a High Court with a juridical-political composition, in a quasi-judicial procedure, and was based on grounds of severe violations of law with implications on the political nature of the Ban's role. The content of these regulations reflected Croatian specificities such as the unicameral Diet, and a focus on the autonomy of the position.

In Croatia, impeachment was not implemented in practice and its function was, as elsewhere, considered primarily as moral-political and preventive. However, the degree of this *a priori* effectiveness was even more doubtful which is clear from the number of violations of Croatian autonomy in the interests of Budapest. This would indicate that merely legal means were not enough for the control of political power concentrated in government, and that indirect political dependency on Budapest affected the functioning of autonomous institutions, and the system as a whole. However, the introduction of the Ban's impeachment was not useless – it had a structural, value-oriented and symbolic importance in the building of a modern Croatian political system.

The most important and the most specific characteristic of the Ban's impeachment regarded its essential function. In the case of Croatia, the function of impeachment was twofold, unlike conventional examples where the origin and main function of ministerial impeachment was the control of government by parliament. In the Croatian case, the primary function of impeachment was the protection of Croatian autonomy, while the original function of impeachment, i.e. the limitation of government by representatives of society, was in fact of secondary importance.

Notes

[1] This paper was written as part of the research project Croatian legal culture in the European context: tradiiton and modernisation (2007), supported by the Croatian Ministry of Science and Technology.

[2] A-É. Lair, *Des hautes cours politiques en France et à l'étranger et de la mise en accusation du Président de la République et des ministres* (Paris, 1899), pp. 435-436 ff.

[3] Lair, *Des hautes cours*, *passim*; A. Esmein, *Eléments de droit constitutionnel français et comparé* (Paris, 1921); See also D. Čepulo, 'Odgovornost i položaj bana i članova hrvatske zemaljske vlade 1868-1918. i ministarska odgovornost u Europi', *Zbornik Pravnog fakulteta u Zagrebu*, 49 (1999), pp. 231-239.

[4] For the Croatian constitutional and legal development see G. Benacchio, *La circolazione dei modelli giuridici tra gli slavi del sud. Sloveni, croati, serbi* (Padova, 1995); D. Čepulo, 'Autonomy, dependence and modern reforms in Croatia-Slavonia 1848-1918', in *Separation of powers and parliamentarism; the past and the present; law doctrine, practice* (Warsaw, 2007); D. Čepulo, 'Building of the modern legal system in Croatia 1848-1918 in the centre-periphery perspective', in T. Giaro (Hrsgb.), *Modernisierung durch Transfer im 19. und 20. Jahrhundert* (Frankfurt am Main, 2006), pp. 47-91; D. Čepulo, 'Modernity in Search of Tradition: Formation of the Modern Croatian

Judiciary 1848–1918', in A. Uzelac and C. H. Van Rhee (eds.), *Public and Private Justice. Dispute Resolution in Modern Societies* (Antwerpen-Oxford, 2007), pp. 105-127.

[5] I. Beuc, *Povijest institucija državne vlasti kraljevine Hrvatske, Slavonije i Dalmacije (pravnopovijesne studije)* (Zagreb, 1985), pp. 87, 159-160, 223-246.

[6] Čepulo, 'Building', p. 50.

[7] Dalibor Čepulo, 'Razvoj ideja o ustroju vlasti i i građanskim pravima u Hrvatskoj 1832-1849', *Pravni vjesnik,* 16 (2000), pp. 36.

[8] J. Horvat, *Povijest novinstva u Hrvatskoj* (Zagreb, 1962), p. 149.

[9] Čepulo, 'Building', 41-44. Cf. also D. Čepulo, M. Krešić and M. Hlavačka (eds.) *Croatian, Slovenian and Czech Constitutional Documents 1818–1849*, München, 2010, pp. 37-44.

[10] T. Markus, 'Zakonske osnove Sabora Hrvatske i Banskog vijeća 1849. godine', *Časopis za suvremenu povijest*, Zagreb 28 (1996), pp. 145-150. Cf. also Čepulo, Krešić and Hlavačka, *Croatian*, pp. 117-121.

[11] Čepulo, 'Odgovornost', pp. 243-244.

[12] The Hungarian government consisted of the prime minister and eight ministries; when deciding on issues of common competence ministers of internal affairs, religion and education, and justice were excluded (these issues belonged to the exclusive Croatian jurisdiction) while the Croatian-Slavonian-Dalmatian Minister without Portfolio (Home minister) was included. The Croatian departments that were established in all ministries in fact served only as technical support, for translation etc. As regards the Common Diet, the Sabor sent two delegates (later three) to the House of Lords with 400 members, and 29 delegates (later 40) to the House of Deputies with 453 deputies. M. Gross and A. Szabo, *Prema hrvatskom građanskom društvu* (Zagreb, 1992), pp. 232 ff; Beuc, *Povijest*, pp. 277-280.

[13] On the Croatian-Hungarian Compromise see Čepulo, 'Building', pp. 64-67; Gross and Szabo, *Prema*, pp. 232-239; D. Čepulo, 'Hrvatsko-ugarska nagodba i reforme institucija vlasti u Hrvatskom Saboru 1868-1871', *Zbornik Pravnog fakulteta Sveučilišta u Rijeci*, 22, Supplement 1, (2000) pp. 117-148; J. Pliverić, *Beiträge zum Ungarisch-kroatischen* Bundesrecht (Agram, 1886).

[14] Cf. M. Smrekar, *Priručnik za političku upravnu službu u kraljevinah Hrvatskoj i Slavoniji* (Zagreb, 1899), *vol. I,* pp. 49 ff.

[15] Čepulo, 'Odgovornost', p. 247.

[16] Čepulo, 'Building', p. 71;Gross and Szabo, *Prema*, p. 274.

[17] Čepulo, 'Building', pp. 70-80.

[18] Cf. Čepulo, 'Odgovornost', p. 259.

[19] Cf. § 1. of the law on the responsibility on the Ban published in *Sbornik zakonah i naredabah valjanih za kraljevinu Hrvatsku i Slavoniju. Godina 1874* (Zagreb, 1876), pp. 3-10.

[20] Čepulo, 'Odgovornost', p. 265.

[21] Ibidem, p. 248; D. Čepulo, 'Izgradnja modernog hrvatskog sudstva 1848-1918', *Zbornik Pravnog fakulteta u Zagrebu*, 56 (1999), pp. 231-239, 365-366, 368-370.

[22] Lair, *Des hautes cours*, pp. 355-379.

[23] N. Ogorelica, *Kazneno procesualno pravo* (Zagreb, 1899), vol. I , pp. 73-76, 86-89, 91-94 ff; V. Ljubanović, '120. obljetnica donošenja i sankcioniranja hrvatskog Zakona o kaznenom postupku od 17. svibnja 1875.', *Hrvatski ljetopis za kazneno pravo i praksu*, 1 (1994), pp. 244 ff.

[24] On *Staattsgerichtshof* see W. Brauneder, *Österreichische Verfasungsgeschichte* (Wien, 2005), pp. 161, 175, 186.

[25] Čepulo, ‚Odgovornost', pp. 248-251.

[26] Ibidem, pp. 262-263.

[27] Ibidem, pp. 260.

[28] Ibidem, pp. 257-258.

[29] Ibidem, p. 252.

[30] Ibidem,, pp. 257 (nt. 85), 258.

[31] Ibidem, p. 257 (nt. 85).

[32] On the period of the Ban Karoly Khuen-Héderváry see J. Šidak et al., *Povijest hrvatskoga naroda g. 1860-1914.* (Zagreb, 1968), pp. 120 ff.

[33] Čepulo, 'Odgovornost', pp. 260-261.

[34] On the *Reichsgericht* see Ch. Eisenmann, *La justice constitutionnelle et la Haute Cour constitutionnelle d'Autriche* (Paris, 1928), 129 ff.

[35] Gross and Szabo, *Prema*, pp. 252-254.

[36] Čepulo, 'Odgovornost', p. 261.

[37] Ibidem, p. 267; L. Polić, *Nacrt hrv.-ugarskog državnog prava* (Zagreb, 1912), pp. 282-283.

[38] Čepulo, 'Odgovornost', p. 263.

[39] Ibidem, pp. 258-259; Šidak et. al., *Povijest*, p. 72; M. Gross, "Mađarska vlada i hrvatska autonomija u prvim godinama nakon Nagodbe", *Historijski zbornik*, 38 (1985), pp. 21-22.

[40] Čepulo, 'Odgovornost', p. 266; L. Polić, *Nacrt*, pp. 249, 256; V. Krišković, *Upravna nauka i ug.-hrv. upravno pravo* (Zagreb, 1912), vol. I, p. 63.

[41] Čepulo, 'Odgovornost', pp. 265-266; 267.

Luigi Compagna

August 1897: a New Parliamentary Assembly is born in Basel

During the winter of 1884 a conference of Chibbat Zion was held in the Silesian Voivodeship at Katowice. But it wasn't there that the Zionist movement transform itself into the Jewish nation parliament there. It happened only in Basel during august 1897. Unlike Herzl, Pinsker did not succeed in mediating between diverse political factions and free thinkers, between traditionalism and modernism, between the difficulties of the emigration to Palestine comparing to the appeal of America, between the idealism and socialism of the Lovers of Zion and the paternalist capitalism of Baron Maurice de Hirsch and Baron Edmund de Rothschild. In sum, between the Eastern and the Western branches of European Jewry.

Early Zionism was not only missing a leadership, a Moses in a sense, it also seemed to be bound to support grassroots initiatives, marked by an inherent inaptitude toward national and liberal parliamentarianism. Herzl was able to modify exactly this fateful path, moving its course from East to West.

At the end of the nineteenth century, Theodor Herzl defined Great Britain as the 'Archimedes' Point' upon which the lever of Zionism ought to be placed. In his opinion, two main reasons displayed strong connection with Disraeli's England: the first one was the political geography between Britain and Turkey which would have, in fact, inspired the diplomacy of Zionism. The second was the presence of a kind of parliamentarianism (most likely *tory* – namely national-popular – than *whig,* considering the need to involve as active participants the Jews of Eastern Europe) by which shaping Zionism as a movement with a strong statual inspiration.

In political terms, both in Disraeli's view as in Herzl's, sephardite ideas in favour of tradition, authority and hierarchy, were conceived as *tories* ideas. However, the *Tories* themselves were responsible for opposing the motion, proposed in 1847, that would have allowed observant Jews to sit in Parliament. On that occasion, as mentioned in Disraeli's *Life of George Bentinck,* merely four conservative deputies had voted in favour of the measure: Disraeli himself, the same Bentinck. Thomas Baring and Milness Gaskell. It was precisely the speech that Bentinck gave on that occasion that actually determined the fading of its leadership. Nevertheless, by defeating Bentinck, the *tories* had in fact indirectly contributed to paving the way for Disraeli's leadership.

More than one of those 'paradoxical event' Disraeli notoriously appreciated, it would have been 'right' in the Jewish sense of the term, and he would have always support it. His political idea was a mixture of aristocracy and meritocracy. He felt closer to National popular sentiments than to European liberal ideas. Judaism represented for him the highest mode of meritocracy. In his view the Jewish question ought to be considered in the framework of the right and duty of Great Britain to colonize. Over the extensive period by which in India, from a far-east commercial company it was transformed into an economic empire, Great Britain accredited itself as the major colonizing power in the nineteenth century. If Gladstone mainly looked to India, Disraeli, in turn had his sights set on the scenery of the Great Turkish empire.

Even it may be difficult to attribute Disraeli with merit as a writer, however in the role of politician his footprint and his weight are significant. In the events that lead to the creation of the State of Israel it would be unfair to regard Disraeli's actions as merely a romantic sephardite's attempt to pursue some kind of morbid fantasies of great colonialism writing.[1] In the context of his political activity, the number of Jews in Palestine would in fact be more than doubled. Not only. It would also have been prospected, at least implicitly, a future in which they would have ruled the country. During a walk along Lord Carrington park in High Wycombe in 1851 Disraeli engaged in a significant conversation with Lord Stanley. As Lord Stanley himself reported:

> '(...) The Palestine, he said, had vast natural supplies; it just needed labour and protection for workers: land ownership could have been purchased from Turkey. Money would have also come: Rothschild family and the main Jewish capitalist would have helped everyone: the Turkish empire was going to ruin and would have done anything for money. It is only needed to implant some colonies, with rights on land and security against oppression. The question of nationality should wait until they were firmly implanted. He added that these ideas were widely diffused and would have been supported throughout the whole Jewish nation. The man who accomplished this would had been the next Messiah, the true Saviour of his people (...)'.[2]

Legends tell us that upon death, Disraeli spoke in Hebrew about Palestine and Jerusalem (as in his novel *Alroy).* This can be irrelevant. But in order to consent Jews to build a parliament and, subsequently, deserve a State, a national-liberal as Herzl was, felt the need to reconnect to Disraeli's and Gladstone's politics in United Kingdom. Arose as a reaction to the increasing anti-Semitism evident in the late nineteenth century, political Zionism was appealing to a people lacking territorial conscience, at least in terms of inter-

national law. Emphasising the crucial importance of a parliamentary conscience, the institution of the Zionist Congress from 1897 onwards was meant to develop exactly that parliamentary conscience that would have been decisive in order to overcome the crucial moment, in 1903, when Uganda appeared to be more reachable than Palestine. Thus the Congress, as it had been created by Herzl, became a Parliamentary Assembly of a State yet with no territory at the moment.

'Any grants to the Jews as individuals, but nothing as a nation', stated Count Stanislas de Clermont-Tonnerre to the French National Assembly in August 1789. The result was the fateful 'contract of emancipation' of the Jews, offered following the French Revolution to all the countries of West and Central Europe: It was possible for Jews to become French citizens and later German or Italian, with the condition that they sacrifice all their national attributes and distinguish themselves from their compatriots just through the practice (or non practice) of religion as single individuals.[3]

The very idea of being citizens of Jewish confession was inconceivable in Poland, Russia and Ukraine, where the majority of European Jews were living. Hence, as a reaction, during the whole twentieth century, the preservation by the Jews in Eastern Europe of collective habits and costumes went far beyond the religious beliefs: from the preservation of the Yiddish language to culture, from concentration in certain districts, everything went with the implicit melancholic hope to return one day to the land of the fathers (Most likely to die than to live in).

It was necessary to involve Jews from both from east and west Europe, thus incorporating them all in a cosmopolitan background within the national political movement. This would enable Judaism to benefit from even more radical effects than those that were imprinted in Christianity by the Enlightenment. Michael Brenner, in his agile *Short History of Zionism,*[4] views the initial Zionism as a kind of 'International nationalism'. There is no doubt that he is right. As Baruch Hagani tells in 1919:

> 'The eastern Jews gave Zionism their enthusiasm, their need for relief and comfort; Western Jews gave, in turn, their spirit of organization, their modern culture and their understanding of current necessities. From the merging of these two elements political Zionism was born. It was dominated by the strong personality of Herzl who with his tireless activities, political talent, the charm and the authority of his person, gave the movement a formidable wideness in the efforts to carry Zionism from the small circle of Jewish life into the greater field of international politics'.[5]

Herzl was aware of how little the game and the bargain of power were connected in Europe with the opportunity of Jewish colonization

on a large scale, and that the wealthy aristocracy was yet not ready to cede authority and influence upon the European Jews to a journalist whose personality resembled the adventurous Shabatai Zevi. It is presumable that precisely in London, during the weeks preceding the Basel congress, with Samuel Montagu in the 'freezing majesty' of the House of Commons, Herzl summoned the determination to create a Jewish parliament as a constitutive element of a Jewish state, prior to the actual availability of a territory. In short, it was as if he once again faced the memory of Disraeli's England. The same visions that would have been upcoming about twenty years later to the European political audience, through the face, the words and the legality of the declaration of Arthur Balfour in the wake of a war fought and won by the principles of nationality.

From the holy people a nation had to be revived to become a State, in the midst of a century that had enshrined the sanctity of the Nation as a supreme principle. However, the path of Political Zionism was meant to be a long struggle even with the political doctrines that Europe had seen grow and spread in the nineteenth century. European liberalism was the guarantor of individual liberties rather than national freedom. Contending with nationalism, it emphasised the implicit risk of submitting individual rights to a principle of belonging to a wider group whose fate would encompass and overwhelm individual destinies. Anglo-Saxon liberalism in particular, by the second half of the nineteenth century, tended to be much less 'mazzinian' than in the past. Regarding the Socialists, carelessness about the principle of nationality was always meant as a doctrinal statement, something that not even war and post-war would ever rectify even when, as in the case of the Bund, the sensitivity for the Jewish question was intense and sincere.

Herzl's Zionism aspired to be first of all a form of parliamentarianism. It was in Basel in 1897 that he succeeded in returning political life to a people who had been deprived from it for 2000 years. This made that first assembly a milestone for Judaism. The task of the first Congress, as he formulated it, 'was to lay the foundations of the house which was meant to host the Jewish nation'. For Herzl this was such a delicate task – a 'dance on eggs, where eggs were invisible'. He attributed the utmost importance to the solemnity of the event. When Max Nordau, his Hungarian life long friend, akin to Friedrich Engels for Karl Marx, appeared with a redingote. Herzl begged him to change his outfit (swallow's tail and white tie for the inaugural session). Everything had to be great, magnificent and solemn. These elaborate preparations surprised the 197 delegates participating in the congress; for most of them the occasion represented the first meeting with Herzl.

The congress was opened by Dr. Lippe, a veteran of the Lovers of Zion; he recited the Shehekeyanu prayer which begins with 'Our mighty lord, king of the universe, thou who kept us alive and allowed us to witness this day'. The following speeches by Herzl and Nordau were the very essence of the congress. Comparing to the pages of the *Judenstaat,* Herzl's speech did not contain anything radically new. He reiterated his points about the flagging solidarity amongst Jews in the face of modem anti-semitism. However, he said, 'we are now returned home. Zionism is the return to Judaism before it is the return to the Promised Land'. Such a statement was too soaked by secularism not to strike the venerable rabbi traditions.

It was necessary for the world to once again recognise that the Jews were a people. A political organisation was needed: not one based upon political parties, but one with a parliamentary structure. They had nothing to hide as they were not involved in any conspiracy. Their aim was to greet the rebirth of Jewish national consciousness and thus mature the same right to the national state that in 1789 had spread to Europe with the exemption of the Jewish people. The eyes of hundreds of thousands of Jews, full of hope and expectations were upon them. The merits of sporadic colonisation were not to be denied, but this old and slow method, without any legal basis of recognition, would have never brought about the solution to the Jewish problem. Only legal recognition could be a solid ground for the future, neither tolerance nor mere acceptance were sufficient anymore. The movement needed to grow vastly and become far more ambitious and powerful in order to achieve its goals: 'A people can be helped only by himself, and if it is not able to do this, then it cannot be helped'. Herzl received an overwhelming fifteen minute long applause. His momentous speech was followed by that of Nordau, who presented a brilliant and accurate reconstruction of the situation of Jews in various parts of the world, focusing on the moral and material aspects and their implications.

Following long debates, the Zionist Congress was determined to function as the supreme organ of the movement. An action committee composed of twenty-three members was to be elected to address the political agenda. Therefore the congress was the annual session of a parliamentary organ which considered itself as a constitutive feature of a 'State in progress'. Membership, with the consequent entitlement to vote in the elections, was open to all those over the age of eighteen who would pay a shekel and accept the programme of Basel. In those discussions, ideas and suggestions that would have played a major role for future Zionist activities were firstly outlined. Bodenheimer, a fraternal friend of Wolffsohn in Cologne, designed a plan for estab-

lishing a bank and a Zionist central fund. Herman Shapira, a Russian professor of mathematics in Heidelberg, suggested that a Jewish University would be established in Palestine.

At the end of the third day of deliberations, Max Mandelstam, a veteran Lover of Zion, gave a moving speech expressing the immense gratitude that the delegates felt towards the 'courageous man who was the most responsible for the aggregation of Jews from all over the world, now joining to decide the future of their own people'. Amid the shouts of gratitude, oaths of fidelity and tumultuous applause, the first Zionist congress came to an end. Just over fifty years later the State of Israel was established, but perhaps as Herzl claimed it was in fact born in Basel during those days in 1897. It was the same *Der Judenstaat* that Herzl had envisaged two years previously during the Dreyfus's trial.

Notes

[1] Laqueur didn't appreciate his activities as a novelist so in his account neglects to attribute Disraeli with any substantial political role. W. Laqueur, *A History of Zionism* (New York, 2003), p. 43.

[2] J. R. Vincent (curator), *Disraeli, Derby and the Conservative Party. The Political Journals of Lord Stanley* (London, 1978), p. 32.

[3] On the eve of the French Revolution, two 'golden' booklets tried to argue against anti-Semitism. The first one, *Apologue to Jews* by Zalkind Hourwitz, explicitly demanded access to French citizenship. The second one, *Essay on natural, moral, political regeneration of Jews* by Henri Grégoire, interpreted the emancipation as a 'new birth' meant to remove from Jews their own features (from eating habits to liturgical traditions, from the reading of the Torah, to the he prospect of Palestine).

[4] See M. Brenner, *Breve storia del Sionismo* (Roma-Bari, 2003), pp. 21-55.

[5] B. Hagani, *Vita di Theodor Herzl* (Roma, 1919), p. 11.

Lorella Cedroni

Rappresentanza territoriale e rappresentanza funzionale nelle democrazie occidentali

1. *Premessa*

Nelle democrazie occidentali il rapporto tra rappresentanza territoriale e rappresentanza funzionale è stato sempre estremamente problematico al punto che, anche nelle democrazie anglosassoni dove la relazione tra stato e interessi rappresentati si costituì come meccanismo atto a garantire il pluralismo politico – ossia 'poliarchico'[1] – questo rapporto viene presentato in modo tale che i due tipi di rappresentanza risultino reciprocamente escludentesi.

La questione è in parte dovuta alla natura stessa della rappresentanza politica che, se da un lato propende a ricreare fittiziamente un'unità – l'unità nazionale, l'unità del popolo sovrano – che altrimenti sarebbe irrappresentabile (per quanto riguarda l'esperienza storica delle democrazie occidentali, 'solo l'unità nazionale – affermava Carl Schmitt – non il pluralismo è capace di rappresentanza'),[2] dall'altro, la rappresentanza non può rinunciare alla sua natura composita e plurale, '*politica'* appunto, soprattutto se riferita al rapporto tra governanti e governati e all'espressione degli interessi variegati e incommensurabili.

Oggi la conflittualità tra le forme della rappresentanza politica (generale) legate all'identità territoriale e le forme della rappresentanza funzionale legate agli interessi organizzati (particolari) sembrerebbe, almeno apparentemente, irrisolvibile.

Diversi studiosi suggeriscono da più parti che la rappresentanza politica, se concepita non come concetto monolitico, o come relazione esclusiva tra *principal* e agente basata sull'identità territoriale, bensì come pratica democratica empiricamente analizzabile, essa riuscirebbe ancora a mantenersi come paradigma euristicamente valido.

Lo sguardo, qui, va inevitabilmente alle istituzioni rappresentative, quelle originarie, fino alle protoforme parlamentari – ne abbiamo considerati, in questo convegno, i diversi casi – alla loro trasformazione, al modo in qui queste si sono adattate alle forme del 'sociale' e, viceversa, al modo in cui le istituzioni parlamentari hanno riconfigurato la società. La 'pratica' della rappresentanza politica aiuta più di ogni altra forma e categoria concettuale a ricondurre la questione della compatibilità tra territorio e funzione alla sua originaria dimensione, quella *politica* appunto, espressione della pluralità degli interessi da

rappresentare, nella loro generalità, in quanto riferibili alla collettività e al bene comune da perseguire.

2. *La rappresentanza funzionale oltre lo Stato*

La questione della rappresentanza degli interessi organizzati è stata risolta, fino alla fine del secolo scorso come un problema di teoria politica e costituzionale, *interna* alla dottrina dello Stato.[3] Joseph Kaiser ha posto l'accento sul fatto che un'adeguata comprensione degli interessi organizzati non debba fare riferimento soltanto alla dimensione statutaria civile indicante le modalità di azione delle associazioni – anche se originariamente è il diritto privato a regolare l'organizzazione degli interessi – ma debba badare, piuttosto, alle loro relazioni con gli apparati di governo. Tale funzione costruttiva dell'organizzazione degli interessi può essere ascritta all'evoluzione della definizione hegeliana della 'società civile' la quale, pur muovendo dalla separazione nei confronti dello Stato, ha assunto marcata caratterizzazione giuridica in grado di esprimersi, ormai comunemente, sotto il nome di 'stato comunità'.[4] In tale visione gli interessi organizzati vengono a costituire un tratto imprescindibile nella società moderna, quella industrializzata per intenderci, in quanto agirebbero 'nello spazio intermedio tra individuo e potere statale'.[5]

Nelle società postindustriali la pressione degli interessi organizzati su scala mondiale è determinante, tuttavia, anche se la rappresentanza, come espressione dell'unità nazionale e politica, risulta sempre più depotenziata e lo Stato, detentore del monopolio della forza e delle forme della sua legittimazione, depauperato della sua funzione primaria, la funzione identificante della natura territoriale della rappresentanza non viene meno. Sempre Schmitt ha rilevato come il fondamento essenziale dello Stato scaturisca dalla contrapposizione tra identità e rappresentanza, laddove il principio di identità era espresso dall'idea del popolo sempre realmente presente nella sua immediata identità, come unità politica (non ci può essere Stato senza popolo) e, al tempo stesso, l'unità politica in quanto tale, non potendo mai essere presente nella reale identità, doveva sempre essere rappresentata personalmente.[6]

La rappresentanza territoriale e la forma politica che la incarna – ossia lo Stato – è dunque tutt'altro che destinata a scomparire e, a maggior ragione in un contesto, come quello attuale, caratterizzato da un nuovo principio di divisione del lavoro, che noi chiamiamo *governance* – anche le istituzioni e le forme della rappresentanza politica moderna, ricordiamo, rispondevano originariamente a questa esigenza di distribuzione (orizzontale) e attribuzione (verticale) di compiti – nei suoi diversi gradi e livelli di cui gli stati, proprio perché territoriali, costituiscono la fonte di legittimità.

Pensiamo ad esempio alle istituzioni rappresentative sovranazionali – come il Parlamento Europeo – la cui principale fonte di legittimità è data dagli stati membri; ma anche alla stessa Unione Europea, la quale altro non è se non una unione, appunto di stati nazionali, la cui formalizzazione è dovuta agli stati nazionali. La territorialità resta la principale forma di verifica di responsabilità (*accountability*) e di democrazia in un sistema così composito – per utilizzare le parole di Sergio Fabbrini – come quello europeo.[7] I cittadini 'europei', inoltre, si definiscono pur sempre rispetto allo stato-nazione di appartenenza, e la definizione di cittadinanza europea risulta essere la formalizzazione di una rideterminazione di uno 'spazio' comune *non* politico, bensì economico, a differenza degli Stati Uniti, in cui tutti sono americani, americani col 'trattino' s'intende,[8] e la sovranità è plurima, perché gli stati sono molteplici, mentre la nazione è unica.

3. *La pratica della rappresentanza politica*

Torniamo alla 'pratica' della rappresentanza in cui la dicotomia territoriale-funzionale appare maggiormente stemperata e riprendiamo per un momento il punto centrale del lavoro di Joseph Kaiser sulla rappresentanza politica in senso moderno, intesa cioè come il risultato di un'organizzazione predisposta attraverso il voto eguale, libero e segreto degli elettori – qui si tratta in effetti di rappresentanza sostanziale, seguendo le indicazioni di Marongiu secondo il significato già chiarito da Maria Sofia Corciulo in apertura a questo Convegno – predisposta, dicevo, al raggiungimento della ricomposizione della comunità. Kaiser coglie il tratto essenziale che accomuna le diverse realizzazioni storiche e istituzionali dell'organizzazione degli interessi, da un lato, tipizzandone le forme e facendo della categoria di 'interesse' un paradigma politico originario, dall'altro comparando vari modelli istituzionali, partendo dalle singole esperienze costituzionali.

Ora, gli interessi sarebbero politicamente ininfluenti se non poggiassero su fattori sociali già esistenti. Ciò che contraddistingue gli interessi organizzati dalle grandi istituzioni di intermediazione delle aspettative dei cittadini nei confronti del potere è il fatto che i primi non sono latori di alcuna responsabilità politica, pur mantenendo una funzione pubblica, mentre gli altri lo sono; ma c'è un dato caratterizzante e precipuo, oltre a questa distinzione, ossia che ad accomunare le diverse realizzazioni storiche degli interessi è il loro tratto *politico* originario. Partendo da questo elemento, possiamo senza dubbio pensare al rapporto tra rappresentanza territoriale e rappresentanza funzionale come una relazione non conflittuale, i cui termini non siano reciprocamente escludentesi.

Abbiamo visto che la specificità dello stato moderno consiste nel parlamentarismo prima e, successivamente, nel suffragio universale,

due presupposti del pluralismo che sono alla base della rappresentanza territoriale. Quest'ultima costituisce il superamento del sistema dei ceti e il risultato di una trasformazione sociale ed economica per cui lo stato nazionale tenderà sempre più a configurarsi come una 'comunità economica di interessi'.[9] Come ha opportunamente notato Giulio Sapelli: 'il principio nazionale assumeva un significato economico e il parlamentarismo si affermava come la forma dominante della vita statale e, al tempo stesso, come la capacità del capitalismo di sostenere politicamente i propri interessi'.[10]

La cultura 'classica' del costituzionalismo ci rimanda alla questione della rilevanza delle pratiche di rappresentanza funzionale a fianco di quelle territoriali, prefigurazione di quella configurazione della natura interattiva del rapporto tra società economica e società politica, come emerge da diversi studi sull'argomento.[11]

Ci sono almeno tre problemi connessi alla rappresentanza *in practice*: il primo riguarda la configurazione istituzionale delle istituzioni rappresentative in una organizzazione democratica dove possa vigere una rappresentanza funzionale, non antistatale, quanto piuttosto prestatale che sorga dalla società civile e che vada ad integrare quella territoriale, in maniera non subordinata, bensì prioritaria e, tuttavia, non esclusiva e determinante. Il principio funzionale – come ha scritto opportunamente Sapelli – può essere, insieme, il 'disvelamento degli interessi non più occulti e il temperamento dell'uguaglianza livellatrice del voto che conduce al plebiscitarismo e che i partiti, nella società globalizzata, non sono più in grado di attenuare da soli'.[12]

Questo ci conduce al secondo problema, ossia: la possibilità che i cittadini con i loro interessi possano essere marginalizzati dalle istituzioni rappresentative. La questione è trattata da numerosi studiosi contemporanei i quali suggeriscono che le istituzioni rappresentative possono includere opinioni, prospettive e interessi di alcuni cittadini a costo di marginalizzare opinioni, prospettive e interessi di altri. Schumpeter ha evidenziato per primo la natura in un certo senso 'classista' delle istituzioni rappresentative, per cui non c'è molto da discutere sul modo per poter migliorare la rappresentanza politica di quei cittadini che non hanno la volontà, il tempo e le risorse per partecipare alla vita politica.[13]

Infine, terzo problema, le discussioni teoriche della rappresentanza politica si sono concentrate principalmente sulle procedure formali di autorizzazione, responsabilità all'interno degli stati nazioni, ossia su quella che viene chiamata 'rappresentanza formale' e poco sull'interrelazione tra le forme della rappresentanza politica moderna e le forme di regolazione e trasparenza dei mercati.[14]

La complessità delle tematiche moderne e delle collocazioni multiple del potere politico suggeriscono che oggi le nozioni di responsabi-

lità e di autorizzazione sono completamente inadeguate. Dal momento che i poteri, un tempo attribuiti in maniera esclusiva agli stati nazione, si sono diffusi tra gli attori internazionali e transnazionali e, considerato anche il ruolo che le organizzazioni non governative giocano nell'arena internazionale, i rappresentanti dei gruppi sociali non riconosciuti non sono più collocati nell'arena politica formale dello stato-nazione. In altre parole i rappresentanti eletti non sono più completamente responsabili di decidere o di favorire le politiche pubbliche che hanno impatto direttamente sui cittadini dai quali vengono a loro volta autorizzati.

Considerati tali cambiamenti è necessario rivedere la nostra concezione della rappresentanza politica, specificamente della rappresentanza democratica, cercando di formulare un quadro concettuale di riferimento che includa forme multiple di rappresentanza, in cui la rappresentanza assolva alla sua funzione originaria di mediazione e ricomposizione degli interessi. La vera differenza tra territorialità e funzionalità 'nella e della rappresentanza' risiede nei meccanismi decisori che a queste due forme possibili di costruzione delle sovranità fanno capo. 'L'unanimità è tipica delle procedure corporative, dove gli interessi non si contano, ma si mediano, sino al raggiungimento dell'unanimità, anziché del rispetto delle regole del principio di maggioranza'.[15]

La rappresentatività fa piuttosto leva sul principio di sussidiarietà (ossia di solidarietà orizzontale) fondata sulla società civile o, meglio se si preferisce, sulla società politica. La sussidiarietà orizzontale è un 'risultato istituzional-funzionale che supera le aporie del principio di maggioranza'.[16] Essa non può esistere senza 'una cornice della sovranità' che sia in grado di 'legittimare le autonomie funzionali'.[17] E la sovranità appartiene esclusivamente alla concezione costituzionale europea del diritto; essa 'è fondata sempre sul principio della relazione simmetrica e congruente tra rappresentanti e cittadini, incarnata dal principio di responsabilità'.[18]

Si parla sempre di crisi della rappresentanza politica, dell'incommensurabilità tra rappresentanza territoriale e rappresentanza funzionale, dell'incapacità delle istituzioni rappresentative di cogliere, registrare e interpretare la domanda sociale; ma più che di crisi io preferirei parlare di 'trasformazione' delle istituzioni rappresentative. Il punto sta nel cogliere queste trasformazioni proprio come all'epoca delle grandi rivoluzioni in cui la rappresentanza politica costituiva il 'problema dei problemi', la 'grande questione' da risolvere per poter comprendere la trasformazione allora in atto.[19]

Oggi come allora ci si chiede se i meccanismi decisori siano appropriati, ossia se 'funzionano', se siano in grado di dare 'rappresentanza' alla domanda sociale, se sappiano incarnare il cambiamento e ir-

regimentarlo, di regolarlo, e di imbrigliare la degenerazione che le trasformazioni sociali ed economiche possono provocare.

Ancora una volta ci si interroga sulla funzione 'politica' della rappresentanza e delle istituzioni rappresentative, di ricomposizione degli interessi e di capacità di attutire i conflitti sociali, attraverso metodi di risoluzione pacifica, in cui tuttavia lo stato non è più il solo attore di tale regolazione. L'istanza collettiva – e qui i riferimenti vanno naturalmente all'assemblea, al parlamento, ai partiti e anche al popolo o, se si preferisce, ai cittadini, in quanto soggetti attivi dell'azione rappresentativa – costituisce, insieme all'identità, un elemento centrale per definire il rapporto rappresentante/rappresentato. In maniera emblematica Bobbio ha sottolineato che le teorie pluralistiche della democrazia sono sorte da una semplice sostituzione dei singoli cittadini con soggetti collettivi[20] e lo stesso Manin ha messo molto bene in evidenza questo nesso mostrando come il carattere *collettivo* dell'istanza rappresentativa sia uno degli elementi di continuità rispetto alla tradizione medievale.[21] E' a partire da questo carattere *collettivo eterogeneo* dell'organo rappresentativo che può essere affrontato il tema della configurazione istituzionale della rappresentanza politica.

Identità e pluralità costituiscono i due punti focali su cui si basa la teoria moderna e contemporanea della rappresentanza politica, teoria che trova il suo fondamento, da un lato, nella omologia necessaria tra rappresentanti e rappresentati, o – come aveva teorizzato Rousseau con inesorabile coerenza – nell'identificazione del popolo con se stesso, dell'Assemblea con la nazione, secondo la visione di Sieyès, espressione della volontà generale, unica, sovrana, indivisibile e imprescrittibile; dall'altro nella differenza, nella distanza sociologica, culturale, politica ed economica, tra rappresentanti e rappresentati.

Nel cortocircuito tra postulato dell'omologia tra rappresentanti e rappresentati e principio del governo mediato, con la necessaria organizzazione di corpi intermedi (partiti, sindacati, gruppi) che si frappongono tra governanti governati, si consuma la tensione tra identità e rappresentanza, laddove il principio d'identità viene espresso dall'idea del *popolo* realmente *presente* come unità politica e, al tempo stesso, l'unità politica in quanto tale, non potendo mai essere presente nella reale identità, viene ad essere rappresentata personalmente.

La priorità della funzione *sociale* accordata alla rappresentanza ci spinge a considerare i partiti politici in rapporto alle organizzazioni d'interessi. Nel paragrafo seguente ci concentreremo principalmente sulla loro configurazione specifica e la reciproca influenza nei processi di rappresentanza e di *decision making*.

I partiti politici, sono stati considerati come sistemi informali – secondo l'indicazione di Michels – generalmente personalizzati e con

una 'tendenza omnibus'.[22] Ne consegue che la loro struttura può restare 'aperta', sia alla base sia ai livelli gerarchici più elevati. I partiti hanno una 'natura *porosa*' – come ha osservato Eldersveld – a tutti i livelli, di base, mediani, di vertice e questo comporta enormi conseguenze, tanto in sede di orientamenti individuali, quanto in sede di relazioni organizzative: 'dove l'adattabilità è massima la funzione direttiva diventa difficile, le fazioni si moltiplicano, l'efficienza operativa cade di tono, il consenso sui principi e sui fini perde coerenza. Viceversa, quando l'adattabilità è minima tali conseguenze sono meno gravi. Questo è il primo dilemma teorico cui il partito si trova di fronte'.

Sempre Eldersweld distingue quattro modelli empirici di partito: il modello *clientelare* caratterizzato da partiti politici attenti al cosidetto 'potenziale clientelare'; ci sono poi partiti che cercano di convertire interessi sociali e politici in potere politico. In tal caso il partito può essere concettualizzato come un'alleanza di substrutture o di subcoalizioni: 'Il partito, secondo questo modello, costituisce un gruppo *intermediario* che rappresenta e sfrutta interessi multipli per il raggiungimento del controllo diretto sull'apparato di potere della società'.[23] Questo tipo di struttura si costituisce al fine di massimizzare la possibilità di risoluzione dei conflitti; in realtà quest'ultima viene soltanto differita dal partito.[24]

Il terzo modello è quello *gerarchico*, in cui si colloca sia la visione *oligarchica* di Michels, secondo cui il controllo della struttura è concentrato nelle mani di un singolo gruppo dirigente, vertice, *élite*, sia quella della *stratarchia*, in base alla quale più che una unità di comando centralizzata esistono degli strati di comando che operano con un grado di indipendenza variabile: 'Nel processo di adattamento, il partito sviluppa suoi propri modelli gerarchici di delegazione stratificata della responsabilità per l'appianamento dei conflitti, piuttosto che mettere a repentaglio la vita dell'intera organizzazione trasferendo tali conflitti ai più alti livelli di comando del partito'.

Il partito infine (quarto modello) può essere considerato come una struttura di *deferenza* reciproca, non essendo un sistema organizzato di autorità, contrariamente ai modelli burocratici e autoritari di organizzazione sociale, quanto piuttosto un sistema di rapporti tra il vertice, i quadri a livello medio e gli attivisti.

Per quanto riguarda la specifica funzione dei partiti politici essi sostanzialmente intercettano le domande che scaturiscono da particolari bisogni dei cittadini (*articolazione*) e le convertono in richieste politiche generali (*aggregazione*).[25] Tuttavia, i partiti non si limitano ad incanalare le preferenze dei cittadini, ma si preoccupano di *interpretarle* e modificarle soprattutto attraverso la formazione di identità collettive.[26] Una volta formate queste identità collettive, i cittadini po-

tranno chiedere ai rappresentanti il soddisfacimento delle loro utilità, offrendo in cambio fiducia (*delega*). Il partito si presenta, in tal modo, come attore politico, essendo delegato ad agire nel sistema per conquistare il potere e, quindi, governare.

Si configurano due tipi di rappresentanza rispetto alla funzione principale dei partiti – come ha indicato Pizzorno – la rappresentanza *identificante* e la rappresentanza *efficiente:* la prima 'consiste nel produrre simboli che servono ai membri di una collettività data per riconoscersi come tali, comunicarsi la loro solidarietà, concordare l'azione collettiva'. La seconda permette invece ai politici di prendere 'decisioni direttamente intese a migliorare, o a non lasciar peggiorare, la posizione relativa dell'entità collettiva che essi rappresentano nel sistema entro cui questa agisce'.[27]

4. *Il rapporto tra partiti politici, sindacati e gruppi di pressione*

La scienza politica si è occupata assai raramente del rapporto tra partiti e gruppi di interesse e/o di pressione; mentre esistono analisi consolidate che riguardano la specificità del sistema dei partiti e delle relazioni interpartitiche non altrettanta attenzione è stata riservata alle dinamiche sociali e politiche.

Il problema del rapporto tra gruppi organizzati e partiti politici è stato sempre posto in termini di predominanza e controllo da parte di questi ultimi sui primi, un controllo che – è stato detto – ha a lungo inibito la capacità dei gruppi di interesse e di pressione di formulare specifiche domande pragmatiche. Il sistema partitico – afferma Almond – 'si pone tra i gruppi di interesse e gli organi preposti alle decisioni politiche e così protegge queste ultime dalla pressione disintegrante e particolaristica degli interessi speciali'. Entrambi partecipano alla competizione politica con un *ethos* di carattere negoziale, ma il 'sistema partitico aggrega interessi e li trasforma in un numero relativamente piccolo di alternative politiche generali. Questo tipo di relazioni tra sistema partitico e gruppi di interesse, da una parte consente al legislativo di realizzare una scelta tra linee politiche generali, dall'altra garantisce che la burocrazia tenderà a funzionare come strumento neutrale del sistema politico'.[28]

Tuttavia, non in ogni sistema politico è dato trovare questa netta differenziazione. Sempre Almond afferma che nei sistemi politici francese e italiano i partiti e i gruppi di interesse non costituiscono sistemi autonomi. Vi sono partiti che controllano i gruppi di interesse; ma vi sono anche gruppi di interesse che controllano i partiti. 'Quando i partiti controllano i gruppi di interesse, viene meno in questi la possibilità di formulare domande precise in forma concreta e pragmatica: i partiti impongono ai gruppi un contenuto politico di natura ideologica. Per converso quando i gruppi di interesse controllano i

partiti, viene limitata la possibilità del partito di stemperare le domande specifiche in programmi politici di più ampio respiro. In questo modo il processo legislativo riceve dai gruppi di interesse e dai partiti o materiale "grezzo" cioè domande di interessi specifici oppure orientamenti ideologici rigidi'.[29]

I gruppi di interesse associativi, come i sindacati, le associazioni culturali e professionali di ogni tipo, hanno come funzione specifica quella di rappresentare gli interessi 'sociali', ma 'particolari', dei diversi gruppi e di attivarsi politicamente cercando di influenzare le scelte politiche e del personale che deciderà determinate politiche, attraverso una modalità – la *pressione* – che può essere esercitata secondo numerose varianti e con gradi variabili di successo, il che dipende della maggiore o minore congruenza con le norme culturali generali di una data società.

Questo è un punto fondamentale perché una maggiore congruenza con le norme culturali generali e diciamo con i valori condivisi dalla collettività – che sono i diritti sociali e civili, la solidarietà, la giustizia, l'eguaglianza, le eque opportunità – espressi in varie forme e da diversi soggetti – dai sindacati alle associazioni d'impresa e di volontariato – è la condizione necessaria affinché vi sia una struttura di rappresentanza 'politica' adeguata alle esigenze del 'sociale' che attinga dal patrimonio dei valori condivisi dalla collettività e non sia basata su dinamiche astratte della politica. Questo quadro 'ideale', ma futuribile, costituisce l'orizzonte teorico entro il quale si possono analizzare le dinamiche socio-politiche di gruppi e partiti dove, da un lato, i diversi gruppi di pressione debbono cercare di mantenere o sintonizzare i loro interessi particolari con quelli più generali della società e, dall'altro, i partiti politici dovranno ristabilire un contatto con la base sociale e l'elettorato se intendono tornare ad esprimere e a rappresentare gli interessi generali della collettività.

Nelle società avanzate i gruppi organizzati dovrebbero essere – e in molti casi lo sono – espressione autonoma degli interessi della società e rappresentare in modo diretto tali interessi; tuttavia, in molti paesi il sistema dei gruppi di interesse dipende ancora in larga parte dal sistema dei partiti e le sue domande trovano udienza presso i vertici del potere tramite l'assunzione e la mediazione da parte di questi ultimi.[30]

Per concludere, ancora qualche considerazione su alcuni aspetti particolari della dimensione territoriale della rappresentanza. Faremo brevi cenni alla dimensione locale, transnazionale e sovranazionale della rappresentanza, attraverso il richiamo a casi specifici come quello dei nuovi Consigli camerali in Italia, degli enti territoriali infrastatuali e del Parlamento europeo. Vaglieremo la plausibilità dell'ipotesi di una possibile compatibilità tra rappresentanza economica

e rappresentanza politica e tra rappresentanza territoriale e rappresentanza professionale (o tecnica). Passeremo poi ad esaminare il modello federale maggiormente propenso a garantire la rappresentanza delle minoranze e la rappresentanza delle regioni.

La legge 580/93 istituiva i nuovi Consigli camerali attraverso i quali, per la prima volta in Italia, si andava ad agire sul rapporto 'locale-centrale' della rappresentanza.[31] L'aspetto più innovativo della riforma delle Camere di Commercio è costituito dalle modalità di formazione dei Consigli Camerali attraverso cui viene attribuito alle associazioni imprenditoriali il diritto di nominare i componenti dei Consigli indipendentemente dalla *effettiva* rappresentatività delle associazioni. In tal modo si viene a creare una corrispondenza diretta fra la composizione dei Consigli ed il tessuto imprenditoriale realmente attivo sul territorio, rendendo le Camere maggiormente rappresentative, secondo la logica di una diretta e reale rispondenza tra rappresentanti e rappresentati.

Il caso dei nuovi Consigli camerali, pone con incisività e urgenza la questione della compatibilità tra rappresentanza politica degli interessi generali, e rappresentanza 'settoriale' di interessi specifici.

Abbiamo analizzato il rapporto tra rappresentanza politica, o meglio partitica, e rappresentanza degli interessi organizzati, rilevando come la pluralità dei rapporti di rappresentanza sia l'elemento che garantisce meglio la 'politica degli interessi'. Uno dei rischi della rappresentanza dei nuovi Consigli è di diventare uno specchio deformato della cosiddetta 'democrazia degli interessi' dove conta la *visibilità* e non piuttosto l'azione politica; in tal modo la rappresentanza viene privata di una delle due forme attraverso le quali si attua: lo *standing for* (stare per, al posto di) e l'*acting for* (agire per, al posto di), stando alla dicotomia introdotta da Hanna Fenichel Pitkin oltre quarant'anni fa.[32]

L'istituzione dei nuovi Consigli camerali pone pertanto al centro del dibattito politico la questione della 'rappresentanza economica' e, conseguentemente, della possibilità di una 'democrazia economica'. La rappresentanza economica può essere considerata come una forma particolare della rappresentanza degli interessi, incommensurabile, almeno dal punto di vista strutturale, con quella politica.

In realtà la riforma risponde – come ha ben chiarito Lorenzo Ornaghi – non già alla necessità di sollecitare da parte del potere partitico-statale un'autonoma politica degli interessi, quanto al bisogno, avvertito in modo sempre più acuto da chi continua a essere investito della duplice legittimazione a rappresentare e a governare, di far sì che una struttura scalare della rappresentanza 'economica' (o una sua linea di sviluppo non contraddittoria e antagonistica con quella 'politica') agevoli o renda meno complesso il governo di tutti gli interessi

da parte del 'centro'. I Consigli camerali sintetizzano le diverse modalità del rappresentare: l'esercizio di un'autorità legittimamente e consapevolmente conferita, la responsabilità rispetto ai rappresentati, il rispecchiamento di una precisa realtà, l'identificazione simbolica della peculiarità di un insieme particolare di interessi e, infine, l'azione puntuale nell'interesse di chi viene rappresentato.[33]

In sostanza la riforma rispondeva ad un'esigenza di 'rigenerare' la rappresentanza politica, in risposta a quella domanda di differenziazione di prestazioni e di funzioni da parte di nuovi attori sociali – come associazioni e movimenti di cittadini, organizzazioni non governative, multinazionali – e nuovi enti autonomi territoriali infrastatuali.

Note

[1] Come ha ben specificato G. Sapelli, *La democrazia trasformata. La rappresentanza tra territorio e funzione: un'analisi teorico-interpretativa* (Milano, 2007): 'tale poliarchia garantiva la trasmissione, ma anche la regolazione e la compensazione degli interessi economici, della riproduzione continua del pluralismo tanto della società politica quanto dei gruppi di interesse'. *Ivi,* p. 2.

[2] J. H. Kaiser, *La rappresentanza degli interessi organizzati* (Milano, 1993), p. 30.

[3] Si veda lo studio – emblematico in tal senso – di Kaiser, *La rappresentanza degli interessi organizzati*. Il volume, apparso nel 1956, costituisce il risultato di un lavoro predisposto dall'Autore tra il 1952 e il 1954. Kaiser considera la questione degli interessi organizzati il 'problema fondamentale del secolo'.

[4] Seguo le considerazioni di S. Mangiameli, si veda la sua *Introduzione* a Kaiser, *La rappresentanza degli interessi organizzati*, p. 5.

[5] Kaiser, *La rappresentanza degli interessi organizzati*, p. 53.

[6] C.Schmitt, *Verfassungslehre* (Munchen,1928), p. 205.

[7] S. Fabbrini utilizza la formula di 'compound republic' riferendosi al caso europeo e riprendendola dal lessico politico americano, per l'esattezza madisoniano (Federalist papers, n, 51); cfr. *Compund Republic* (Cambridge, 2008).

[8] M. Walzer parla di 'hyphenated Americans', *Che cosa significa essere americani* (Milano, 1997).

[9] O. Hintze ha descritto in maniera assai chiara ed efficace tale trasformazione, in 'Wirtschaft und Politik in Zeitalker des Modernen Kapitalismus', in P. Schiera (ed.), *Stato e società* (Bologna, 1980), pp. 202-20.

[10] Sapelli, *La democrazia trasformata,* p. 40.

[11] Si veda per tutti il lavoro di A. Schonfield, *Il capitalismo moderno. Mutamento nei rapporti tra potere pubblico e privato* (Milano, 1967).

[12] Sapelli, *La democrazia trasformata,* p. 121.

[13] J. Schumpeter, *Capitalism, Socialism, and Democracy* (London, 1976).

[14] Su questo punto si veda ancora Sapelli, *La democrazia trasformata,* p. 122.

[15] *Ivi*, p. 159.

[16] *Ivi*, p. 205.

[17] *Ivi,* p. 206.

[18] *Ivi*, p. 207.

[19] Ho trattato specificamente questo punto altrove: L. Cedroni, *La rappresentanza politica. Teoria e modelli* (Milano, 2004).

[20] N. Bobbio, *Il futuro della democrazia* (Torino, 1984).

[21] Facendo vedere come tale nozione non sia 'una creazione *ex nihilo* del pensiero politico moderno, ma un lascito della storia…la cura stessa che mettono i primi sosteni-

tori delle assemblee rappresentative moderne nell'esporre dettagliatamente i tratti che differenziano la nuova dalla vecchia istituzione, dimostra che sono coscienti dei legami di filiazione tra l'una e l'altra'. B. Manin, *La democrazia dei moderni* (Milano, 1992), p. 125.

[22] R. Michels, *La sociologia del partito politico nella democrazia moderna* (Bologna, 1966).

[23] S. J. Eldersveld, *Political Parties. A Behavioral Analysis* (Chicago, 1964).

[24] Il partito – afferma Eldersveld – 'cerca di stabilizzare le interazioni e le relazioni fra le subcoalizioni in modo tale che questi interessi diversi rimangano legati alla organizzazione dopo aver dato loro parziale soddisfazione, ma senza permettere che le rivalità fra i vari gruppi interferiscano con il disegno del partito per l'accesso al potere. La tensione fra lo scopo del gruppo e le richieste delle subcoalizioni è il secondo dilemma strutturale del partito' (Eldersveld, *Political Parties*, p. 289).

[25] G.A. Almond e G.B. Powell, *Politica comparata. Sistema, processi e politiche* (Bologna, 1988).

[26] A. Pizzorno, *Le radici della politica assoluta* (Milano, 1993), p. 228.

[27] Ivi, p. 175.

[28] G. Almond, 'Sistemi partitici e gruppi di pressione', in G. Sartori (ed.) *Antologia di Scienza politica* (Bologna, 1971).

[29] *Ivi,* p. 195.

[30] M. Fotia, *Le lobby in Italia* (Bari, 1997).

[31] L. Ornaghi, *'Nuovi poteri e rappresentanza economica', Impresa & Stato*, 36 (2001).

[32] H. Fenichel Pitkin, *The Concept of Representation* (Berkeley, 1967).

[33] *Ibidem*.

Cristiana Senigaglia

Parlamentarismo e questioni territoriali: la posizione di Max Weber nel dibattito politico-costituzionale degli anni 1917-1919

1. *Rappresentanza e territorio: i termini della questione in Germania durante il conflitto*

L'anno 1917 segna una data importante per le riforme parlamentari in Germania. Il perdurare della guerra, e il suo caratterizzarsi come conflitto che concerne e coinvolge in prima istanza la popolazione, spinge a cercare nuove soluzioni istituzionali che rafforzino il sentimento di cittadinanza e il legame tra Stato federale e Stati membri. Indebolitasi la carica emozionale che aveva guidato le popolazioni a sostenere le decisioni dei Governi nazionali nel 1914, gli Stati cercano altre vie per rivitalizzare la solidarietà tra cittadini e Governi puntando soprattutto a un loro riconoscimento sul piano politico. L'Inghilterra promuove in quegli anni una riforma elettorale che estende il diritto di voto dei suoi cittadini, ma una forte spinta ad agire viene prodotta anche in seguito alla rivoluzione di Febbraio in Russia, che pone fine alla sovranità dello Zar e porta al potere temporaneamente Kerenskij conferendo centralità all'attività e alle decisioni della Duma. In Germania, la discussione sull'opportunità di una riforma elettorale si intreccia strettamente con una questione territoriale, in quanto la legge elettorale nazionale già prevede il suffragio universale per l'elettorato maschile che abbia compiuto i 25 anni. L'attenzione si concentra allora sul Parlamento (*Landtag*) prussiano, che si basa su una rappresentanza suddivisa per classi (*Dreiklassenwahlrecht*). La discussione parte dall'esigenza di garantire ai reduci di essere ammessi nella classe superiore, a prescindere dalla professione e dal reddito, e si estende ben presto alla richiesta formulata da molti (soprattutto dagli esponenti del Partito Socialdemocratico)[1] di un suffragio uguale e universale, che implichi una distribuzione dei seggi legata a criteri quantitativi semplici, cioè proporzionale al numero di voti ricevuti. La questione del diritto elettorale prussiano offre un'occasione cruciale per conferire al dibattito politico-istituzionale una dimensione pubblica ampia. All'interno di esso acquisisce importanza l'analisi sulla funzione del Parlamento, accusato spesso di essere limitato a un'attività meramente 'negativa' di critica dell'operato del governo e di controllo del budget. La problematica parlamentare si intreccia però contemporaneamente con la questione territoriale sia perché la Costituzione tedesca del 1871 è una Costituzione

federale, sia perché è caratterizzata dall'anomalia di un territorio (la Prussia) predominante sugli altri non solo per estensione territoriale e popolazione, ma anche grazie al suo potere politico-istituzionale (la Casa regnante degli Hohenzollern è prussiana, il Cancelliere tedesco è spesso anche Capo del Governo territoriale prussiano o quanto meno suo membro). In questo complesso quadro politico, la riforma elettorale diventa questione di importanza fondamentale per l'intero assetto politico-istituzionale dello Stato tedesco così come per gli equilibri interni tra Stato e territori.

È all'interno di questo dibattito articolato che si possono inquadrare la posizione e gli interventi proposti da Max Weber. Nella fase iniziale del conflitto mondiale, essi concernono soprattutto una visione extranazionale che si ispira all'idea di *Mitteleuropa* e riguarda la possibilità di cooperazione tra Stati e regioni che si richiamino a un'identità culturale comune o almeno in parte condivisa. La caratterizzazione territoriale costituisce progressivamente un criterio per attribuire agli Stati compiti differenti correlati alle loro dimensioni, ma anche per sottolineare le possibili difficoltà derivanti da disparità di estensione e di popolazione e per suggerire una politica attenta all'equilibrio e alla reciprocità dei rapporti e delle garanzie tra i popoli. Successivamente, sulla scia delle discussioni sulla riforma del diritto di voto in Prussia, le disparità territoriali diventano uno dei fulcri della questione della riforma parlamentare del sistema politico tedesco. Gli sforzi di Weber mirano a trovare soluzioni istituzionali capaci di integrare parlamentarismo e federalismo, individuando delle forme di rappresentanza che esprimano ad un tempo specificità territoriali e partecipazione democratica, e che sappiano coniugare l'autonomia dei territori con il loro intervento attivo nel processo decisionale e nella legislazione del Paese.

2. *Tematiche territoriali negli scritti weberiani agli inizi del conflitto*

Nei primi anni della guerra l'attenzione di Weber viene attratta soprattutto dalle questioni di politica internazionale. Dopo un iniziale sostegno dettato dal senso del dovere di fedeltà alla nazione, egli tende ad assumere una posizione moderata nei confronti del conflitto, alla ricerca di una pace equilibrata e duratura che non mini gli interessi tedeschi, ma nemmeno sia guidata da pretese di imperialismo e dominio sugli altri Stati. L'analisi concernente le questioni territorriali lo porta comunque a tracciare una precisa distinzione tra Stati di dimensioni più limitate e Stati di massa, che egli ritiene essere connotati da funzioni storiche differenti, ma di pari valore. L'insistenza su questo aspetto è esplicita: 'Le 'piccole nazioni', gli Svizzeri, Olandesi, Danesi, Norvegesi, Svedesi, hanno forse per questo motivo *meno valore*? *A nessun tedesco* è passato per la mente di fare una affermazione del genere'.[2]

Le funzioni 'storiche' differenti vanno piuttosto interpretate in un'ot-

tica complementare. Agli Stati di grandi dimensioni viene conferito un ruolo significativo in particolare nelle questioni che riguardano la politica internazionale, quindi l'assetto e l'equilibrio tra gli Stati. Agli Stati di piccole dimensioni spetta invece il compito di sviluppare il senso della democrazia e della cittadinanza, esercitando parimenti una funzione di controllo e di garanzia.[3]

Dall'altro lato si conferma per via indiretta la convinzione weberiana che per gli Stati di grandi dimensioni sia possibile e auspicabile solo una democrazia rappresentativa, che Weber già allora, a differenza di molti altri intellettuali tedeschi della sua epoca, identifica con un sistema parlamentare che si ispiri al modello britannico. L'inaggirabile condizione politica degli Stati di grandi dimensioni riguarda per Weber, ancor più che l'impossibilità di fare politica riuniti tutti insieme nello stesso luogo, la necessità di un apparato burocratico ampio e specializzato, a cui è possibile contrapporre efficacemente soltanto una rappresentanza politica altrettanto preparata e informata. La componente territoriale diventa dunque una questione, ancor prima che politica, istituzionale e amministrativa, e richiede, proprio come contrappeso al sapere specialistico e all'organizzazione complessa, una democrazia rappresentativa guidata da un Parlamento competente e da politici di professione.

Un altro problema che Weber comincia ad affrontare in questo periodo è la questione della federazione a livello internazionale. A questo proposito, il principio ispiratore proviene, oltre alle esigenze contingenti dell'alleanza di guerra, dal libro di Friedrich Naumann *Mitteleuropa*,[4] che comincia a delineare un'idea di unione tra gli Stati dell'Europa centrale fondata sull'abrogazione delle dogane, la cooperazione economica e una coordinazione comune della politica e della difesa.[5] Tenendo presenti le esigenze più immediate della guerra, Weber insiste sull'importanza del coordinamento militare e dei rifornimenti. In una prospettiva più ampia, ciò che caratterizza la sua visione è la netta distinzione tra il rapporto che intercorre tra Stati nazionali e invece il rapporto tra Stati precedentemente indipendenti e confederati che si sono riuniti in uno Stato federale, come si è verificato in Germania a partire dal 1871.[6]

Nel caso ad esempio della Baviera, argomenta Weber, occorrevano garanzie peculiari al fine di assicurare la non ingerenza del Governo centrale su alcuni ambiti specifici. Nel caso di un'unione tra Stati con una storia autonoma e differenziata, si tratta di contemplare delle forme di alleanza e di rapporto reciproche e paritarie, in cui i soggetti coinvolti siano in grado di offrire garanzie equivalenti e concordemente stabilite. Questo implica anche una capacità di coordinamento e cooperazione orizzontale, salvo restando che Weber pensa a un'unione di Stati, dove ciascuno mantiene ampi ambiti di sovranità. Una particolare

attenzione viene da lui dedicata in questo periodo al caso della Polonia, che egli ritiene che possa essere risolto solo se si accetta la sua organizzazione come Stato indipendente e dotato di istituzioni costituzionali libere e autonome, con cui si tratta di raggiungere sul piano internazionale una solida alleanza e una stretta cooperazione commerciale.[7] Per quanto concerne invece il federalismo interno allo Stato, Weber si limita nel 1916 a sottolineare le garanzie e la salvaguardia di alcuni diritti specifici nei confronti degli Stati membri.

3. *Questioni territoriali e proposte weberiane di riforma nel 1917*

Nel 1917 gli interventi di Weber si concentrano sempre più sulla politica interna. Inizialmente, egli si limita a considerare favorevolmente il rafforzamento del potere di voto per i reduci. La questione riguarda primariamente il diritto di voto per il *Landtag* (che si potrebbe anche tradurre con il termine di *Parlamento territoriale*) della Prussia, in cui vige appunto un sistema di rappresentanza in base alle classi. Nel testo *Una legge eccezionale del Reich sul diritto elettorale*, Weber sostiene la necessità di considerare i reduci come membri della classe più elevata, dal momento che essi combattono per la nazione e che sono destinati a trovarsi dal punto di vista economico e sociale in posizione svantaggiata rispetto a coloro che sono rimasti a casa. La questione tocca anche il problema del federalismo e della ripartizione dei poteri: in questo caso, Weber ritiene corretto l'intervento del Reich, perché si tratta di persone che offrono un servizio a tutto il Paese. Ma l'argomentazione weberiana è destinata ad ampliarsi: negli scritti successivi, in particolare in *Gli insegnamenti della crisi tedesca*, in *Diritto di voto e democrazia in Germania* e poi negli articoli per la 'Frankfurter Zeitung' che verranno raccolti l'anno successivo nell'opera *Parlamento e Governo*, si pronuncia a favore di una riforma del diritto elettorale prussiano in senso democratico con voto uguale e universale. Weber giustifica la legittimità della riforma affermando che lo Stato ha il diritto di intervenire sulle decisioni di carattere fondamentale che riguardano l'intera nazione, anche quando queste siano limitate ai territori e ai loro Parlamenti.[8] La motivazione di principio che Weber adduce concerne il significato storico della politica e della democrazia negli Stati moderni:

> È soltanto allo Stato moderno che appartiene il concetto di *cittadino*. E lo stesso diritto di voto non significa di fatto nient'altro che, almeno per questo aspetto della vita sociale, il singolo per una volta *non* sia considerato, come altrimenti avviene dappertutto, secondo la sua distinzione in posizioni professionali e familiari e secondo le diversità della sua condizione materiale o sociale, ma appunto soltanto come *cittadino dello Stato*.[9]

Oltre a questo argomento di carattere generale, si aggiunge la considerazione che l'organizzazione politica della Prussia non può esse-

re ritenuta una questione interna prussiana, ma riguarda tutto il Paese. Certo è in gioco il ruolo storico della Prussia che con Bismarck aveva raggiunto l'unificazione della Germania e la proclamazione del Regno tedesco nel 1871. Questa posizione privilegiata aveva consentito alla Prussia di esercitare un ruolo egemonico anche all'interno delle istituzioni, tanto più che il modello federale sancito dalla Costituzione rappresentava più l'accordo tra le corti e i ministeri che tra le popolazioni. Ma anche le considerazioni di carattere territoriale giocano un ruolo fondamentale, se si intende come aspetto determinante del territorio la caratteristica quantitativa della sua estensione, a cui si associa normalmente una popolazione numericamente corrispondente.

Perché le questioni territoriali sono così importanti? Perché le dimensioni territoriali contribuiscono in buona parte, all'interno dello Stato tedesco, a determinare le modalità di esercizio della politica dei singoli Stati federali. Si può parlare in proposito grosso modo di tre tipi di territori:

1. la Prussia, territorio di vastissime dimensioni e numero di abitanti superiore al resto del Paese, che ha assunto un ruolo determinante sia dal punto di vista istituzionale che dal punto di vista politico-decisionale;
2. i territori di medie dimensioni, come il Württemberg e in particolare la Baviera, che hanno ottenuto dei diritti e delle prerogative speciali che garantiscono la salvaguardia di una certa indipendenza rispetto alla Prussia così come al Governo centrale;
3. i cosiddetti 'Staterelli', che sono di fatto completamente soggiogati alla Prussia o cercano comunque di restarne alleati e di sostenerne, in cambio di singoli favori, le scelte politiche.

La questione diventa ancora più scottante, allorché dalla riforma del diritto di voto Max Weber passa progressivamente a considerare la possibilità di una riforma politico-costituzionale, che a suo avviso pone due esigenze fondamentali:

1. la necessità della parlamentarizzazione, legata sia all'esigenza di fornire un contrappeso politico al potere dell'apparato burocratico centrale così come a quelli territoriali, sia alla capacità di esprimere su una base democratico-rappresentativa una conduzione unitaria della politica;
2. una riforma del federalismo che dia maggiore spazio e potere decisionale ai singoli Stati membri, sottraendoli a un ruolo troppo passivo e subordinato rispetto alla componente territoriale principale.

Le peculiarità territoriali ostacolano per Weber sia l'equilibrio tra tutto e le parti, sia tra le parti stesse. In particolare la posizione privilegiata della Prussia, consolidata anche grazie alla sua vastità territoriale, mette in difficoltà il federalismo. Weber argomenta:

> In tutti gli Stati federali della terra vale il principio che certi fondamenti strutturali degli Stati appartenenti sono considerati essenziali a causa della federazione e perciò come materia dello Stato federale, senza per questo danneggiare la più ampia autonomia possibile e la divisione di competenza tra Stato federale e Stato singolo.[10]

L'estensione territoriale della Prussia e la sua funzione privilegiata impediscono secondo Weber l'attuazione di questo principio. Inoltre il Cancelliere (cioè il capo del Governo dello Stato tedesco), facendo parte del Parlamento territoriale (*Landtag*) prussiano ed essendone spesso il capo del Governo, è responsabile di fronte al Parlamento prussiano, ma non a quello nazionale. Nel corso del 1918 la situazione si modificherà, in quanto la riforma introdotta contempla per la prima volta la responsabilità del Cancelliere del Regno di fronte al Parlamento nazionale (*Reichstag*), ma questo non impedisce che le leggi continuino a essere preparate nel Consiglio federale (*Bundesrat*), all'interno del quale la Prussia dispone di una sicura maggioranza grazie all'appoggio garantito degli Staterelli. Nel 1917, quando si discute sulla riforma, la Prussia dispone inoltre di un privilegio che le consente di impedire cambiamenti anche con i suoi soli voti su questioni riguardanti l'esercito, le dogane, diverse forme di tassazione, provvedimenti di tipo commerciale e amministrativo. Se si considera che il Kaiser e il Consiglio federale sotto controllo prussiano decidono anche le dichiarazioni di guerra, i trattati di pace e in genere i trattati internazionali, e che il Cancelliere dal canto suo non fa parte del Parlamento nazionale e non è nemmeno collegato ad esso in quanto membro del partito o della coalizione di maggioranza, si vede come vi sia uno sbilanciamento della politica nazionale a favore della Prussia, e come questo mini parimenti l'intero sistema federale. D'altro canto la sproporzione territoriale rende assai difficile anche pensare a una riforma del Consiglio federale in senso parlamentare, che prevederebbe una rappresentanza dei singoli Stati in buona parte a prescindere dall'estensione territoriale e dal numero degli abitanti.

All'anomalia della Prussia corrisponde specularmente la tendenza degli Stati medi e in particolare della Baviera ad assicurarsi garanzie e prerogative speciali. La Baviera è riuscita in questo modo, spiega Weber, ad avere diritti particolari garantiti dalla Costituzione, che non possono venire modificati senza il suo esplicito consenso. A differenza inoltre degli altri Stati membri, che vengono messi spesso, soprattutto nel caso dei progetti di legge preparati dal Consiglio federale, di fronte al fatto compiuto, la Baviera viene generalmente consultata durante la fase preparatoria della legislazione. Tutto questo secondo Weber garantisce solo una forma di libertà negativa dal *Reich*, e non la possibilità positiva di influire efficacemente sulla sua politica. Occorre invece

passare 'dalla libertà dal *Reich* alla libertà nel *Reich*'.[11] Come egli mette in luce dapprima nell'articolo *La Baviera e la parlamentarizzazione nel Reich* e ribadisce poi anche in *Parlamento e Governo*, delle riforme che rafforzino nello Stato le istituzioni parlamentari non vanno interpretate come processo di centralizzazione, ma piuttosto come possibilità per gli Stati di influire in modo più positivo e più determinante sulla politica nazionale, estendendo anche sul piano politico i vantaggi di un'organizzazione federale, che ha segnato a livello economico un indubbio progresso eliminando dogane e veti reciproci. Si tratta allora, secondo Weber, di correggere i meccanismi costituzionali in modo da garantire allo stesso tempo 1) una parlamentarizzazione del *Reich* e 2) il rafforzamento degli Stati non prussiani.

Che cosa significa per Weber 'parlamentarizzazione'? In generale, egli critica il predominio dell'apparato burocratico che, servendosi delle conoscenze ottenute grazie al suo sapere specialistico e alla segretezza delle pratiche, si trova in posizione di indubbio vantaggio rispetto alle conoscenze a disposizione del Parlamento. Questa situazione si è riprodotta secondo Weber anche all'interno dei singoli Stati e delle loro burocrazie. La libertà delle burocrazie locali rispetto al potere centrale ha avuto come conseguenza un loro rafforzamento a scapito dei Parlamenti territoriali, che hanno progressivamente perso la loro funzione di controllo sugli apparati amministrativi, riducendo così il loro significato e il loro ruolo politico.

A livello statale, la questione diventa quella di 'come si può trasformare il Parlamento, condannato dalla sua struttura interna attuale alla politica negativa, in un organo che coopera nell'assunzione della responsabilità politica'. Il primo passo viene appunto compiuto nel corso del 1917 con la proposta di riforma che prevede la responsabilità del Cancelliere di fronte al Parlamento. Weber auspica però un maggiore radicamento del Primo Ministro nel *Reichstag*, in quanto il Cancelliere venga scelto al suo interno e sia membro attivo dei partiti di maggioranza, cosa che è possibile solo eliminando la clausola dell'incompatibilità tra presenza nel Parlamento e presenza nel Consiglio federale. L'eliminazione di tale clausola includerebbe anche una parlamentarizzazione del Consiglio federale, perché consentirebbe l'ingresso a rappresentanti parlamentari, senza implicare automaticamente la loro destituzione dalla carica di deputati, e muterebbe almeno in parte la composizione del Consiglio federale, all'epoca costituito quasi esclusivamente da esponenti dell'alta burocrazia.

Per quanto riguarda il potenziamento dell'intervento da parte dei singoli Stati nel senso di un federalismo attivo, che si coniughi con la democrazia e con il parlamentarismo, Weber propone la creazione di Commissioni all'interno del Consiglio federale, nelle quali siano coinvolti anche i rappresentanti degli Stati 'già nello stadio della *consulta-*

zione preliminare, affinché i loro Governi e capi parlamentari siano in grado di prendere posizione già in quella fase'.[12]

Il ruolo di Commissioni a carattere consultivo non va secondo lui sottovalutato, dal momento che è a quel livello che vengono prese le decisioni e stabiliti gli indirizzi fondamentali della politica. A questo proposito egli auspica altresì che la parlamentarizzazione del Consiglio federale avvenga anche a partire dal basso, non soltanto mediante l'invio di membri nominati in quanto appartenenti ai Parlamenti territoriali, ma anche in quanto rappresentanti nazionali eletti nei singoli territori. L'invio esclusivo di membri dei Parlamenti territoriali includerebbe secondo lui il rischio della particolarizzazione all'interno del Consiglio federale, e cioè il perseguimento di interessi meramente regionali. La presenza di una rappresentanza territoriale che acquisisca esperienza all'interno del Parlamento nazionale consentirebbe invece di congiungere la sensibilità territoriale con le capacità e l'abitudine a confrontarsi con le questioni politiche generali, e rafforzerebbe in senso positivo e concreto l'intervento degli Stati membri.

4. *L'attenzione weberiana al territorio nel nuovo progetto di Costituzione*

La discussione sulla connessione tra peculiarità territoriali, federalismo e parlamentarismo si riaccende alla fine della prima guerra mondiale, quando la rivoluzione e la caduta della monarchia nel novembre 1918 pongono i presupposti per un nuovo assetto costituzionale. Weber viene invitato a partecipare alla discussione sul progetto di nuova Costituzione a Berlino, al Ministero degli Interni, dal 9 al 12 dicembre 1918, e i temi affrontati in quella sede caratterizzano anche l'argomento principale dei suoi articoli e saggi politici tra la fine del 1918 e i primi mesi del 1919. Le problematiche fondamentali hanno tutte a che fare direttamente o indirettamente con la questione territoriale: la relazione dello Stato nei confronti degli Stati singoli, l'alternativa tra soluzione unitaria e federale, il problema del rapporto asimmetrico tra la Prussia, con la sua vastità territoriale e i suoi 40 milioni di abitanti, e gli altri Stati federali. Nell'insieme, la commissione di lavoro per il progetto costituzionale condivide l'opinione che per ragioni di carattere storico, geografico e politico, il federalismo resta una componente irrinunciabile, anche se la tendenza prevalente è quella di ridurre le prerogative e i diritti speciali e di abolire almeno dal punto di vista istituzionale le condizioni che consentono l'egemonia della Prussia. Nel nuovo assetto repubblicano, ad esempio, il Capo dello Stato non deve essere più necessariamente prussiano, e viene abolita la situazione di privilegio nel Consiglio federale e nelle questioni militari. Le dichiarazioni di Weber in proposito sono esplicite: 'Un federalismo ampliato viene richiesto dai fatti',[13] e tuttavia 'deve

essere introdotto quanto più unitarismo possibile all'interno di una Costituzione federale'.[14] È in questo spirito che vengono decise effettivamente una legislazione doganale unitaria, una gestione centralizzata per lo meno delle imposte indirette principali, dei monopoli, delle ferrovie, del traffico aereo e fluviale, dell'esercito, di banche, borsa, commercio e, con il mantenimento di alcuni diritti speciali per la Baviera e il Württemberg, parzialmente anche delle poste. In particolare, pur garantendo l'esistenza di un recrutamento su base territoriale degli apparati amministrativi, si cerca di stabilire un orientamento normativo generale fissato dalla Costituzione. 'L'introduzione di alcune determinazioni normative nella Costituzione – dice Weber – è auspicabile. La sede di controllo per la loro attuazione deve essere il tribunale amministrativo dello Stato'.[15] Viene anche dibattuto il problema della sproporzione tra i territori: da un lato, si dice, la Prussia è troppo grande, dall'altro lato alcuni Stati sono troppo piccoli. Anche se in generale ci si pronuncia contro lo smembramento della Prussia, viene fatta presente l'esigenza di contenere entro un certo numero i suoi rappresentanti, e di eliminare altresì la rappresentanza degli Stati troppo piccoli. Per Weber si profila come possibile anche la formazione di nuovi Stati autonomi, purché siano attuate certe condizioni che vanno sancite costituzionalmente e che rispettino altresì la volontà popolare. Per quanto riguarda un organo centrale a carattere federale, le opinioni si dividono tra una riedizione del Consiglio federale, formato da esperti, e un organo rappresentativo. Weber propende chiaramente per la seconda ipotesi. In particolare, egli ritiene che i Consigli di Stato siano quasi sempre organi burocratici e tecnici, privati di fatto del potere politico, mentre una Camera degli Stati (*Staatenhaus*) offre secondo lui maggiore possibilità di influsso sul Governo centrale da parte degli Stati membri, impedendo dall'altro lato il prevalere di interessi soltanto particolaristici.[16]

La contrapposizione tra federalismo e particolarismo verrà ribadita da Weber anche in un articolo successivo, pubblicato dalla 'Heidelberger Zeitung' il 28 e il 29 marzo 1919, con particolare riferimento alla questione amministrativa. Mentre l'unitarismo implicherebbe l'obbedienza da parte delle burocrazie territoriali alle direttive del *Reich*, il particolarismo si fonda su un'autonomia amministrativa che non prevede la possibilità diretta di controllo dei funzionari regionali da parte delle autorità centrali. Ma questa cessione di potere agli Stati singoli non è secondo Weber espressione di autentico federalismo, ma soltanto espressione di debolezza nei confronti di interessi particolaristici.

Nelle riflessioni successive ai lavori preparatori per stilare la Costituzione, Weber giunge a ritenere le disparità territoriali il problema più gravoso per il federalismo. Nel saggio su *La forma futura dello Stato tedesco* egli afferma infatti:

> Ora qui si trova, nel peso – che nessun paragrafo può eliminare – esercitato dall'estensione del territorio [prussiano], dalla sua popolazione e dalla sua posizione economica sia come mercato di vendita che come territorio produttivo, e nell'enorme posizione di potenza dell'apparato amministrativo e della sua direzione, la fonte di quasi tutte le difficoltà del federalismo tedesco.[17]

Weber ritiene uno smembramento della Prussia difficile da attuare; in particolare, rifiuta l'idea che esso debba venire effettuato dall'alto, a prescindere dal consenso e dalla libera iniziativa della popolazione. Tuttavia, nel caso vi sia una volontà in questo senso che parte dal basso, tale volontà va senz'altro sostenuta e incoraggiata. La proposta concreta formulata da Weber è che in un territorio amministrativo di almeno tre milioni di abitanti facente parte di uno Stato libero già sussistente, siano sufficienti 100.000 elettori per chiedere un referendum ai fini della costituzione di un nuovo Stato. In proposito, lo Stato centrale si impegna a garantire ai territori una Costituzione repubblicana con diritto di voto universale, uguale, segreto e diretto. L'idea è che la soluzione di un problema territoriale anche gravoso, che scompensa gli equilibri federali, non può comunque essere realizzata con un atto di imposizione esercitato dall'alto, ma solo in base a un principio di autodeterminazione democratica, che può tutt'al più venire facilitata dalla legislazione. Ciò non impedisce che lo Stato centrale continui a essere garante della democrazia e della legalità tramite leggi e controlli che garantiscano a tutti i cittadini la decisione politica in base a criteri numerici, senza discriminazioni e diseguaglianze.

Le peculiarità territoriali possono inoltre essere espresse efficacemente anche attraverso le vie parlamentari, non solo per mezzo degli organi locali, ma tramite una *Camera degli Stati* che riduca il peso delle differenze quantitative a favore di quelle qualitative con un numero di rappresentanti eguale per ciascun territorio (o almeno per la maggioranza di essi). Weber a ragione sospetta che in Germania finirà per prevalere una riedizione del Consiglio federale (cosa che di fatto avverrà con l'istituzione del Consiglio di Stato). La sua opzione è tuttavia che la Camera degli Stati debba essere un organo di rappresentanti scelti dalle popolazioni e dai Parlamenti dei singoli Stati e e che debba disporre di mandato libero, non vincolato e quindi indipendente da altri organi e autorità. La sua preferenza va all'elezione diretta da parte dei cittadini, proprio in nome di un'espressione a livello nazionale di specificità territoriali:

> Un'elezione popolare diretta di una *Camera degli Stati* (*Staatenhaus*) sarebbe ... non una rappresentanza di singole personalità *politiche*, cioè dei rispettivi detentori del *potere* politico nei singoli Stati, ma una rappresentanza delle specificità territoriali del popolo, cioè: dei partiti rispettivamente predominanti in ciascun territorio (*Landschaft*) più esteso.[18]

Weber usa qui il termine *Landschaft*, che si ricollega al panorama e quindi alla specificità geografica intesa sia in senso letterale che nel senso metaforico della pluralità delle opinioni. Per questo organo rappresentativo, Weber propone un numero ridotto di rappresentanti, in quanto non si tratta di rispecchiare le diverse sfaccettature delle posizioni politiche, ma di creare un organo di controllo in particolare dell'amministrazione e dei trattati internazionali, con competenze specifiche separate rispetto all'altra Camera rappresentativa. Pur essendo democratico ed elettivo, risulterebbe così particolarmente sensibile agli interessi territoriali, sottraendosi tuttavia a una prospettiva di mero decentramento. Nella Camera degli Stati Weber vede infatti la possibilità, che poi però non verrà realizzata nella Costituzione della Repubblica di Weimar, di consentire quel congiungimento positivo e concreto di interessi territoriali e rappresentanza a livello centrale, che potrebbe consentire di portare le istanze specifiche a maggiore espressione e compimento, integrandole in progetti politici di più ampio respiro.

5. *Osservazioni conclusive*

Nel corso della sua riflessione, Weber coglie alcuni problemi inerenti alla peculiare situazione della Germania e propone alcune soluzioni che, anche quando non furono adottate immediatamente dalla Costituzione della Repubblica di Weimar, contribuirono a definire l'assetto federale tedesco dopo la fine del secondo conflitto mondiale. Ma anche al di là della situazione storica specifica, le tematiche da lui messe in rilievo sono degne di essere tenute in debita considerazione. Le sue osservazioni partono dall'idea fondamentale che non si può distruggere l'identità e la peculiarità dei territori, e che allo stesso tempo occorre però salvaguardare alcuni principi democratici e rappresentativi fondamentali. Le questioni attinenti alle differenze territoriali e di popolazione costituiscono dei fattori oggettivi che vanno riequilibrati e integrati attivamente all'interno di un sistema unitario. Il problema che Weber concretamente si pone riguarda le modalità in cui si possono coordinare e rappresentare adeguatamente differenze territoriali inducendo le diverse componenti alla cooperazione piuttosto che alla difesa 'negativa'[19] della loro sussistenza. Un possibile riequilibrio dei territori tramite una loro differente ripartizione può essere una buona soluzione, solo se esso corrisponde alla volontà democraticamente espressa dai loro cittadini, che può essere sostenuta, ma non sostituita, da un'opportuna iniziativa legislativa. Per lui occorre inoltre ricordare che le disparità territoriali e di popolazione contribuiscono a sviluppare tendenze diverse sul piano politico, sia in termini di potenza (tipica dei territori vasti) che di pratica democratica (tipica dei territori di piccole dimensioni), e che questo può costituire non solo un apporto differenziato e positivo, ma anche un ostacolo reale alla loro coesistenza in unioni

e federazioni. Il processo proposto da Weber prevede un'integrazione di queste funzioni, che contempli però sia una maggiore influenza delle componenti territoriali a livello centrale sia una maggiore partecipazione alla legislazione, e riduca sul piano rappresentativo le diseguaglianze quantitative. Ciò implica la capacità di integrare le identità territoriali in una visione della democrazia 'positiva' e partecipativa, laddove i soggetti presi in considerazione non sono più soltanto gli individui, ma anche regioni, Stati e territori, di cui va rispettata la specificità e differenza, ma per cui vanno ricercati parallelamente criteri generali di convivenza e di esercizio comune della decisione politica.

Note

[1] Cfr. V. Ullrich, *Die nervöse Großmacht 1871-1918* (Frankfurt/M., 2007 [3ª ed.]), pp. 515-6.

[2] M. Weber, 'Deutschland unter den europäischen Weltmächten', in *Max Weber. Gesamtausgabe* (GA) (Tübingen, 1984), vol. I, 15, p. 190.

[3] Cfr. ivi, p. 191.

[4] F. Naumann, *Mitteleuropa* (Berlin, 1915).

[5] Weber intraprende a questo scopo anche alcuni viaggi. Cfr. M. Weber, *Max Weber: ein Lebensbild* (Tübingen,1984 [3ª ed.]), pp. 564-7, 582-4.

[6] Cfr. M. Weber, 'Deutschland unter den europäischen Weltmächten', GA, vol. I, 15, p. 185.

[7] Sulla questione della Polonia si veda: H. Konno, *Max Weber und die polnische Frage. 1892-1920* (Baden-Baden, 2004), in part. pp. 172-179. Sui riflessi della questione dell'indipendenza della Polonia nella politica e nel Parlamento tedesco: A.S. Kotowski, *Zwischen Staatsräson und Vaterlandsliebe. Die Polnische Fraktion im Deutschen Reichstag 1871-1918* (Düsseldorf, 2007), pp. 169-192.

[8] Cfr. W.J. Mommsen, *Max Weber und die deutsche Politik 1890-1920* (Tübingen, 2004 [3ª ed.]), pp. 264-267.

[9] M. Weber, 'Wahlrecht und Demokratie in Deutschland', GA, vol. I, 15, p. 369.

[10] M. Weber, 'Parliament und Regierung im neugeordneten Deutschland', GA, vol. I, 15, p. 581.

[11] M. Weber, 'Bayern und die Parlamentarisierung im Reich', GA, vol. I, 15, p. 331.

[12] Ivi, p. 337.

[13] M. Weber, 'Beiträge zur Verfassungsfrage anläßlich der Verhandlungen im Reichsamt des Innern vom 9. bis 12. Dezember 1918', GA, vol. I, 16, p. 57.

[14] Ibidem.

[15] Ivi, p. 68.

[16] Cfr. in proposito Mommsen, *Max Weber und die deutsche Politik 1890-1920*, pp. 380-387.

[17] M. Weber, 'Deutschlands künftige Staatsform', GA, vol. I, 16, pp. 117-8.

[18] Ivi, p. 121.

[19] Si potrebbe richiamare in proposito la distinzione che è stata proposta più tardi da Isaiah Berlin, *Two concepts of liberty* (Oxford, 1959) tra libertà negativa e libertà positiva, laddove i termini del confronto però non riguardano più soltanto i singoli cittadini, ma anche le diverse componenti (territori, regioni, ecc.) dello Stato o una pluralità di Stati in una comunità sovrannazionale.

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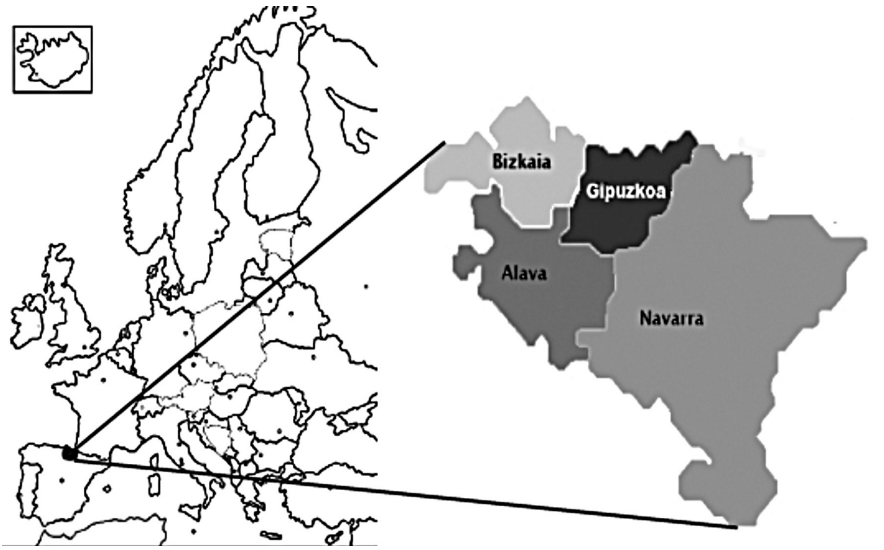
I parlamentari delle circoscrizioni del Territorio Basco nella II Repubblica spagnola (1931-1939)[2]

1. *Introduzione*

Lo studio che presentiamo in questo congresso si inserisce in una linea di indagine portata avanti da più di una decade dal nostro gruppo di ricerca con l'obbiettivo di analizzare la rappresentanza parlamentare dei Paesi Baschi nel corso dei secoli XIX e XX.[3]

In una prima fase abbiamo realizzato un'analisi microbiografica dei 610 parlamentari che rappresentarono le circoscrizioni basche tra il 1808 e il 1939 in due dizionari biografici, che comprendono le biografie dettagliate degli eletti.[4] In una seconda fase, partendo da un'estesa informazione empirica, abbiamo iniziato l'elaborazione di un'analisi prosopografica su questi personaggi. In questo intervento realizziamo l'analisi dei 44 parlamentari che rappresentarono le circoscrizioni del Territorio Basco nella II Repubblica spagnola (1931-1939).[5]



L'elaborazione dei dizionari biografici citati è servita a dare vita ad un progetto che comprende l'intero territorio spagnolo[6] e ci auguriamo che in futuro questo progetto di analisi prosopografica dei parlamentari a cui diamo inizio serva da modello per un progetto della stessa indole che riguardi l'insieme dei parlamentari spagnoli.

Se ripassiamo la bibliografia pubblicata fino ad oggi constatiamo l'esistenza di alcune analisi parziali sulla composizione del Parlamento[7] rispetto alle quali il nostro studio apporta una differenza sostanziale. L'analisi prosopografica realizzata parte da una esaustiva raccolta delle fonti primarie utilizzate per l'elaborazione dei nostri dizionari bibliografici. Tale riflessione è importante dato che al verificare i dati di cui disponiamo osserviamo che in alcuni capitoli, come la formazione universitaria dei parlamentari, esiste una gran differenza tra i deputati baschi e quelli del resto della Spagna. Il dubbio che ci poniamo è se tale differenza sia reale o si debba al fatto che il nostro sforzo per documentare le biografie ci ha fornito un'informazione più completa rispetto a quella di cui disponiamo per il resto della Spagna. Pertanto, in questo studio, non stiamo solo analizzando un gruppo di parlamentari, ma stiamo elaborando un modello di studio del Parlamento partendo dai suoi protagonisti.

2. *La II Repubblica, il Parlamento spagnolo e la politica basca*

La proclamazione della II Repubblica spagnola il 14 aprile 1931 suppose l'inizio di un nuovo periodo nella storia contemporanea spagnola. Il progetto repubblicano cercava di sostituire il vecchio regime oligarchico e signorile della Restaurazione,[8] identificato con la monarchia, con uno stato democratico e riformista. Il nuovo ordine era la manifestazione politica delle profonde trasformazioni – industrializzazione, urbanizzazione, secolarizzazione... – che stava sperimentando la società spagnola e, al tempo stesso, era l'espressione politica delle nuove classi sociali, la classe media e il proletariato. L'instaurazione della Repubblica, più che un semplice cambiamento politico, venne percepito nell'immaginario collettivo di ampi settori sociali come l'inizio di un nuovo ordine sociale nel quale i lavoratori avrebbero migliorato le proprie condizioni, i giovani avrebbero avuto accesso all'istruzione, le donne sarebbero entrate nella vita pubblica, le nazionalità avrebbero avuto un nuovo ordine nello stato, etc. Per questo generò un autentica esplosione di aspettative. Ciononostante, le speranze del 1931 si videro presto frustrate a causa delle enormi difficoltà che ebbe la repubblica per consolidarsi, dovendo affrontare forze diverse che andavano dall'opposizione anarchico-sindacalista alla reazione dei padroni o dei militari, passando per la mobilitazio-

ne del mondo cattolico e della Chiesa, e tutto in un contesto di grave crisi economica e di disoccupazione crescente. La conseguenza fu che l'evoluzione della repubblica venne marcata dall'instabilità politica e dal conflitto sociale.

L'ambiziosa politica riformista – trasformazione dell'esercito, separazione Chiesa-Stato, nuovo modello territoriale dello stato, riforma sociale e agraria, etc. – del governo repubblicano socialista del biennio del 1931-33 venne annullata quando le destre vinsero le elezioni. Il governo ricadde, allora, nelle mani del Partito Radicale, inizialmente con l'appoggio e posteriormente con la partecipazione diretta della destra cattolica (CEDA) durante il cosiddetto 'biennio nero' (1933-36). Nel frattempo si sviluppò nella società spagnola una dinamica dell'esclusione che contrapponeva gruppi sociali e scindeva gli spagnoli in universi culturali antagonisti, operai contro padroni, cattolici contro anticlericali, difensori dell'ordine e partitari della rivoluzione. Le elezioni di febbraio del 1936, che diedero il trionfo alla sinistra del *Frente Popular* contrapposto a liste di destra raggruppate sotto la bandiera della controrivoluzione, si celebrarono in questo clima di parossismo politico. Alcuni mesi dopo la Repubblica fu vittima della sommossa militare che condusse la Spagna ad una sanguinosa guerra civile nel luglio del 1936 e alla sconfitta della Repubblica nel 1939.[9]

Il progetto della II Repubblica si basava su due concetti fondamentali: democrazia e riforma, ambedue strettamente correlati. La democrazia doveva essere lo strumento per trasformare lo stato per poi da questo trasformare il paese, realizzando le profonde riforme di cui la Spagna aveva bisogno. L'affermarsi di questa democrazia repubblicana convertì il parlamento nella chiave di volta del nuovo intreccio istituzionale, espressione unica della sovranità nazionale e principale centro decisionale della politica.[10]

Nello stesso modo in cui la repubblica significava una rottura storica con passato monarchico, il suo parlamento non aveva niente a che vedere con quello della Restaurazione[11]. Se la Costituzione del 1876 sanciva l'inizio di una sovranità condivisa tra un Parlamento bicamerale e il re, riconoscendo ad ambedue le istituzioni il potere di fare le leggi, la Carta Magna Repubblicana del 1931 proclamava il potere legislativo del popolo per mezzo di un Parlamento unicamerale.[12] Dal Parlamento dei notabili della Restaurazione si passò a un Parlamento di partiti che istituzionalizzò la figura dei gruppi parlamentari, ai quali, da quel momento obbligatoriamente, dovevano iscriversi gli eletti. La discontinuità riguardò l'elite parlamentare che si rinnovò in profondità.[13] A questo contribuì, insieme ad altri fattori, il nuovo sistema elettorale sostanzialmente diverso dal precedente. Da un lato venne ampliato il di-

ritto al suffragio. Come prima cosa, nel maggio del 1931, si abbassò di due anni l'età per votare, riconoscendo tale diritto ai maschi maggiori di 23 anni. Poco tempo dopo la Costituzione del 1931 introdusse il suffragio femminile, che venne applicato per la prima volta nella storia spagnola nelle elezioni del 1933. Ciò supponeva un corpus elettorale di 12.913.038 votanti, il 54'5% della popolazione.[14] Per tanto, suffragio universale, però anche suffragio pulito grazie alla soppressione delle anteriori circoscrizioni uninominali per 'i gravi inconvenienti che per la purezza del suffragio offre la Legge Elettorale in vigore, che stabilendo il sistema della maggioranza per i piccoli distretti unipersonali, lasciò aperta la porta alla coercizione signorile. All'acquisto di voti e a tutte le corruzioni ampiamente conosciute'.[15] Con questo cambiamento si pretendeva, oltre ad evitare la prepotenza signorile, di introdurre una maggiore proporzionalità tra il numero di elettori e di eleggibili. Si stabiliva come base per le elezioni la circoscrizione provinciale. In ognuna di queste sarebbe stato eletto un deputato ogni 50.000 abitanti. Le città di Madrid e Barcellona e quelle di più di 150.000 abitanti, insieme con i municipi del loro distretto giuridico, costituivano una circoscrizione propria, formando i restanti municipi della provincia un'altra circoscrizione.[16] Nel caso del paese basco questa della divisione della provincia in due distretti riguardò esclusivamente la Biscaglia.

Il sistema elettorale era di tipo maggioritario corretto: favoriva le maggioranze, però contemporaneamente permetteva la rappresentazione delle minoranze riservandole una parte dei seggi. Per questo si utilizzò il metodo elettorale di liste con voto ristretto nelle quali ogni elettore poteva votare solo un numero di candidati inferiore al numero totale dei deputati da eleggere nella propria circoscrizione. L'applicazione di questo procedimento nel caso del Territorio Basco supponeva che in Navarra con sette seggi da assegnare gli elettori potevano votare per assegnarne solo cinque, nella circoscrizione di Guipúzcoa e in quella di Bilbao con sei deputati da scegliere potevano votarne quattro, nella circoscrizione Biscaglia-Provincia dei tre seggi ne potevano votare due e in quella di Álava dei due seggi ne veniva assegnato con il voto solo uno.[17]

Tabella 1. Seggi assegnati nel Territorio Basco nelle elezioni (1931-1936)

	ÁLAVA	BILBAO	BISCAGLIA PROVINCIA	GUIPÚZCOA	NAVARRA	TOTAL
1931	2	6	3	6	7	24
1933	2	6	3	6	7	24
1936	2	6	3	6	7	24

Il sistema elettorale stabiliva l'obbligo di indire un secondo turno elettorale se il candidato o i candidati più votati non ottenevano il 20% dei voti emessi.[18] Nel 1933 tale requisito venne reso anor più restrittivo: per proclamare deputati i candidati si pretese che 'oltre ad apparire con il maggior numero di voti validi scrutinati, che uno o vari candidati avessero ottenuto come minimo il 40% dei voti suddetti' e che il resto dei candidati avesse ottenuto almeno il 20% dei voti scrutati. In caso contrario, si sarebbe indetto un secondo turno elettorale al quale avrebbero potuto partecipare solo i candidati che nel primo turno avessero ottenuto l'8% dei voti validi scrutinati.[19] In definitiva, la riforma della legge elettorale del 1933 accentuò il carattere maggioritario del sistema. Si pretendeva in questo modo di facilitare la formazione di maggioranze stabili, allontanandosi così da sistemi proporzionali come quello dell'instabile Repubblica di Weimar il cui recente fallimento avevano ben a mente i repubblicani spagnoli. Tuttavia, il sistema elettorale, lontano dal raggiungere il proprio obbiettivo, favorì la bipolarizzazione politica, indusse alla formazione di coalizioni elettorali estremamente eterogenee e finì per propiziare un esagerato movimento pendolare nell'evoluzione parlamentare della repubblica che rese difficile il suo consolidamento. A ciò bisogna aggiungere altri fattori, come l'assenza di un sistema di partiti stabili o la straordinaria frammentazione del Congresso, che contribuirono all'instabilità politica e parlamentare negli anni della II Repubblica.

La situazione politica dei Paesi Baschi aveva delle caratteristiche specifiche rispetto alla restante parte della Spagna. È stato affermato, in questo senso, che durante la II Repubblica si fosse costituito un sistema basco di partiti politici diverso da quello spagnolo.[20] Le principali caratteristiche di questo erano la rilevanza del PNV, un partito nazionalista che rivendicava l'autonomia per i Paesi Baschi e aspirava all'indipendenza, e la permanenza del carlismo, corrente tradizionalista in opposizione con la rivoluzione liberale durante il XIX secolo, il cui atteggiamento nei confronti della Repubblica fu di radicale belligeranza. Insieme a queste due forze politiche – carlismo e nazionalismo basco – deboli o inesistenti nel resto della Spagna, esisteva una corrente di sinistra solidamente radicata in zone urbane e industrializzate. Il risultato era un sistema politico dall'aspetto triangolare nel quale convivevano tre culture politiche in tensione.[21] Le destre filo spagnole sotto l'egemonia del tradizionalismo, ma con la presenza di altri gruppi come monarchici alfonsini o cattolici indipendenti, il nazionalismo basco che si definiva anch'esso come un partito cattolico ma, a differenza dei precedenti, esigeva l'autogoverno dei Paesi Baschi; e le sinistre, composte principalmente da socialisti e repubblicani. Il radicamento territoriale di queste corrrenti era molto disuguale, in consonanza con le differenze economiche, sociali e culturali dei

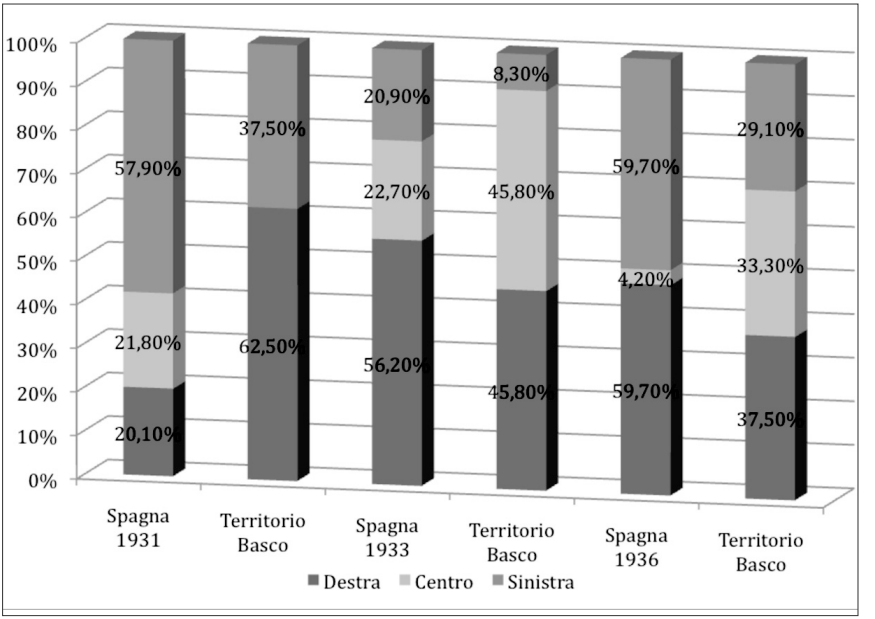
Paesi Baschi. Le destre tradizionaliste erano egemoniche in Navarra e maggioritarie in Álava, provincie prevalentemente agricole e scarsamente toccate dai processi di modernizzazione. I nazionalisti baschi mantenevano una forte presenza in Biscaglia e in Guipúzcoa, specialmente nelle zone rurali. Bilbao e le zone industrializzate della Biscaglia e Guipúzcoa, oltre alla zona di frontiera navarra, erano le zone in cui le sinistre avevano maggior peso.[22]

Al margine della questione sociale, furono l'autonomia e la religione i temi che polarizzarono il dibattito politico tra queste tre correnti politiche e ne determinarono le alleanze e le opposizioni. All'inizio della Repubblica, tradizionalisti e nazionalisti si allearono a favore di uno statuto decentralizzato per il governo regionale – il denominato Statuto de Estella – che intendeva l'autonomia come uno strumento che preservasse i Paesi Baschi dalla legislazione laicista repubblicana.[23] Il progetto fallì a causa del fatto che le sinistre, maggioranza nelle camere costituenti, non potevano accettare un'autonomia antirepubblicana o utilizzando le parole del socialista Indalecio Prieto, una 'Gibilterra Vaticanista'. Il PNV decise di negoziare uno statuto rispettoso della legalità repubblicana, mentre le destre si allontanarono da qualsiasi progetto autonomistico che non perseguisse il loro obbiettivo di lottare contro la Repubblica. Dal 1934 al 1936 si apre un periodo di confronto tra il Governo, dominato dalla destra, e il nazionalismo basco, e nel 1936 le alleanze politiche erano cambiate radicalmente rispetto a quelle del 1931: iniziata la guerra civile, le sinistre e il nazionalismo vasco combatterono insieme a difesa della Repubblica e dello Statuto di autonomia, approvato dalle camere repubblicane nell'ottobre di quell'anno.

I risultati delle tre elezioni delle camere indette durante la II Repubblica mostrano l'evoluzione dell'equilibrio tra queste tre grandi correnti politiche basche e le sue varianti provinciali. Nelle elezioni per le Camere costituenti del 1931 le destre filo spagnole, i nazionalisti baschi e i cattolici indipendenti si presentarono in coalizione (salvo ad Álava) in difesa dello Statuto di Estella, in opposizione alle candidature della sinistra composte da repubblicani e socialisti. Mentre nel resto della Spagna le destre furono quasi cancellate dal Parlamento, nei Paesi Baschi, ottennero la vittoria con 15 deputati e costituirono il gruppo parlamentare di minoranza basco-navarra che sviluppò un importante attività nella Camera.[24] In chiaro contrasto con la bipolarizzazione elettorale del 1931, i gruppi parlamentari si presentarono disuniti alle elezioni del 1933: rottosi il blocco di Estella, nazionalisti baschi e destre filo spagnole si presentarono separati, così come socialisti e repubblicani, salvo nella circoscrizione di Bilbao dove Indalecio Prieto e Manuel Azaña, i due politici che meglio incarnavano il progetto della Repubblica, capeggiarono una candidatu-

ra repubblicano-socialista. Il risultato fu una spettacolare sconfitta delle sinistre (solo due seggi), una chiara vittoria nazionalista (dodici seggi) e una notevole presenza della coalizione di destra (dieci seggi, sebbene sette di questi corrispondessero alla circoscrizione navarra, dove stravinsero la rappresentazione parlamentare). Le elezioni di febbraio del 1936, caratterizzate nel resto dello stato dall'estrema polarizzazione sinistre-destre, confermarono l'equilibrio tra le tre correnti politiche predominanti. I nazionalisti ottennero nove seggi, otto la coalizione delle destre (sette in Navarra e uno in Álava) e sette le sinistre unite adesso nel *Frente Popular*.

Gráfico 1. Il Parlamento della Seconda Repubblica: distribuzione dei seggi per affinità politiche. 1931-1936.[25]



Fonte: Elaborazione propria. I dati che si riferiscono all'insieme dei deputati spagnoli provengono da M. Alvarez Tardio, 'El Parlamento de la II República', pp. 217-218.

3. *Come arrivano al Parlamento?*

I risultati elettorali nella II Repubblica nel Territorio Basco offrono una triangolazione della rappresentanza quasi perfetta, come già è stato segnalato precedentemente, tra le tre grandi tendenze politiche presenti sul territorio studiato, anche se con enormi variazioni nelle diverse elezioni. Il nazionalismo basco ottiene il 34,1% dei seggi, la destra, fondamentalmente tradizionalista e autodenominata indipenden-

te, il 34,1% e la sinistra, repubblicani, socialisti e comunisti, il 31,9%.

Questa suddivisione della rappresentanza suppone un cambiamento importante rispetto al periodo della Monarchia,[26] dato che i partiti monarchici, liberali e conservatori, scompaiono lasciando maggiore spazio a nazionalisti e a repubblicani e socialisti. Il tradizionalismo, continua ad avere rappresentanza.

L'attività parlamentare di una buona parte dei deputati viene preceduta da tentativi precedenti di ottenere una seggio. Quasi il 28% del totale avevano fallito in una delle elezioni precedenti. Questo dato ci induce a pensare che il dominio da parte dei candidati monarchici in alcune circoscrizioni durante la Restaurazione abbia reso difficile l'accesso al Parlamento delle nuove forze politiche, cosa che cambiò radicalmente durante la II Repubblica.[27]

Tale dato contrasta con quello relativo alla Catalogna[28] dove l'11,3% dei parlamentari del 1931 erano stati sconfitti in precedenza in una delle elezioni parlamentari. Questa minor incidenza di sconfitte elettorali va legata ad un minor peso dei nuovi deputati che probabilmente dipende a sua volta dal peso delle nuove forze politiche, specialmente della *Solidaritat Catalana*, che iniziarono il processo di rinnovamento dell'elite parlamentare in anticipo e la sostituzione dell'antica elite monarchica, cosa che incrementa considerevolmente nel 1931.

L'età della prima elezione è intorno alla quarantina nel 36,4% dei casi e alla trentina nel 29,5%. Questo accesso al Parlamento di persone con una certa maturità è dovuto ad una precedente esperienza nell'amministrazione locale di quasi la metà dei parlamentari.

Nelle elezioni della II Repubblica la presenza di non nativi nelle circoscrizioni del Territorio Basco, così come nel resto della Spagna,[29] è ridotta: soltanto due dei parlamentari, il 4,5%, erano nati fuori da queste province. Inoltre l'11,6% dei parlamentari lo furono in una provincia che non era quella di nascita, in particolare tra nazionalisti baschi e tradizionalisti che presentavano i propri leader nelle circoscrizioni che consideravano più sicure o nelle quali potevano attrarre un maggior numero di elettori. Tale identificazione dei deputati baschi con la regione e non con la provincia per la quale venivano eletti riguarda buona parte dei parlamentari.[30]

Nel caso della Catalogna i parlamentari nati fuori dalla regione erano l'11,3%, quantità che si riduceva al 4,5% se consideriamo come catalani ai nati nel resto dei territori di lingua catalana.

Sembra logico affermare che il numero scarso dei deputati non nativi è, almeno nel caso basco, dovuto alla ricerca di circoscrizioni sicure per personalità alle quali bisognava garantire l'elezione, come avviene con i repubblicani Azaña e Ruiz-Funes nella circoscrizione di Biscaglia-Capitale. A questa ragione bisogna unire la divisione interna del repubblicanesimo basco al momento di preparare le candidature,

fatto questo che li spingeva alla ricerca di figure nazionali indiscutibilmente riconosciute del repubblicanesimo per evitare di dover scegliere tra le diverse personalità locali.

4. *Conclusioni*

Durante la II Repubblica esiste un sistema basco di partiti differente da quello spagnolo per l'importante radicamento del nazionalismo basco e la forza del tradizionalismo, che darà come risultato una politica triangolare contro quella bipolare che caratterizza la Spagna nel suo insieme. Tale sistema è anche caratterizzato dalla permanenza delle forze politiche preesistenti senza che su di esse incida in maniera sostanziale l'apparizione di nuove forze politiche all'interno della destra basca, così come era avvenuto nel resto della Spagna.

Così come avviene a livello spagnolo l'immensa maggioranza dei parlamentari sono originari della regione o persone radicate nella stessa. Il fenomeno del *cunerismo* (originarietà) si riduce al repubblicanesimo, che con la partecipazione di personalità nazionali evita di dover scegliere tra i differenti leader locali e allo stesso tempo garantisce ai propri candidati un'elezione sicura.

Rispetto al profilo sociale dei deputati baschi, spiccano vari aspetti che contrastavano con quelli che caratterizzavano l'insieme dei parlamentari spagnoli della epoca.

In primo luogo, erano molto più giovani, cosa che indica un ricambio generazionale in questo ambito geografico, frutto non solo della grande importanza assunta da forze politiche, come il nazionalismo basco, anteriormente appena rappresentato nel sistema parlamentare pseudodemocratico, ma anche prodotto di un intenso rinnovamento interno nei quadri dirigenti di gran parte dei partiti.

Risulta degno di nota l'alto livello educativo dei deputati baschi, di molto superiore a quello rilevato negli studi sul Parlamento spagnolo dell'epoca, e ciò può essere vincolato, tra gli altri motivi, alla maggiore importanza dei partiti di destra e di centro-destra nel Territorio Basco. Considerando l'importanza della qualificazione universitaria, è comprensibile la considerevole produzione scritta dei parlamentari baschi.

Contrasta anche con l'insieme della Spagna la presenza di un numero molto più alto di parlamentari che erano imprenditori, anche se ad un scala differente (dalla piccola alla grande impresa). Ciò risulta coerente con una differente struttura economica, essendo i Paesi Baschi una delle zone con maggior sviluppo industriale nella Penisola.

La continuità tra i parlamentari baschi della Restaurazione e quelli della II Repubblica è simile alla media spagnola e ciò significa un'importante rinnovamento dell'elite parlamentare e dei suoi leader. Però se apriamo l'analisi alla partecipazione politica osserviamo come

quasi la metà dei parlamentari avessero svolto attività politica precedentemente.

È possibile osservare una grande contrasto tra il Territorio Basco e il resto della Spagna nella stabilità della rappresentanza parlamentare della II Repubblica. La percentuale di parlamentari che nel Territorio Basco furono rieletti nel proprio seggio era un 18% superiore a quella del resto della Spagna. Ciò si deve all'esistenza di una maggiore stabilità del sistema di partiti del Paese Basco.

Rispetto ad un luogo comune secondo cui i parlamentari baschi permanevano poco attivi nella vita della Camera e unicamente intervenivano nelle questioni direttamente legate alle proprie circoscrizioni, osserviamo che i parlamentari baschi, compresi i nazionalisti baschi, presero parte attivamente, anche al di là di quello che il loro numero potrebbe far supporre, negli incarichi istituzionali, nei lavori nelle commissioni e nei dibattiti nelle sedute plenarie relative ad ogni tipo di tema e non unicamente a quelle più direttamente legate alle proprie circoscrizioni.

Note

[1] Gruppo di ricerca 'Biografia e Parlamento' del Dipartimento di Storia Contemporanea della Università del Paese Basco.

[2] Questo studio è stato realizzato nel contesto del progetto di ricerca *La 'cuestión vasca' en la política española: de la 'España Foral' a los estatutos de autonomía (1876-1939). La creación de un centro documental informatizado* (COD. HUM2005-02954/HIST) finanziato dal Ministero di Educazione e Scienza.

[3] I nostri primi risultati sono stati presentati nella *43th annual Conference of the ICHRPI* (Camerino, 1993) nello studio 'Spanish parliamentary prosopography during the rise of the Liberal Revolutión (1808-1874)', in M.S.Corciulo (a cura di), *Contributi alla Storia parlamentare europea (secoli XIII-XX). Atti del43º Congresso ICHRPI* (Camerino, 1996), pp. 248-261 e successivamente nella *53th annual Conference of the ICHRPI* (Barcelona, 2003) nello studio 'Prosopographical anlysis of MPs elected in the Basque Country (1808-1937): first results and continuation of the study of the period 1808-1876', in *Proceedings of the 53rd Conference of the ICHRPI. Studies presented to the ICHRPI. Volume LXXXII* (Barcelona, 2005), vol. II, pp. 1365-1374.

[4] *Diccionario biográfico de los parlamentarios de Vasconia, 1808-1876* (Vitoria-Gasteiz, 1993) e *Diccionario biográfico de los parlamentarios de Vasconia, 1876-1939* (Vitoria-Gasteiz, 2007), 3 vols.

[5] Nell'elaborazione del testo abbiamo fatto ricorso all'utilizzo di percentuali, nonostante l'universo statistico sia ridotto, per facilitare la comprensione dei dati piuttosto che utilizzare altri tipi di proporzioni che avrebbero reso prolissa la lettura.

[6] Ci riferiamo al progetto del *Diccionario biográfico de los parlamentarios españoles*, cfr. M. Urquijo, 'La costruzione di una rete di ricerca: il *Dizionario biografico dei parlamentari spagnoli* nella cornice della storia parlamentare europea', *Le Carte e la Storia*. (2008) nº 1, pp. 5 ss.

[7] J.J. Linz, P. Gangas, M. Jerez Mir, 'Spanish Diputados: From the 1876 Restoration to Consolidated Democracy', in H. Best, M. Cotta (ed.), *Parliamentary Representatives in Europe 1848-2000. Legislative Recruitment and Careers in Eleven European Countries* (Oxford, 2000), pp. 371-460 o per la Restaurazione J.L. Gomez-Navarro, J. Moreno

Luzon y F. Rey Reguillo, 'La élite parlamentaria entre 1914 y 1923', in M. Cabrera (dir.), *Con luz y taquígrafos. El Parlamento en la Restauración. 1913-1923* (Madrid, 1998), pp. 103-142.

[8] Con il nome di Restaurazione identifichiamo il regime liberale oligarchico imperante in Spagna tra il 1876 e il 1923. La sua incapacità per integrare nel sistema politico nuovi settori sociali e correnti politiche determinarono la sua crisi, evidente dal 1917. Per uscire da questa, la monarchia appoggiò l'alternativa autoritaria capeggiata dall'esercito nella dittatura di Miguel Primo de Rivera (1923-1930). La crisi della Dittatura trascinò nella sua caduta la propria Monarchia e tutto il sistema della Restaurazione.

[9] Dall'abbondante bibliografia sulla II Repubblica ved., per tutti le recenti sintesi pubblicate da S. Juliá (dir.), *República y guerra civil* (Madrid, 2004); J. Casanova, *República y guerra civil* (Madrid, 2007).

[10] Nonostante l'importanza delle Camere nella II Repubblica, la bibliografia sul tema e abbastanza scarsa Rilevanti per il punto di vista generale gli studi di M. Cabrera, 'Las Cortes republicanas', *Ayer*, nº 20 (1995), pp. 13-48; M. Alvarez Tardio, 'El Parlamento de la Segunda República española (1931-1939)', in *El Parlamento en el Tiempo* (Vitoria-Gasteiz, 2003), pp. 173-223; S.Varela, *Partidos y Parlamento en la II República española* (Madrid, 1978) e A.Salles, 'El sistema parlamentario durante la Segunda República', *Hispania* (1995), nº 189, pp. 99-124.

[11] Sul Parlamento della Restaurazione cfr. Cabrera, *Con luz y taquígrafos, passim*.

[12] 'La potestà legislativa risiede nel popolo, che la esercita per mezzo delle Camere o Congresso dei Deputati', Costituzione della Repubblica spagnola 9 dicembre 1931, articolo 18 (*Gaceta de Madrid* 10 de dicembre 1931, articolo 51).

[13] Nelle pagine seguenti tratteremo più in profondità il tema della discontinuità dell'elite parlamentare della repubblica rispetto a quella della restaurazione. Sulla transizione da un parlamento di notabili a uno di partiti e le sue difficoltà dovute alla frammentarietà dei differenti parlamenti repubblicani in numerose formazioni e per la propria immaturità del sistema dei partiti durante la II Repubblica , cfr. M. Alvarez Tardio, 'Las Cortes de la Segunda República: ¿un parlamento de partidos?', *Revista de las Cortes Generales* (2004), nº 63, pp. 139-174.

[14] M. Caballero Dominguez, 'El derecho de representación: sufragio y leyes electorales', *Ayer* (1999) nº 34, p. 56.

[15] Decreto per la modifica della legge elettorale del 1907 (8 maggio 1931) esposizione dei motivi, J.C. Rueda, *Legislación electoral española. 1808-1977* (Barcelona, 1998), p. 179.

[16] Decreto per la modifica della legge elettorale del 1907 (8 maggio 1931) articolo 6, *Ibidem* , p. 181.

[17] Decreto di modifica della Legge Elettorale del 1907 (8 maggio 1931) articolo 7, *Ibidem*, p. 181. In termini comparativi la relazione maggioranza / minoranza era nel Territorio Basco maggiormente favorevole alle minoranze rispetto a altre zone per le dimensioni ridotte di alcune circoscrizioni basche. Tale situazione raggiungeva la sua massima espressione a Álava dove, dovendosi assegnare solo due seggi, uno lo otteneva la maggioranza e l'altro la minoranza. Ciò nonostante, quando una forza politica era chiaramente egemonica in una circoscrizione poteva cercare di occuparne tutti i seggi, cosa che rendeva necessaria una grande preparazione delle elezioni e capacità organizzativa. In questo modo il Partito Nazionalista Basco (PNV) ottenne tre seggi della circoscrizione Biscaglia-Provincia nel 1931 e 1936 e la coalizione delle destre monopolizzò la rappresentazione navarra nel 1933 e 1936.

[18] Decreto di modifica della Legge Elettorale del 1907 (8 maggio 1931) artículo 11, *Ibidem*, p. 182.

[19] Decreto di modifica della Legge Elettorale del 1907 (27 luglio 1933), *Ibidem*, p. 184. Tale disposizione toccò a Álava, Guipúzcoa e la circoscrizione di Biscaglia-provincia nelle elezioni del 1936, nelle quali si celebrò un secondo turno.

[20] Rispetto alla politica basca della seconda repubblica facciamo riferimento a J.L. Granja, *Nacionalismo y II República en el País Vasco. Estatutos de autonomía, parti-*

dos y elecciones. Historia de Acción Nacionalista Vasca: 1930-1936 (Madrid, 2008 [si tratta di una edizione aggiornata della prima pubblicata nel 1986]).

[21] Una profonda analisi sul contenuto di queste culture politiche in J. J. Diaz Freire, *La República y el porvenir. Culturas políticas en Vizcaya durante la Segunda República* (San Sebastián, 1993).

[22] L'evoluzione politica delle differenti province basche possono vedersi in S. Pablo, *La Segunda República en Álava. Elecciones, partidos y vida política* (Bilbao, 1989); M. Ferrer, *Elecciones y partidos en Navarra durante la Segunda República* (Pamplona, 1992); J. A. Rodriguez Ranz, *Guipúzcoa y San Sebastián en las elecciones de la II República* (San Sebastián, 1994); benchè non esistano ricerche specifiche sulla Biscaglia, la dinamica politica e elettorale di questo territorio può seguirsi in Granja, *Nacionalismo y II República* e in R. Miralles, *El socialismo vasco durante la II República. Organización, ideología, política y elecciones* (Bilbao, 1988).

[23] Questa opposizione alla politica secolarizzatrice basata sulla difesa dell'autogoverno mantiene certe similitudini con quella che era stata provata nel periodo 1868-1874, durante il quale l'opposizione alla libertà religiosa e al matrimonio civile proclamati nella Constituzione democratica del 1869 era stata presentata come una difesa dei fori baschi.

[24] J.M. Gil Angulo, 'Los parlamentarios de los territorios vasco-navarros y la discusión de la Constitución republicana de 1931', *Espacio, Tiempo y Forma, Serie V, Historia Contemporánea* (2000) 13, pp. 393-413.

[25] La classificazione delle forze politiche o dei parlamentari come di destra, centro o sinistra non sempre risulta chiara e in alcune occasioni può cambiare nel corso el tempo. Ciò avviene con il Partito Nazionalista Basco, le cui posizioni, alleanze e definizione parlamentare nelle elezioni del 1931 e nelle camere costituenti furono di destra. Dal 1933 si presentò in solitario ai comizi e sviluppò una politica centrista. Per questo, i parlamentari del PNV sono stati compresi nel gruppo di destra nel 1931 e in quello di centro nel 1933 e 1936. Nel resto della Spagna, la principale forza di centro era il Partito Radicale, un gruppo politico repubblicano e laico, che solo ottenne un parlamentare nei distretti del Territorio Basco durante la II Repubblica.

[26] Una breve analisi di questo cambiamento del risultato elettorale in tutta la Spagna in C. Garcia Alix, 'Los condicionamientos regionales en los diputados a las cortes constituyentes de la Segunda República', *Estudis. Revista de historia moderna*, n. 2, 1973.

[27] Questa apparente maggiore trasparenza elettorale non si sa se si può estendere a tutte le regioni spagnole. Nel caso della Castiglia La Mancia osserviamo che le strutture signorili dei partiti monarchici si mise al servizio del repubblicanismo conservatore e della destra non repubblicana che rimane attiva in politica, vedere J. de D. Izquierdo y M. Requena, 'Estado actual de la investigación electoral en Castilla-La Mancha', *Revista de Estudios Políticos*, (1992) nº 75, pp. 265-267.

[28] I dati relativi alla Catalogna per i diversi confronti li prendiamo da A. Gonzàlez Vilalta, *Els diputats catalans a les Corts Constituents republicanes (1931-1933). Nacionalismo, possibilisme i reformisme social* (Barcelona, 2006).

[29] C. García Alix segnala che unicamente una trentina di parlamentari furono eletti da una regione diversa da quella di nascita, Garcia Alix, 'Los condicionamientos regionales', p. 245.

[30] C. García Alix dice che sono circa la metà degli eletti nel 1931, *Ibidem*, p. 246.

Enza Pelleriti

The Idea of Sicilian Autonomy in the Writings of Guarino Amella (1943-1946)

1. *The idea of Sicilian autonomy in historiography*

I would like to show here the first outcomes of my research on the contribution of Giovanni Guarino Amella[1] to the origin of the Sicilian autonomy and to the Sicilian Statute, after the fall of the Fascism and on the eve of the Italian Republic.

Guarino Amella was among the chief actors of the Sicilian autonomist culture and a major member of the Partito democratico del lavoro (Labour Democratic Party).[2] Though over seventy years old, he actively took part to the works of the Consulta Regionale, was President of the Commissione Paritetica for the Sicilian Statute's transition and actuation rules, and also a member of the Consulta Nazionale, where he strongly supported the need of a Statute, overcoming the opposition of eminent politicians like Einaudi, Nenni and Ricci.[3]

Talking about Sicilian autonomy, we need to consider the most relevant historiographic theses. I refer, in particular, to the studies of Adelaide Baviera Albanese, Giuseppe Giarrizzo, Massimo Ganci e Francesco Renda.[4] Their works seem to give rise to two interpretative lines, conflicting only in appearance: on the one side, the affirmation of the continuity connection between autonomist ideals and the deepest roots of Sicilian culture (significant Ganci's reference to the Constitution of 1812, as birth date of the autonomist culture); on the other side, the indication of a censure so that autonomy, the way it was enhanced between 1943 and 1945, deeply broke up with all previous enunciations.

We can see how this coexistence of different evaluations on the same conception of autonomy finds its explanation in the two opposed points of view concerning the State, which the leading groups produced in the Italian history during the nineteenth and twentieth centuries. In the liberal age, in fact, the appeals to the autonomist ideology referred anyway to a coherent imagery of national State. Nevertheless, the return of the autonomist culture, after the fall of the Fascist regime and the end of the WWII, had to measure with a totally original horizon, characterized by the consciousness of a strong discontinuity, which would very soon become clear with the institution of the Republic.

The autonomy Guarino Amella imagined consciously entered this second new and innovative political institutional scenery. Concerning this, we can recall a thought of his about the idea of autonomy as reported in an original manuscript, probably dated between 1943 and 1945 and kept among his writings.

> Nell'autonomia è impegnato il nostro onore oltre che l'avvenire. E' una posta grossa che giochiamo sul tavolo della storia, non soltanto sotto gli occhi del resto d'Italia, ma di tutto il mondo. E' per questo che abbiamo il dovere di prepararci. Intendere l'autonomia, acquisirla nel suo contenuto e nei suoi limiti, sostanziarla nella nostra coscienza, dare spirito alla sua lettera.[5]

It is clear how in this case the concept of autonomy, defended by the Sicilian politician, took strongly into account the break with the past and, at the same time, how it shows the way he drew a new theoretical institutional model aimed at building future perspectives.

2. *Sicily between autonomist feelings and separatist proposals*

A further historiographic matter concerns the bitter dialectic between the autonomist declarations and the rising of separatism.

From this angle, autonomy appears as the right political answer to the appeals of the Sicilian people, who had always been against state centralization, and an effective way to contain the separatist danger mostly represented by the proposals of Andrea Finocchiaro Aprile. In its protagonists' mind, this was not only in the interest of national unity, but also and first of all in that of the same Sicily.[6]

With this concern, Guarino Amella clearly said that separatism was 'un bubbone maligno che forse non si ha in Sardegna' e che i 'separatisti sono in armi e affermano che la promessa d'autonomia è una turlupinatura'.[7]

Actually, going through the Island history,[8] we can see how the separatist sentiment has been cyclically there in Sicilian minds. As Francesco Renda has pointed out, 'un fiume carsico sotterraneamente affiora impetuoso ogni qualvolta una crisi istituzionale si affaccia all'orizzonte, quasi un sisma che scombini i precari equilibri esistenti'.[9]

In 1943, on the wave of Fascism's dissolution, of the military defeat and of the Anglo-American occupation, a revived separatist movement put on the ground a question that had been set aside, but never forgotten.[10] Nevertheless, in Guarino Amella's skilled representation, separatist temptations and revivals traced back to a past that could not be proposed, whereas the modern conception of autonomy boasted a huge culture and an onward projected practice. Moreover, in the Sicilian politician's opinion, the autonomist perspective did not ended up in a regional experience, exclusive and unrepeatable, but on

the contrary it could correctly deal, within a European context, both with the Sardinian movement and the Catalan experience.[11] Later on, he would dedicate to both of them consistent comparative appeals.

On 11 February 1944 the Allied Forces gave Sicily back to the Italian administration headed by Marshal Badoglio. This act provoked violent protests on the part of the separatists, but also of the autonomists. With Sicily returned under the Italian State jurisdiction, autonomy became a national matter, and nonetheless even harder to realize in a frame of institutional crisis of transition.

The thread of separatism, on its side, induced Italian leaders, who were going to plan the post-war reconstruction of the country, to give the Sicilians at least the illusion of self-government. In 1944 they chose as Alto Commissario Francesco Musotto, former prefect of Palermo, who was appreciated both by the Allied and by the separatists, with the charge of supervising all the civil administrations of the State of the Island.[12] A Giunta Consultiva was created to assist him, initially composed of six members, later of nine, one for each province, and finally of thirty-six, with fundamentally deliberative aims; among its most relevant members we can recall the Christian democrats Bernardo Mattarella and Salvatore Aldisio, the communist Giuseppe Montalbano, the socialist Francesco Taormina, the liberal Andrea Guarnieri, the actionist Salvatore Monteforte, and the democratic-socialist Vincenzo Saitta.[13]

3. *The autonomist project of Giovanni Guarino Amella.*

And so, it was right within the Consulta that the debate on autonomy started, which soon entered its juridical-constitutional phase, on 1 September 1945, when the High Commissioner for Sicily, Salvatore Aldisio, who substituted Musotto, created a Commission with the charge of drawing the plan of a new 'Statute'.[14]

During this delicate stage of the building of the regional autonomy became clear the role played by Giovanni Guarino Amella, whom an article published on *La Fiaccola* on 27 October 1946 praised as follows: 'tra gli uomini politici siciliani, il più competente sul problema dell'Autonomia siciliana e più appassionato e tenace sostenitore'.[15] We can see, nevertheless, that in the political context of the 1950s, the role of the Agrigento politician, notwithstanding his initial popularity, gradually lost its importance.

The core of Guarino Amella's autonomist programme consisted in the attribution of a prominent role to the Island's economic and social structure.

His reflections centred, in particular, on the need of radically changing the condition of the Sicilian economic inferiority in comparison with the rest of Italy.

Guarino Amella's ideal, as Giuseppe Giarrizzo has pointed out, was that of 'una società di piccoli e medi proprietari, di piccoli e medi artigiani, che manifestano nella vita locale esigenze di operosità e di solidarietà umane'.[16]

And so he conceived autonomy as the most passionate instrument of enhancement of that peculiar society, able to set it free from the economic and political influences of the agrarian-conservative coalition. At the same time, the autonomist impulse had to be considered as the appropriate occasion to obtain a new political-institutional government balance, following practises that had to be freed from state centralization, which had been responsible for the unbalance in the territorial development of the country.

Guarino Amella's initiative substantially aimed at identifying and developing the Island native potentials, basing on specific interests rooted in the local productive context. In his opinion, these interests were mortified by the administrative and bureaucratic centralization of the national government.[17] He thought that the autonomist practice, in this case, concerned first of all the local direction of public affairs, 'nella logica di riuscire a far meglio a Palermo – in terms of governance – ciò che a Roma non si era fatto, non si voleva fare, o non si riusciva a fare'.[18]

The Sicilian politician had been cultivating these ideas since 1906, in a time when political and administrative centralization seemed inalienable. Guarino Amella, in fact, through *Il Moscone*, which he edited, stated that, because of the contraposition of interests between North and South and the diversities of energies and resources, autonomy was the only remedy to solve the economic distance and allow Sicily to walk the street of progress.[19] These thoughts of his would fully enter the plan of Statute that he himself later drew.

Ever since he showed his scheme of Statute to the regional Congress of the Labour Democratic Party, held in Catania on 8-9-10 April 1945, Guarino Amella explained that it was a plan of a Statute, that is to say a constitutional and not an ordinary law, which would give Sicily a political and not only an administrative autonomy.[20] He underlined the fact that the Statute he sketched was not a simple law, because it included 'principi e norme fondamentali, che debbano avere carattere di stabilità, che non siano perciò mutabili per mutevole variare di maggioranze'. Soon after he showed the four essential points of his scheme, all of which had critical aspects open to several solutions.

The first point concerned the Region legislative body that in the Catalan Statute, to which Guarino Amella inspired, was indicated as *Generalidad*.[21] He proposed, more modestly, the name of Consiglio Regionale, wondering on the election rules, of first and second degree, for its 100 members. He concluded that the essential was

that this body came out of regional elections, leaving the rest to a later debate.[22]

The second matter Guarino Amella submitted to the Congress was about the composition of the Consiglio regionale which, notwithstanding its name, was charged with all the functions of a real Parliament. He wondered, in fact, whether it was better that it was only composed of political representatives or to choose members from the local economic world. Maybe they'd rather favour a compromise solution. Guarino Amella came to exclude this latter possibility, because 'la potestà deliberativa doveva essere lasciata all'assemblea politica, che necessariamente varia nella sua composizione perché trae origine diretta dalla volontà popolare e dalla multiforme espressione di svariate esigenze ed interessi diversi'.[23]

The voice coming from the representatives of the producing category could only be heard submitting the bills to the interested technical bodies (art. 21). The regional council remained in office for five years (art. 10) and the councillors were responsible only in front of the Assembly they were members of. In case of violation of the Statute and of the law they would be tried by a Supreme Constitutional Court of Justice (art. 15). Also on these items, the autonomist politician followed the example of the Catalan Statute which provided for a Parliament ('elegido por un plazo no major de cinco años, por sufragio universal, directo, igual, y secreto'),[24] with a legislative power, and not subject to the other central state bodies' intervention. In this plan, a central role was given to the President of the Region. Elected by the Council with absolute majority and secret ballot, he would be responsible together with the Giunta. Moreover, he would have a ministerial status in an absolutely comparable situation with the other members of the central government.

The third point underlined by the Sicilian politician during the Labour Democratic Party's Assembly was perhaps the most relevant, because it concerned the choice of the subjects which belonged to the regional legislative power. With this regard, pointing out that for the autonomists Region was an essential part of the State and not a separate sovereign State, he stated that some delicate items, as included in art. 22, would be of the exclusive legislative competence of the central Government. These items concerned: the acquiring and the losing of citizenship, the relationships among State and Church, foreign policy, immigration, emigration and the rules for foreigners, extradition, national defence, the great communication lines, the monetary system and copyright.[25] For other matters, whose discipline was enclosed in art. 23, such as health, public education, publishing, traffic police, the disciplines of credit and savings, it seemed suitable that the general prescriptive power was kept by the State, while Region would

deal with the necessary fitting rules to adjust those prescriptions to the Island's peculiar conditions and needs. An example Guarino Amella referred to was the one related to public education, with particular attention to the discipline of didactic, schedule, programmes, and even the same architectural aspects of school buildings. In his opinion these matters could not be faced in the same way in a village of Val d'Aosta and in Palermo, in Venezia and in Canicattì.[26] Guarino Amella's project included, moreover, the abolition of Provinces, whose competences would be given to Region, Municipality and to municipal partnerships, which would be created on the base of common interests and easiness of communication.[27] With this concern, the Sicilian politician specified that Province, the way it was 'constituted', did not represented anymore the ancient geography of every single municipality relating to the territory, because of the new road- and rail-networks. Furthermore, if on the one hand it had already lost several of its administrative and political functions, on the other those remaining would be better enhanced by multi-municipalities partnerships.[28] Guarino Amella paid much attention to the matter of local revenues, wondering in a very accurate way:

> Con quali mezzi l'Ente Regione dovrà provvedere ai servizi e alle funzioni che le vengono trasferiti dallo Stato? E con quali mezzi lo Stato provvederà a quella parte dei servizi e delle funzioni che, per essere di carattere statale, riflettono anche la Regione, ed a quei servizi e funzioni che, pur essendo a carico dello Stato, si riversano sulla Regione?[29]

To solve the above mentioned problems he proposed two possible solutions, leaving to the Regional Congress the final choice. His first solution took as a model the one adopted by Spain in 1931, when the Catalan region was created. It substantially stated that regional revenues would be made of the income taxes that the State would leave to the region and of special excises imposed directly by the latter. The second solution followed the example of the Sardinian Action Party and the Consiglio Straordinario di Stato Siciliano[30] in 1860 (on the occasion of plebiscite for the annexation of Sicily to the Italian State).[31] The region would have the exclusive right of imposing and get all revenue, giving the State only a sort of contribution, fixed by an apposite Commission. After exposing every inconvenient of both these solutions, Guarino Amella openly declared his support for the latter, both because Sicily, aspiring to autonomy, also had to take charge of all related hazards, and to fight against the 'pessimismo allarmistico dei nemici dell'autonomia, sostenitori' instead of 'dell'unitarismo accentratore'.

Finally, the Sicilian politician, showing his own point of view on constitutional guarantees for the Statute's violations on the part of

the central State, proposed to create a jurisdictional body, that he called Suprema Corte Costituzionale then referred to as Alta Corte, with its seat in Sicily, made up of members jointly chosen by the regional and the national governments.[32]

Besides assuming as a model the Catalan *Estatuto* of 1932, Guarino Amella also had frequent exchanges of ideas with the Sardinian autonomists, as we can see from a confidential letter he received from Mario Berlinguer right at the conclusion of the regional Congress of the Labour Democratic Party:

> carissimo, ho letto il resoconto del vostro Congresso e la tua lucida interessantissima relazione sull'Autonomia regionale siciliana [...] Vi è da tenere conto delle differenze tra la tua Sicilia e la nostra Sardegna. Ma, a parte ciò, il complesso della tua relazione è in armonia con i nostri programmi e con le nostre esigenze: ed è veramente ottima cosa il contributo concreto, dettato da una passione che è la passione nostra ed espresso in concetti così chiari e realistici che tu dai alla soluzione positiva del problema.[33]

4. *The approval of the Statute's final text*

Guarino Amella's project, together with others officially presented by Professor Giovanni Salemi, Mario Mineo, Enrico Paresce and Duke Carlo Averna di Gualtieri, was examined by a special Commission appointed on 1 September 1945 by the Alto Commissario Salvatore Aldisio to process the regional Statute's text. After taking office on 22 September, the Commission, headed by Giovanni Salemi and having among its members the same Guarino Amella,[34] after a sharp debate which lasted twenty-three sessions, ended its work on 7 December 1945.[35]

The project planned by Salemi would represent the scheme of the final Statute, embodying a sort of mediation between the more radical tendencies of Guarino Amella and Avarna on the one side, and those more moderate of Mineo and the law philosopher Enrico Paresce.[36]

Within the Consulta regionale, Guarino Amella was one of the most decided supporters of the Statute's immediate approval, declaring that if the disposition connected to its promulgation had not immediately been approved all the work they had made so far would gone lost. As a consequence, the Sicilians would be allowed to think that, as usual, 'i politici si erano parlati addosso'.

He opposed the observations of Girolamo Li Causi, a famous member of the Sicilian Communist Party. The latter thought that they had not to anticipate too much the promulgation of local autonomy, because of the so many uncertainties occurred during the works.[37] The communist member reasonably proposed to wait for the administrative elections and for the elections of the Costituente, so that each Party had the chance to expose in public meetings its own autonomy plan.

On his part, Guarino Amella replied with good suggestions that the 'Costituente non avrebbe dato lo Statuto dell'Autonomia regionale: la Costituente affermerà il principio, se lo affermerà, dello Stato regionale; poi la Costituente si scioglierà dopo sei, sette mesi […] e rimanderà al Parlamento, che verrà eletto dopo la Costituente, la formazione delle leggi relative'.[38]

The Agrigento autonomist underlined the need of presenting to the future Constituent Assembly a Statute that had already been tested for at least two years. Otherwise the Costituente would find itself in a very complex situation, restricted to judge the limits or the merits of the Statute to correct possible mistakes.

Guarino Amella's passionate 'harangue' was probably fundamental for the approval of the article 39 of the original draft, which would mark the fate of the Island. It stated: 'Il presente Statuto sarà approvato con decreto legislativo ed entrerà in vigore dopo la pubblicazione nella Gazzetta Ufficiale del Regno'.[39] The Consulta Regionale approved the Statute on 23 December 1945. Submitted to the Consulta Nazionale, though the survey of Gilardoni, spokesman of the 'Giunta di studio' that had been constituted *ad hoc* for that purpose, the Statute was labelled as 'constitutional text', and so irrevocable, though to be submitted to the Assemblea Costituente, most recently elected, 'per coordinarlo alla nuova Costituzione dello Stato'.[40]

On 15 May 1946 the project of Statute was voted and approved by the Council of Ministers with the opposition of Nenni, Cattani and Gasparotto.

5. *Reflections of Guarino Amella after the approval of the Statute*

Guarino Amella's political commitment would not expire after the approval of the Statute. Some time after, in a letter dated 19 July 1946 he sent to Salvatore Aldisio, he congratulated for the appointment of the latter as Minister for the Merchant Navy and, at the same time, he asked some news about the legislative acts which would regulate the administrative elections in Sicily. He wrote:

> Io qui in Sicilia non faccio che arrabbiarmi e questionare perché si è diffusa la convinzione che l'annunziata autonomia sia stata una sporca turlupinatura elettoralistica, come dicevano i separatisti durante la lotta elettorale del maggio scorso.[41]

He asked the Minister how to 'riparare a quella fregatura dell'art. 42 delle disposizioni transitorie del nostro progetto, approvato dal Governo a saccu d'ossa, senza tenere conto delle osservazioni fatte su questo punto in seno alle Commissioni riunite della Consulta nazionale'.[42]

Substantially, he solicited the new Government the promulgation of a bill providing for the first election of the regional Assembly as soon

as possible. Guarino Amella suggested to not waiting for the election of the new Parliament or of the Costituente for approving the new electoral law.

A few days after, the Sicilian politician sent another letter to the editor of the political magazine of the MIS, *Trinacria*, which was published in the issue of 3 August 1946. In that letter he recalled a previous article entitled 'La beffa dell'Autonomia', issued on the first number of *Trinacria*, which mocked the autonomist ideas compared to the radical strength of the separatist faith. Guarino Amella opposed all this with a dynamic and open vision of autonomy which was close to an idea of government. He so stated that neither the Alto Commissario nor the Consulta Regionale could consider themselves as expressions of the autonomy, and that self-government had still to be adopted through the elections of the 90 Sicilian deputies who, on their turn, would elect the President and the ministers of the Sicilian government. They would be the only ones to promulgate the new Sicilian laws. He recalled, furthermore, the concept of independence. This concept 'non stava a significare la fratricida indipendenza politica', in the sense given by the international relationships among States, but 'indipendenza economica, legislativa, quella che noi chiamiamo autonomia, autogoverno regionale'.

The letter ended up with an eminent quotation from a speech of the 'autonomist' Alcide De Gasperi, held in Catania, on 28 May 1946: 'Uno Statuto è niente se non c'è la pratica applicazione; e la pratica applicazione non è possibile se non c'è concordia fra il popolo ad incalzare giorno per giorno per ottenere ed allargare il suo potere di autogoverno'.[43]

The politician who had fought so hard for the Island's autonomy did not happen to become a member of the Regional Assembly.

Presenting himself to the elections with a list of his own in the constituency of Agrigento, to the first regional elections of 1946, notwithstanding the high number of votes (sixteen thousand votes) he had, he did not reach the proper list rate and so he was not elected.[44]

A few years after, on 19 October 1949, the great autonomist, and self-taught politician, died in his S. Angelo Muxaro.

Notes

[1] Giovanni Guarino Amella was born in Sant'Angelo Muxaro, province of Agrigento, on 8 October 1872. When very young, he moved to Canicattì, where Baron Francesco Lombardo, a rich landowner, put him under his protection paying for his education until his degree in Law at the University of Palermo. In 1902 he was elected Councillor at the Municipality of Canicattì and in 1906 he was elected Provincial Councillor, deputy to the national Parliament from 1919 to 1926. See G. Portalone, 'Giovanni Guarino Amella: un impegno eminente per l'autonomia siciliana', in *Giovanni Guarino*

Amella la sua opera per l'autonomia della Sicilia (Palermo- Canicattì, 2003), p. 12.

[2] Cfr. Portalone, 'Giovanni Guarino Amella', p. 41.

[3] On Giovanni Guarino Amella see P. D'Antoni, *Giovanni Guarino Amella* (Palermo, s.d.).

[4] See the introduction essays by G. Giarrizzo, G. Salemi, A. Baviera Albanese, in *Atti della Consulta Regionale Siciliana* (Palermo, 1975-76); and also E. La Loggia, *Autonomia e rinascita della Sicilia* (Palermo, 1953); S. Di Matteo, *Anni roventi. La Sicilia dal 1943 al 1947* (Palermo, 1967); G. Giarrizzo, 'Sicilia politica 1943-45. La genesi dello Statuto regionale', in *Atti della Consulta Regionale Siciliana. 1944-1945* (Palermo, 1971), I; F. Benigno, G. Giarrizzo (eds), *Storia della Sicilia* (Roma-Bari, 2002); M. Ganci, *Storia antologica della autonomia siciliana* (Palermo, 1980), I-III; F. Renda, *Storia della Sicilia dal 1860 al 1970* (Palermo, 1983), vol. III; F. Renda, 'Sicilia, autonomia, Costituente: il punto di vista storico', *Incontri meridionali*, vol. 29, (n. 1, 1991), pp. 21-73.

[5] See *Fondazione Giovanni Guarino Amella, Archivio* (FGGA), Serie 125, busta B, fascicolo 2, doc. n. 23.

[6] Andrea Finocchiaro Aprile reached Palermo in 9 July 1943 and established the *Comitato per l'Indipendenza siciliana*. On the eve of the arrival of the Allied Forces in Palermo he wrote a proclamation and a memorandum where he asked them 'la costituzione di un governo siciliano provvisorio, perché si dichiari decaduta la monarchia sabauda in Sicilia'. With this regard see Giarrizzo, 'Sicilia Politica 1943-1945', p. 11 and the essay by F. Renda in *1947- 1977 Trent'anni di autonomia* (Palermo, 1978), p. 54 and following.

[7] See Atti, Commissioni riunite affari politici e amministrativi – giustizia – finanze e tesoro. Resoconto finanziario della seduta di martedì 7 maggio 1946, in *Atti della Consulta Regionale*, p. 83.

[8] See A. Romano, 'Influenze costituzionali spagnole sul costituzionalismo italiano. Note sulla genesi dello statuto della Regione Siciliana', in *The Spanish Constitution in the european constitutional context* (Madrid, 2003), p. 2244.

[9] See Portalone, 'Giovanni Guarino Amella', pp. 21-22.

[10] See Portalone, 'Giovanni Guarino Amella', p. 22. In this sense, the separatism of Finocchiaro Aprile was full of claims and recriminations against a State that over the centuries had always almost left Sicily aside. He recalled the wrongs the Island had suffered since the Unification, when it had become a market place for the Northern goods, as a real colonial possession. This separatist struggle was supported, though in an ambiguous manner, by the Anglo-Americans that in that period needed to act in a friendly situation and so could not lean on that anti-Fascist small number made up of separatists and Mafia.

[11] See Renda, *Trent'anni di autonomia*, p. 55. Significant studies on Sardinian autonomy are those by M.R. Cardia, *La nascita della Regione autonoma della Sardegna. 1943-1948* (Milano, 1992); Eadem, *Le origini dello statuto speciale per la Sardegna. I testi, i documenti, i dibattiti* (Sassari,1996), 3 voll; Eadem, *La Sardegna nella strategia mediterranea degli Alleati durante la seconda guerra mondiale. I piani di conquista. 1940-1943* (Cagliari, 2006); U. Cardia, *Autonomia sarda. Un'idea che attraversa i secoli* (Cagliari, 1999); L. Berlinguer, A Mattone, *La Sardegna* (Torino, 1999) (essays by I. Birocchi, M.R. Cardia, S. Ruju and F. Soddu); G. Ortu, *Storia e progetto dell'autonomia. Percorsi e profili dell'autonomismo sardo nel Novecento* (Cagliari, 1998).

[12] See Portalone, 'Giovanni Guarino Amella', p. 26

[13] The Alto Commissariato, established with R.D.L. of 18 March 1944, n. 91, following the normative text, was established as individual extraordinary body and with a term of one year after the end of the war. Art. 7 provided for the institution of the Giunta Consultiva. Its members were named by a decree of the Head of Government, heard the Council of Ministers. Its sessions were headed by the Alto Commissario and they had to take records of them. See *Atti della Consulta Regionale Siciliana*, I, p. 206; Ganci, *Storia antologica*, p. 311.

[14] The Commission's works started on 22 September 1945 and ended up on 7 December of that same year.

[15] See Portalone, 'Giovanni Guarino Amella', p. 12.

[16] See Giarrizzo, 'Sicilia politica 1943-1945', p. 107.

[17] See E. Scaglione, *Prodromi federalistici nell'impianto istituzionale del progetto dell'autonomia siciliana di Guarino Amella*, in *Giovanni Guarino Amella*, p. 69.

[18] Id.

[19] See Portalone, 'Giovanni Guarino Amella', p. 21.

[20] See Ganci, *Storia antologica*, p. 337; Portalone, 'Giovanni Guarino Amella', p. 33.

[21] See 'Estatuto de Cataluña (ley de 15 de septiembre de 1932)', in *Leyes politicas espanolas fundamentales. 1808-1978* (Madrid, 1984).

[22] See the survey presented to the Regional Congress in Ganci, *Storia antologica*, pp. 338-339.

[23] See the project of the Statute of the Sicilian Region in G. Guarino Amella, *Per l'autonomia regionale della Sicilia. Progetto di Statuto* (Palermo, s.d.), p. 7; Ganci, *Storia antologica*, p. 81.

[24] Catalan Statute 1932, art. 14, III comma, in Ganci, *Storia antologica*, p. 81.

[25] See Guarino Amella, *Per l'autonomia regionale*, pp. 19-20; M. Ganci, 'Lo Statuto della Regione Siciliana nel progetto di Guarino Amella', in *Giovanni Guarino*, p. 79.

[26] See Ganci, *Storia antologica*, p. 80. In the exposition of the matter of exclusive competence of the Region it was evident the influence of the Catalan Statute, because some of those matters were common to both the Statutes. Very similar to the Catalan was also the system of services for the public order and judiciary police (art. 26 of Guarino Amella's project, art. 8 of Catalan Statute). Both these texts assigned to National government the services of public security of national importance, while local public order and judiciary police were assigned to regional competence.

[27] See Portalone, 'Giovanni Guarino Amella', p. 35.

[28] See Guarino Amella, *Per l'autonomia regionale*, p. 11.

[29] See Guarino Amella, *Per l'autonomia regionale*, p. 12.

[30] With this concern Guarino Amella recalled that among the members of the Consiglio straordinario di Stato were many eminent people of the time, such as Gregorio Ugdulena, Andrea Guarnieri, Michele Amari, Stanislao Cannizzaro, Giuseppe Costantini, Francesco Ferrara, Domenico Peranni, Francesco Paolo Perez, Pietro Scrofani, Nicolò Turrisi, Salvatore Vigo. See Guarino Amella, *Per l'autonomia regionale*, p. 13.

[31] 'Il 19 ottobre del 1860 il prodittatore Mordini, in nome di Vittorio Emanuele re d'Italia, emanava un decreto con il quale si istituiva "un Consiglio straordinario di Stato per studiare ed esporre al governo gli ordini e gli stabilimenti adatti a conciliare i bisogni peculiari della Sicilia con quelli generali dell'unità e prosperità della Nazione"'. See D. Novarese, 'Perché rimangano conciliati i bisogni peculiari della Sicilia con quelli generali dell'Unità e prosperità della nazione italiana. Il Consiglio Straordinario di Stato e l'autonomia negata', in *Derecho, Historia y Universidades. Estudios dedicados a Mariano Peset* (València, 2007), II, p. 308.

[32] See Portalone, 'Giovanni Guarino Amella', p. 37.

[33] See FGAA, Serie manoscritti, 103/43, corrispondenza politica.

[34] His scheme of Statute was modelled to a form of 'moderate autonomy', because he wanted to prevent a decline of autonomy in a sort of concealed separatism and as a consequence limited its powers. The project of duke Avarna di Gualtieri provided a very wide Istituto autonomista regionale, empowered with huge and exclusive authorities, almost bounding federalism. See Ganci, *Storia antologica*, p. 310.

[35] See Romano, 'Influenze costituzionali spagnole', p. 2257. *Atti della consulta*, pp. 96-97. Members of the Commission were Giuseppe Alessi (DC), Giovanni Guarino Amella (PDL), Mario Mineo (PSI), Alfredo Mirabile (Pd'A), Giuseppe Montalbano (PCI), Carlo Orlando (PLI), and three Professors of the University of Palermo: Franco Restivo (Institutions of Roman Law), P. Ricca Salerno (Political Economy) and Giovanni Salemi (Administrative Law).

[36] See Romano, 'Influenze costituzionali spagnole', p. 2259. In January 1944, a 'schema di progetto per l'autonomia della Sicilia', drafted by Vincenzo Vacirca and, pro-

bably, Fausto Montesani, of the Social-Democratic Federazione Socialista Siciliana, was presented to the AMGOT. It proposed of constituting Sicily as an autonomous region, based on a Statute sketched by a constituent elective assembly.

[37] See *Atti della Consulta*, III, p. 437.

[38] See *Atti della Consulta*, III, p. 440.

[39] See *Atti della Consulta*, III, p. 440.

[40] See Ganci, *Storia antologica*, p. 313; Romano, 'Influenze costituzionali spagnole', pp. 2261-2262.

[41] Letter of Guarino Amella to Salvatore Aldisio, 19 July 1946, in FGAA, Serie 125, busta B, fascicolo 2, doc. n. 26.

[42] See the letter of Guarino Amella to Salvatore Aldisio.

[43] See 'Una lettera dell'On. Guarino Amella. L'autonomia è una beffa?', *Trinacria*, 3 Agoust 1946, p. 2.

[44] See S. Di Matteo, 'Padre nobile dell'autonomia: Giovanni Guarino Amella nelle battaglie del pensiero e della vita', in *Giovanni Guarino Amella*, p. 84; and also D'Antoni, *Giovanni Guarino Amella*, p. 33.

Simone Pajno

Regionalism in the Italian Constitutional System

1. *Foreword*

The aim of this essay is to briefly deal with the history of the relationship between State and Regions in Italian regionalism. I pay special attention to what has happened to the category of regions usually called 'Regioni Speciali'.

In section 2 I study the birth of Italian regionalism. I examine the 'special treatment' of the Regione siciliana before the Constitution came into force, starting in 1946; the approval of the Italian Constitution in 1947, and the 'ordinary model' of regionalism held in this charter; finally, the 'constitutional statutes' – approved by the same Constituent Assembly in 1948 – regulating the constitutional position of the regions mentioned in art. 116 Cost.

Section 3 describes the most important features of the 'ordinary model', as they appeared in the *constitutional text*. In fact, constitutional interpretation – especially by the constitutional Court – has reshaped the relationship between State and Regions. The path followed by the Court, indeed, was far from the expectation one may have had when reading the Constitution.

The relationship between State and Regions in the *living Constitution* is the topic of Section 4, where I try to describe the features of the model, as shaped by the decision of the constitutional judges. I attempt, therefore, to offer a point of view about the *reasons* that form the basis of such a model. The thesis suggested in this essay holds that the main reason lies in some assumptions in the field of constitutional theory, especially those concerning the validity of the Constitution and the idea of the People. The consequence of this assumption in relationship between State and Regions is the ontological superiority of the first over the second. The key term I use to explain this 'way of life' in the experience of Italian regionalism is '*interesse nazionale*' (national interest).

Section 5 studies the 'life' of the 'Regioni speciali'. This kind of Regions never enjoyed the special treatment one could derive from the constitutional law.

It is well-known that in 2001 the Italian Parliament approved the most important constitutional reform since 1948. The '*legge costituzionale*' n. 3/2001 – whose title is *Modifiche al titolo V della parte seconda della Costituzione* – changed many articles in the part of the Italian Constitution dedicated to the relationship between the central

State and other autonomous territorial organizations: Regions, of course, followed by 'comuni' (city councils); 'province' (provinces) and 'città metropolitane' (metropolitan areas).

In section 5 I attempt to offer a comprehensive reading of the shape that constitutional reform gave to the Italian system. The main idea is that the l. cost. 2/2001 determined the fall of the State's superiority. The key-words I use to explain this point of view are '*pluralismo istituzionale paritario*' (that we can translate as 'equal institutional pluralism') and '*sussidiarietà*' (subsidiarity). Of course, subsidiarity is a well-known concept in political and legal studies. My aim is not to focus on this principle, but to explain the Italian path towards subsidiarity, drawn by the constitutional reform and the decisions of the Constitutional Court, and, before these, by the legislative reforms of the 1990s.

The thesis I try to draw is that this principle expresses a profound changeover in the way of thinking of the problem of validity and the very idea of People.

2. *The Birth of Italian Regionalism: the 'Regioni speciali' and the Constitution*

The first experience of regionalism in Italy can be found in Sicily. In 1946 – before the Constituent Assembly began working – Sicily received a special statutory treatment. The *Statuto*, approved by the Government and issued as a *Regio decreto legislativo* n. 455, 1946, gave the Region considerable power: legislative powers, fiscal autonomy – especially the right to hold the fiscal proceeds obtained in Sicily – special powers to the President to preserve law and order, and, generally speaking, a separation system between regional and general order, are the main features of Sicilian pre-constitutional autonomy. It is important to point out: *i*) that the Sicilian experience was radically new in the Italian legal order; *ii*) that the reason for this strong autonomy was probably linked to the political pressure for independence, also supported by the MIS (*Movimento per l'indipendenza siciliana*); *iii*) that the main claim was of an economic nature, because the Italian State was held responsible for the state of poverty and backwardness of the Region; *iv*) that the model of relationship between the State and the *Regione siciliana* held in the *Statuto* was very far from the constitutional model: this is the reason for the provision of its coordination to the oncoming Constitution; *v*) that this coordination has not yet been achieved.

As we know, the Italian Constitution was approved on December 22, 1947. The regionalism provided for in the Charter was based on 14 'ordinary Regions'[1], whose system was disciplined in the Constitution itself. Next to these Regions, art. 116 provided for the creation of

five 'special Regions': Friuli-Venezia Giulia, Sardegna, Sicilia, Trentino-Alto Adige and Valle d'Aosta. The law regulating the relationship between special Regions and State is not in the Constitution, but in the respective *Statuti* approved in the shape of *legge costituzionale* by the Constituent Assembly itself. The Sicilian *Statuto* was instead merely confirmed, without due coordination.

3. *The Relationship between State and Regions, in the constitutional Text*

As I pointed out in the first section, the interpretation of the constitutional rules concerning the constitutional position of the Regions, and the system of their relationship with the State supported by the constitutional Court was very far from an 'intuitive understanding' of the text. In this section I shall briefly show the most important characteristics of the 'intuitive understanding' of the constitutional text. In the following section, I will try to describe the opera of the *Palazzo della Consulta* in reshaping the relationship between State and Regions.

One can set (solely) the qualifying features of the model according to an 'intuitive understanding', in the following list:

a) Regions had legislative power, but only in enumerated fields, while the State's legislative power was general and not limited to certain fields; furthermore, in those fields, regional statutes had to follow the 'fundamental principles' (*principi fondamentali*) set by State's statutes; in a few fields – indicated in the art. 117 Cost. – the State, furthermore, had the possibility to identify the *national interest* and reshape – in accordance with that qualification – the allocation of legislative power;

b) the government could appeal to the Constitutional Court, if it believed that the statute of a Region contrasted with the Constitution[2]; the government, furthermore, could appeal regional statutes to the Parliament when it considered them, *in all fields*, in contrast with *national interest*: unlike the Court's judgment the latter was, obviously, a *political* judgment;

c) administrative power was divided on the basis of the rule usually called '*principio del parallelismo*' (parallelism principle): the Regions could exercise powers in administration only in the same fields that they could regulate;

d) the regions were also autonomous in fiscal and economic affairs, but only in the spaces set by the State's statutes;

e) beyond the judicial review of legislation, there were many controls on regional powers;

f) finally, the text approved in the Constituent Assembly recognized the autonomy of *comuni* and *province*, however assigning them a less

guaranteed role than that of the Region: the State's statute, indeed, could mold their position.

4. *The Relationship between State and Regions in the 'Living Constitution'. The Scholars and the Court*

Up to now, we have focused on the constitutional text. But what about the *living Constitution*? In this Section I show how the Constitutional Court of the *Palazzo della Consulta* interpreted constitutional rules regulating the relationship between various level of government and their constitutional powers.

First of all, it is necessary to stress the importance of the general clause mentioned above: the national interest (*interesse nazionale*). According to the case law of the Court, this clause did not represent a legal limit for regional legislation except for the few fields in which it was expressly mentioned in art. 117 Cost. The Court, instead, interpreted the *interesse nazionale* as a general legal limit to regional legislation. Scholars criticized this assumption[3], but in a few years it became a solid pillar of the reconstruction built by the judges of *Palazzo della Consulta*.

At the same time, I should mention that the instrument provided to enforce the limit of *interesse nazionale* – that is the political instrument, devolved to the national Parliament – was never used between 1948 and 2001, when constitutional reform erased the related rules from the Constitution.

So, the real 'thorny point' in the relationship between State and Regions in the Italian constitutional experience, is the legal *status* in the system of the general clause just mentioned. The Court's theory about this relationship can be exposed as a theory concerning the *interesse nazionale*.

Regarding this controversial issue, the judges of *Palazzo della Consulta* disagreed strongly with the scholars. They refused all the doctrinal proposals. Here, it suffices to mention two or three opinions on this regard.

Let's start with Costantino Mortati.

According to his theory, legal control was only possible in those fields in which the Constitution explicitly mentioned that clause in the division of legislative powers[4].

In the remaining fields, no legal monitoring was allowed. The government could only invoke parliamentary decisions. Such decisions, in Mortati's theory, were completely free of legal limits. It was a pure political pronouncement[5].

Scholars like Temistocle Martines[6] and Augusto Barbera[7] proposed a different theory. Both Martines and Barbera – like Mortati – maintained that the choice of the Court of reading the clause as a general

legal limit was wrong, but held that the national Parliament not completely free in its political decision. *Their goal was to take away the decision of cancelling a regional statute from the dominion of the majority*. They did not consider parliamentary majority capable of cancelling a regional statute.

The problem is that both Martines and Barbera did not develop a really useful theory, nor did their theory fit with the Constitution as a whole, because some of the concepts used in their studies were too vague, and because of the difficulty of coordinating the theory with some important assumptions in the field of constitutional theory.

From a certain point of view, Livio Paladin was the scholar that reached the most radical position as opposed to Mortati's. Indeed, he thought that the Court was right in 'transforming' the *political* limit of *interesse nazionale* into a general legal limit. Moreover, he believed that the Court should check the choice of the State in reshaping the field of his legislative power as the field of its regional legislative power, using a well-defined and rigorous criterion: Livio Paladin faced the hard challenge to find the way to transform the clause of *interesse nazionale* into something certain and that could be used in legal judgment. In other words, the question was how to interpret the problem concerning the possible existence of national interest in a particular field of human experiences as a *legal question* and not as a merely *political question*. He therefore considered the clause as equivalent to the interest that can be inferred from the law yet in force. As a result, he interpreted the *interesse nazionale* as something very close to the general principles of law.

Finally, let us consider Manlio Mazziotti di Celso. He is important in our essay because he proposed a theory which, from a certain point of view, was closer to that of the Court. He suggested that norms, mentioned above and referring to national interest, should be interpreted as expressing a general rule. This opinion was founded on the fundamental principle of 'political unity' (*unità politica*). The need to maintain political unity was the basis – according to Mazziotti – of the superiority of the State on the Regions, and allowed the former to adapt the division of legislative powers to its political choices. In this way, national interest became a legal limit to regional statutes, but – unlike Paladin's proposal – without any criterion for the Court to judge the State's choice. The State was completely free to reshape constitutional rules

The judges of *Palazzo della Consulta* did not follow the scholar's suggestion. In a cornerstone of their case law (n. 138/1972), the judges established that the Regions had to be considered as institution ex-

pressing interests of a merely regional level; the consequences of this point are the following:

> è d'uopo ritenere che l'ordinamento costituzionale, come impone che siffatti interessi si soggettivizzino nelle Regioni …, così esige, nel quadro di una razionale individuazione delle due sfere di competenza, che allo Stato faccia capo la cura di interessi unitari, tali in quanto non suscettibili di frazionamento territoriale.

From these preliminary remarks, the Court draws the conclusion: 'non si può affermare … che per la definizione delle materie elencate nell'art. 117 Cost. sia sempre sufficiente il ricorso a criteri puramente formali e nominalistici.'

Therefore,

> anche se nel testo costituzionale solo per alcune di esse viene espressamente indicato il presupposto di un sottostante interesse di dimensione regionale, per tutte vale la considerazione che, pur nell'ambito di una stessa espressione linguistica, non è esclusa la possibilità di identificare materie sostanzialmente diverse secondo la diversità degli interessi, regionali o sovraregionali, desumibile dall'esperienza sociale e giuridica.

One can say that the Court endorsed a theory similar to the one previously mentioned. A general principle guides the interpretation of constitutional norms mentioning the '*interesse nazionale*' in drawing the spheres of legislation, and the conclusion is to enlarge the area governed by these rules, transforming the national interest into a general legal limit.

Anyhow, the most important difference between the way of reasoning of the Court and that of Mazziotti is the following: *the judges of Palazzo della Consulta founded a criterion to judge the choice of the State*.

This criterion, nevertheless, does not consist in a well-fixed (and determinate) standard. The Court, on the other hand, used the fluid criterion usually called '*ragionevolezza*' (reasonableness), that scholars often considered something in-between law and politics[8].

All in all, through the above-mentioned interpretation the Court unequivocally set the State's superiority over the Regions.

This assumption was completed by the extension of this way of thinking into the field of administrative power – on the grounds of the 'parallelism' principle, mentioned above – and through the re-interpretation of the fundamental principles set by state legislation as a limit for regional statutes.

With regard to the former issue, it suffices to recall that the interpretation of national interest endorsed by the Court gave the state legislation the basis for 'catching' those parts of administrative activities that, *reasonably*, coincided with a national interest.

As to the latter, on the other hand, the Court considered state legislation not only able to set fundamental principles within the spheres the Constitution gave to regional legislation, but also able to establish the entire regulation of the matter, while waiting for the regional one.

Finally, I have to mention the 'fiscal question': regional finance depended almost totally on the state budget. Fiscal autonomy was only a promise, albeit a constitutional promise.

5. *The Constitutional Law of the* 'Regioni Speciali'

We will now take a look at the *Regioni speciali.*

First of all, I have to point out that for several years, the 'special' Regions were the only ones operating in Italy. The ordinary model began in 1970. In the opinion of constitutional scholars, the delay depended on the interests of the most important national parties, especially the *Democrazia Cristiana.* This party, in fact, was probably afraid of diminishing its power because of the creation of other levels of government.

Consequently, the general assumptions mentioned above were set initially, toward *Regioni Speciali*, and – during the 1970s – extended to the ordinary model.

Secondly, the Court – despite a very common different opinion – reduced the differences between special and ordinary Regions.

Finally, during the 1970s there were two huge administrative devolutions toward ordinary Regions: the *Regioni speciali*, nevertheless, had to 'run after' the ordinary model, because the devolution to this kind of regions needs to follow a specific path. A specific path for obtaining regional consensus, but in practice slower than the ordinary one. So, this kind of Regions – created to guarantee to their inhabitants more autonomy than the others – became an obstacle in the path of self-government.

6. *Why this particular History?*

The problem I am supposed to face in this section is the origin of the path followed by the living Constitution, as described in the Section above. It would be easy to avoid this controversial issue cross-referring to other and more appropriate situations. And perhaps it would be wiser.

However, I will try to make some considerations.

First of all, in my opinion, it is important not to read the development of the Italian constitutional system merely as a 'mistake chain' of the Court. It is obviously possible to disagree with the statements of *Palazzo della Consulta.* But it is useful for constitutional studies to make an effort to understand the profound reasons of the Court's decisions before the constitutional reform in 2001.

As I said at the beginning of this essay, I believe that a reason for the development of the living Constitution could be found in the way of thinking about a number of important ideas of constitutional theory. In particular, the concept of the People, and the grounds for constitutional validity. I will try to put forward some considerations about these two questions: how were we used to thinking of the People in Italy during the second part of the last century? Why was Italian Constitution considered as 'valid'? These questions are, moreover, linked one to the other.

As to the former question, it is useful to compare the Italian (and European) idea of People to the American one. To do so, we can quote a very famous scholar, Daniel J. Elazar.

> The real meaning of the American federal solution was to provide a way to circumvent the problem of exclusive state sovereignty – in other words, to provide a modern alternative for organizing the polity on an even more democratic basis than that of the Jacobin state. Rather than accepting the sixteenth-century European view of the sovereign state, Americans understood sovereignty to be vested in the people. The various units of government – federal, state, or local – could exercise only delegated powers. Thus it was possible for the sovereign people to delegate powers to the general and constituent governments without normally running into the problem of which possesses sovereignty except in matters of international relations or the like. In matters of internal or domestic governance it was possible to avoid the issue except when political capital could be made out of it. Different governments are purposely designed to serve arenas of a different sizes, but since size is not an a priori determinant of importance, they relate to one another as equal with regard to the powers delegated to each, respectively[9].

In Elazar's passage, there is a misunderstanding that is easy to find for a European reader. The issue we are talking about is different from the dispute concerning the 'research' for the 'holder of sovereignty' in the non-federal state. It is well-known, indeed, that theory of state sovereignty was useful for obtaining a balancing point between two different origins of political power: the King, on the one hand, and the People, on the other.

The arguments above allow us to point out a second – and for us more important – misunderstanding, about the very idea of People. In the European tradition, the People is a 'unitary person' contending the sovereign power to other 'unitary persons': the King, at the beginning, and the State later. The People, in this way of thinking, is not the mere *sum of individuals*. It is something more and different. It is an abstract being that gets its unity through the virtue of political representation. From this point of view, the question answered by Elazar could be reformulated: whose is the sovereignty? Is it of the

People's federation, or does it belongs to the People of the member States?

Daniel J. Elazar, from his point of view, can successfully answer the question because he starts from a different idea of People: the – typically American – idea implied by the well-known *incipit* of American Constitution: *We, the People*. Elazar's People, indeed, *does not* transcend individuals. *It is their sum*. So, neither the Federation, nor the member States, are sovereign bodies, but only the sum of citizens is, and it delegates the power in part to the former, in part to the latter.

It can be useful to quote also a passage by Ronald Dworkin. He proposes a theory that distinguishes two conceptions of democracy, interpreting in a different way the premise of 'government by the People'. The first one is a «statistical one»: it holds that «in a democracy political decisions are made in accordance with the votes or wishes of some function – a majority or plurality – of individual citizen». The latter is «the communal reading»: it holds that «in a democracy political decisions are taken by a distinct entity – the people as such – rather by any set of individuals one by one»[10].

In Italy, traditionally, the way of thinking about these theoretical points is quite different from Elazar's. It is closer to the 'communal reading' of democracy[11]. A People – as in the continental tradition – is thought as a unitary being. And it is on its shoulder that the validity of the Constitution lies.

This way of thinking represents the common ground of various Italian constitutional theories. When – in Italy – constitutional theory faced the issue of pluralism, it tried to overcome the formal unity of the concept of People. Through the recall of sociologic elitist theories, Costantino Mortati, in a cornerstone of Italian studies, proposed the theory of '*costituzione materiale*': that is both the ruling party and its fundamental aim. The *costituzione materiale* was the basis of constitutional validity.

This famous theory did not fit, however, with the pluralism in Italian society and in the same constitutional text. So, it was common to represent the Constitution as a peace treaty, where every part gave something to the others[12]. The text adopted many principles and values, even if – as is well-known – often one contrasting the other. Each party had 'their' principle written in the constitutional text: both the *Democrazia Cristiana* and the *Partito Comunista*.

In this situation, Mortati's theory could not successfully explain the path of constitutional validity. There was not a single party pursuing a single end, nor a system of parties pursuing a single end. There were *many parties each one pursuing its own end*. Therefore, constitutional validity followed a quite different path. The grounds of validity were the ruling parties, as in the Mortati's proposal, but not

gathered around a single aim: each pursuing its own aim, trying to make an agreement with the other in the day-by-day political life. The founding parties continued in *Parlamento* the agreement get in Constituent Assembly, thus holding together constitutional validity. The Constitutional Court, in this situation, had the task to collaborate and to oversee, using the above-mentioned hybrid criterion of *ragionevolezza*, in-between law and politics[13].

One can read the problem of the relationship between State and Regions using this view. Constitutional validity was built on a being that founded its unity through national political parties. It was not the whole People, obviously: it was *the ruling part of the People*, as far as the political parties were able to find an agreement in everyday life.

So, political choices at the state level were incomparably more important than political choices at the regional level. The former were the expression of the unitary being carrying on its shoulder the validity of the Constitution. The state supremacy toward Regions descends from this premise. This supremacy, however, was not without limits. The supremacy was well-exercised only if it was coherent with the polytheism of constitutional values, checked through the criterion of *ragionevolezza*.

The paradigm of national interest – as reshaped by the Court – could be read in this context. The State founded its supremacy on the same grounds as constitutional validity. In this way it could reshape the spheres of legislative power. But the State was only 'representing' the entity carrying the validity of Constitution, that is the ruling part of the People composed by many political parties agreeing with each other. Therefore, the choice to qualify something as a good of *national interest* was able to reshape the legal limit of regional legislation, but it need to be checked through the criterion of *ragionevolezza*.

7. *The Constitutional Reform*

The Italian Parliament at the end of the XIII *Legislatura* approved the *Legge costituzionale* n. 3/2001 (*Modifiche al titolo V della parte seconda della Costituzione*), that modified several articles of the part of the Constitution devoted to the relationship between State and Regions.

As is well-known, these are the most important changes in constitutional text:

i) first of all, the way of defining the sphere of legislative powers has been changed: now Regions have general legislative power, while the State has legislative power solely in enumerated fields;

ii) secondly – but probably more importantly – the *interesse nazionale* disappeared as the general clause governing the relationship between different levels of government: and the Constitutional Court,

in a pillar of the 'new deal' of constitutional case-law, stated that «*nel nuovo Titolo V l'equazione elementare interesse nazionale = competenza statale, che nella prassi legislativa previgente sorreggeva l'erosione delle funzioni amministrative e delle parallele funzioni legislative delle Regioni, è divenuta priva di ogni valore deontico, giacché l'interesse nazionale non costituisce più un limite, né di legittimità, né di merito, alla competenza legislativa regionale*» (sent. n. 303/2003);

iii) as for administrative powers, together with national interest, the parallelism principle was also erased: now the criterion for the division of administrative powers is the well-known, widely-studied but yet obscure, principle of subsidarity;

iv) the constitutional reform also increased regional fiscal autonomy, but this is the sole field that the Court has considered still quiescent: we are still waiting for a legislative reform to enact the constitutional provisions;

v) *last but not least*, the reform gave the same *status* both to the Regions and to the other levels of government (City councils, Province and Metropolitan areas).

8. *'Equal Institutional Pluralism': The Fall of State Supremacy*

It is hard to summarize the effects of the reform in the Italian constitutional system. It is also necessary to remember that scholars do not agree about these effects. Therefore, the following observations – although probably endorsed by other scholars – are quite different from the conclusion one could find in other essays.

First of all, it is necessary to underline the importance of the defeat of national interest. Following this change, it is possible to argue that the political choices of the State are now not 'more important' than regional political choice. This changeover is expressed by the decision of the Court quoted in Section 7, but it can be read also in the new text of art. 114. Before the constitutional reform this article read:

'La Repubblica si riparte in Regioni, Provincie e Comuni'.

The new provision, instead, is the following:

'La Repubblica è costituita dai Comuni, dalle Province, dalle Città metropolitane, dalle Regioni e dallo Stato'.

In another important decision, the Constitutional Judges stated that in the new art 114: 'Gli enti territoriali autonomi sono collocati al fianco dello Stato come elementi costitutivi della Repubblica quasi a svelarne, in una formulazione sintetica, la comune derivazione dal principio democratico e dalla sovranità popolare' (n. 106/2002).

Therefore, the State is not the 'strongest' public body. It is only 'larger', not 'stronger' than the Regions. And art. 114 also places Provinces, Metropolitan Areas and City councils next to State and Regions. All these bodies, like Regions, now are '*collocati al fianco dello Stato come elementi costitutivi della Repubblica*', and all these bodies are founded on democratic principle and on the sovereignty of the People.

A well-known and widely-used expression calls this new system 'equal institutional pluralism' (*pluralismo istituzionale paritario*), to mean that the State, the Regions, the Provinces, the Metropolitan Areas and the City Councils are different in functions, but equal in their *constitutional status*. None of them has the right to impose its political choice on the others. They can only – and have to – exercise the tasks given by the Constitution and by the legislation on the basis of the Constitution. These tasks can be (and usually are) very different in weight and importance: 'equal institutional pluralism' does not deny functional differentiation. It denies only the 'major strength' of one of them.

But we can go further.

As I tried to show above, before 2001 the supremacy of the State was founded on the basis of the sovereignty of the People, considered as a whole, as a unitary being. In the new constitutional law each level of government has the same 'constitutional status', but the smallest level of government has a 'preferred position'. This preferred position is clear in the subsidiarity principle. But it can be read in the rule that gives to the State legislative power only in certain fields. The preferred position – as to the legislative power – is the regional one, nowadays. As for administrative power, on the basis of subsidiarity the preferred position is the position of the City councils, over the Provinces; the position of the Provinces, over the Regions, and so on.

9. *Constitutional Reform and the 'Regioni speciali': some Problematic Aspects*

Up to now, I have talked about the evolution of the 'ordinary model'. Now it is necessary to focus on the *Regioni speciali*.

The constitutional reform concerns the *Regioni speciali* only through art. 10 of the *legge costituzionale* 3/2001. Indeed, in order to avoid the 'overtaking' of the *Regioni speciali* by the ordinary Regions as regards their autonomy, the mentioned rules contain the provisions that the new constitutional law concerns the Regioni speciali (as well as the *Regioni ordinarie*) solely in those parts that are more 'favorable' for this kind of Regions in comparison to the old *Statuti*.

The 'intuitive reading' of this rule suggests that the general law of each *Regione speciale* is still its old *Statuto*, except for some particular aspects.

The case law of the constitutional Court has followed the above 'intuitive reading'. The judges of Palazzo della Consulta have tried to find the 'new' fields of legislative competence given to the *Regioni speciali* by the constitutional reform. These new spheres of regional legislation, however, have been put by the Court in the context of the old *Statuti*, which is very similar to the old, ordinary model.

The problem is that not all the provisions of the *legge costituzionale* 3/2001 have the same impact on the constitutional law of the *Regioni speciali*. That assumption is self-evident if one considers the abovementioned provision of art. 114. 'Equal institutional pluralism' – with regard to the relationship between State and Regions – is itself a rule more 'favorable' to the *Regioni speciali*. But it is such a general rule that it is able to influence the entire constitutional law of this kind of Regions.

Therefore, I do not agree with constitutional case law. In my opinion, constitutional reform is now the general constitutional law regulating the Regioni speciali.

As for legislative power, for example, it is easy to understand that the fall of state supremacy makes the State unable to reshape the field of its legislation and the field of regional legislation. The general clause of national interest is 'swept away' by equal institutional pluralism, not only in the new sphere of legislative competence, but, more generally, in the whole system of relationship between State and Regions.

Against this view of the relationship between State and Regions in the new constitutional system, a scholar recently remarked that 'to have a competence is always more favorable than not to have a competence': in the old sphere of competences, therefore, if the new constitutional law does not give legislative power to the ordinary Regions, the old competence survives with its old limits, including national interest[14].

I do not agree with this theory. Holding a competence – albeit limited, as before, by the clause of *interesse nazionale* – is obviously more favorable than not to hold that competence. It is a truism. However, in order to find the constitutional law of the *Regioni speciali* as determined by art. 10 of the constitutional reform, it is logically necessary to apply, first of all, the provision of the same art. 10 to the general rule of equal institutional pluralism. Therefore, one has to ask oneself: is the equal relationship between State and Regions held in art. 114 more favorable to the *Regioni speciali* than the old system? This is a rhetorical question. The answer is obviously positive. Therefore, the State has lost its supremacy not only towards ordinary Regions, but also towards the *Regioni speciali*, in every field. It depends on the status of political representation. After the reform, regional po-

litical representation is not less endorsed by democratic principle than state representation.

There is another problematic aspect of the constitutional law of the *Regioni speciali*, highly debated by scholars: the constitutional position of public bodies *inside* the *Regioni speciali*. The question one has to answer is: are the City Councils, the metropolitan areas, and the Provinces of the *Regioni speciali* ruled by the same constitutional law of the other City Councils, metropolitan areas and Provinces? The case law of constitutional Court answered this question negatively. Art. 10 of the constitutional reform mentioned above states that the new constitutional law has to be applied – if more favorable – to *Regions*, not to these other political bodies[15].

There are, nevertheless, many reasons for disagreeing with this interpretation. They involve many theoretical matters. So, in the following Section I will only indicate them.

10. *Trying to reach a Conclusion: Democracy and Regionalism in Italy*

Before the *legge costituzionale* 3/2001 – as I tried to show in Section 6 – the sovereignty of the People founded the state supremacy.

In the words of the Constitutional Court quoted in Section 8, one can read a real changeover concerning the connection between People's sovereignty, democracy and the relationship between the State and the Regions.

The judges of Palazzo della Consulta stated: 'gli enti territoriali autonomi sono collocati al fianco dello Stato come elementi costitutivi della Repubblica quasi a svelarne, in una formulazione sintetica, la comune derivazione dal principio democratico e dalla sovranità popolare'.

In this interpretation of the Italian constitutional system, the sovereignty of the People founds the powers of the State and the powers of the other political bodies at the same time. This assumption is so similar to the Elazar's proposal – mentioned above, in Section 6 – to demand a further investigation of its implications.

The Regions, indeed, can be put at the state level in their relationship toward the People's sovereignty only if one thinks of the People – using a 'dworkinian' language – from a 'statistical' viewpoint rather than in a 'communal' way. If People is a unitary entity, it can fully express itself only at the state level. In this way of thinking, the Regions are forced to be subordinate with respect to the State. And – at the same time – this way of thinking does not fit with 'parity' between State, Regions and the other public bodies mentioned above.

Therefore, in my opinion, from this premise, one can infer that this profound changeover concerns, first of all, the way of thinking of the People and the very concept of democracy.

After the fall of the old party system in Italy, the paradigm described in Section 4 is no longer able to explain the validity of the Constitution.

Firstly, the old parties do not exist anymore. Hence, the validity of the Constitution cannot lie on the grounds of those parties

Secondly, there is no replacement in this role. The present party system is not able to offer a synthesis of the pluralism, not even through an agreement between the ruling parties. The reason lies probably in the deep changeover of the pluralism itself. There are no collective identities in which one can recognize oneself, as happened in the past. Every man or woman nowadays, expresses his or her special identity, the result of the special path of his or her own life. This is the '*crisi del rappresentato*'[16], that makes political representation unable to give unity to the People.

We cannot consider the People as a unitary and abstract entity. The grounds of constitutional validity have to be found elsewhere. It has to be found in a theory capable of keeping together the manifold individual identities that characterize the atomized pluralism of the present constitutional situation. A theory based on the fundamental rights of individuals.

This is the real changeover of Italian Constitutional Law. And this changeover also explains the way of thinking of democracy implied by the new relationship between State and Regions. Moreover, the indicated path also suggests the reason of the 'preferred positions' mentioned above.

Why does the 'smaller' level of government have the preferred position with respect to the 'larger' level of government? Why does the Italian Constitution give general legislative power to the Region, and to the State only a limited legislative power? Why does art. 118 hold the principle of subsidiarity with respect to administrative power?

These questions are very difficult to answer if one moves from the European traditional 'communal interpretation' of democracy. If one moves from a 'statistic interpretation' of democracy, on the other hand, one can easily see that the weight of each person in public democratic choices is greater in a smaller community. The smaller the community, the bigger the approximation to the ideal of self-government.

This theory explains the fall of the supremacy of the State, the deletion of the general clause of 'national interest', but also the application of the pillars of the constitutional reform also to the *Regione speciali*. Equality requires that the possibility of self-government for the citizens of the *Regioni speciali* is the same as for all the other Italians. To reach this aim, I suggest the following path:

i) first of all, one has to interpret the term '*Regione*' – in the art. 10

of the *legge costituzionale* 3/2001 – as referred to the whole regional legal order, unlike the case law of the Constitutional Court, that reads this term as referred to the politic body called '*Regione*';

ii) secondly, we have to tear the veil of the political bodies, and to refer the 'autonomy' mentioned in the art. 10 of the *legge costituzionale* 3/2001 to the individuals that take political choices through those bodies.

Therefore, we can draw this conclusion: one has to apply the constitutional reform if it gives the citizens of *Regioni speciali* more possibilities of self-governing than the old *Statuti speciali*. The general principle stated in art. 114 and its applications both in the legislative field and in the administrative field give more possibilities of self-governing than the old *Statuti speciali*. So we have to apply them to the *Regioni speciali*.

Notes

[1] Nowadays in Italy there are 15 ordinary Regions, because, in 1963, *Abruzzi e Molise* split into 2 different Regions.

[2] Instead, Regions could only appeal a statute of the State in case of invasion of their sphere of competence.

[3] See eg. A. D'Atena, *L'autonomia legislativa delle Regioni* (Roma, 1974), pp. 121 ff.

[4] His theory about *interesse nazionale* was built on the ground of the idea that legal control on the respect of this vague und undefined clause was only possible in the cases in which the text of the Constitution allowed the State's evaluation of the division of legislative powers to the State's evaluation, mentioning expressly the *interesse nazionale* or other similar concepts.

[5] See C. Mortati, *I limiti della legge regionale*, in Id., *Problemi di diritto pubblico*, cit., pp. 549 ff.

[6] See T. Martines, *L'interesse nazionale come limite alle leggi regionali*, in Id., *Opere*, II, *Fonti del diritto e giustizia costituzionale* (Milano, 2000), pp. 375 ff.

[7] See A. Barbera, *Regioni e interesse nazionale* (Milano, 1973).

[8] P. Merola Chierchia, *L'interpretazione sistematica della Costituzione* (Padova, 1978), pp. 87 ff.

[9] D.J. Elazar, *Exploring federalism* (Alabama, 1987), p. 41.

[10] R. Dworkin, *The moral reading of the American Constitution* (Oxford, 1998), p. 20, quoting especially Rousseau's democratic theory.

[11] But not to the Dworkin's version of 'communal reading'. The famous scholar, indeed, proposes a 'communal reading' of democracy 'morally oriented', and – we can say – 'right based'. In his theory, to think of People as a whole, individuals have to be 'moral members' of the community. And 'the democratic conditions are the conditions of moral membership in a political community'. Therefore, there are two kinds of conditions of moral membership: first of all, 'structural conditions', that 'describe the character the community as a whole must have if it is to count as a genuine political community'; secondly, 'relational conditions', that 'describe how an individual must be treated by a genuine political community in order he or she be a moral member of that community'. All quotations are taken from Dworkin, *The moral reading*, p. 24.

[12] Costantino Mortati himself suggested this comparison: see C. Mortati, *La costituente* (Roma, 1946).

[13] See eg. F. Modugno, *Corte costituzionale e potere legislativo*, in P. Barile, E. Cheli, S. Grassi (ed.), *Corte costituzionale e sviluppo della forma di governo in Italia* (Bologna, 1982), pp. 22 ff.

[14] See S. Parisi, *Il 'posto' delle fonti locali nel sistema*, in O. Chessa, P. Pinna (ed.), *La riforma della Regione: dalla legge statutaria al nuovo statuto speciale* (Torino, 2008), section III.2.

[15] See Corte costituzionale, n. 370/2006.

[16] See M. Luciani, *Il paradigma della rappresentanza di fronte alla crisi del rappresentato*, in N. Zanon, F. Biondi (ed.), *Percorsi e vicende attuali della rappresentanza e della responsabilità politica* (Milano, 2001), pp. 109 ff.