

Democracy as a System of Government

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Abstract

The democracy is as a system of government. Democracy is found under various forms, more or less pure, as defined in theory, there are three of them: direct democracy where the people itself exerts the power, the indirect democracy that is as a sovereignty no longer exercised directly by the people and the semi-direct democracy that is representative by the involvement of the electorate in the Parliament's legislative activity.

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Paul Negulescu starts to describe democracy with the essential elements of an organized state. Thus, besides population and territory, the state is defined by the right to command “which is considered to be the expression of collective will of all the citizens and which is called national sovereignty.”¹ The collective will is superior to the individual will of every member of the social group, in this case the state. The author presents the two types of democracy, from the greatest thinkers of the XVIIth century, Jean-Jacques Rousseau and Montesquieu.

Claudia Gilia's assertion is also inspired by Jean-Jacques Rousseau: “If there were a people of gods, it would be governed democratically. People don't fit such a perfect government”, the author quotes.² She considers democracy to be a form of moral perfection. Democracy sizes both the power's organization and operation in order to humanize it, and the citizens' lifestyle to shape it. The pure essence of democratic government is the absolute domination of the majority because, besides majority, nothing else resists in a democracy. As well as the other powers, and

¹ Paul Negulescu, *Curs de drept constituțional român*, Bucharest, 1928, p. 60.

² Claudia Gilia, “Regimul constituțional și democrația – premise fundamentale ale statului de drept”, *Studii de drept românesc*, no. 3-4, 2005, p. 405.

perhaps more than any of them, the majority's power must last to seem legitimate. Modern democracies are based on the limited majority's domination, electoral procedures and the representative transmission of power. Although elections and representation are tools necessary to democracy, they are "Achilles' heel". The one who delegates the power can also lose it, the elections are not necessarily free, and the representation is not necessarily real.

To preserve democracy as an ongoing process, we have to ensure that all citizens have the necessary rights for the good administration of democracy.³

Alexis de Toqueville thought the principle of majority was an egalitarian principle, because it tends to give more importance to the numeric force than to individuality. The principle of majority is based on the argument that "more people gathered together are brighter and wiser than one only, that number prevails over quality. It is the equality theory applied to intelligence."⁴

Tudor Dragasanu defines democracy as a regime that "implies vote participation of all mature, capable and worthy citizens".⁵ The concept according to which the author defines democracy turns out to be that of the citizen. Therefore democracy cannot exist outside the state and does not include the entire population of that state: stateless persons, minors, unworthy, banned... those who do not have a voting right. Democracy is found under various forms, more or less pure, as defined in theory.

1. Direct democracy

Thus, Tudor Drăganu believed that direct democracy was characterized by the fact that "the people itself exerts the power, without resorting to the medium of an individual or a group of individuals, such as the Parliament"⁶. As the author admits, it is a definition with a rather theoretical value than a practical one. It is more than difficult for all the state's attributions to be exercised by people permanently. Generally, these democracies delegate the functions to some magistrates during the time when the assembly of the people is not gathered. There are, therefore, periods of time when the citizens of direct democracy are not governors, because when all the functions are fulfilled by the united congregation, the people just govern.

The classical examples of direct democracies are the antiques one, but considering that the slaves did not take part in the city's life, although they

³ *Idem*, p. 408.

⁴ Alexis Toqueville, *Despre democrație în America*, vol. I, Humanitas Publishing House, Bucharest, 2005, pp. 282-291.

outnumbered the citizens, it is to say that those democracies were transformed in aristocracies. Nowadays, we can apply this type of democracy to some Swiss cantons with very little population: Glaris, the two Unterwald cantons and the two Appenzell cantons.

Direct democracy implies a few conditions: little population, a very small territory, people with a serious civic education and a bright spirit regarding justice and moderation.

Paul Negulescu builds the theory of direct democracy on the doctrine developed by Jean-Jacques Rousseau⁵. According to this thinker, the people's right of sovereignty must be developed directly by every citizen and, therefore, this right cannot be alienated. Only achieving everybody's will could be an act of sovereignty.

Ioan Muraru and Elena Simina Tănăsescu believe that direct democracy of ancient cities have at least two big disadvantages: "on the one hand, not the entire population of the ancient cities could take part in exerting the power, but only the citizens (free men), with the exclusion of slaves, women; on the other hand, the direct exertion of the entire power permanently supposes the entire population to participate at first hand at the concrete realization of all the state's functions, which, taking into consideration large territorial states, with large population, as most of the states known in modern times are, would be extremely difficult, if not impossible."⁶

Switzerland states only exercise state power in the legislative field, the other state functions being delegated to bodies denoted by elections or by designation. The authors describe the use of direct democracy through general gatherings of the Swiss cantons citizens during springtime, when decisions regarding the entire community are taken. It must be add that, even though it is called democracy, the principle of universality of the right to vote was introduced in these cantons only in 1971, as well as women's voting rights.

2. Indirect democracy

Indirect democracy is characterized by Tudor Draganu as a "sovereignty no longer exercised directly by the people, but by the means of a Parliament elected on a limited time"⁷. The author also adds that not all the sovereignty's attributions

⁵ Paul Negulescu, *op. cit.*, p. 60.

⁶ Ioan Muraru and Elena Simina Tănăsescu, *Drept constituțional și instituțiile politice*, vol II, C.H.Beck, Bucharest, 2006, p. 132.

⁷ Tudor Drăganu, *Drept constituțional și instituții politice, Tratat elementar*, vol I, Lumina Lex, Bucharest, 1998, p. 236.

are exerted by chosen representatives, because the executive and the judicial function are exerted by bodies formed on other basis.

To determine the nature of legal relations between people and the elect, several theories have been set forth:

- The imperative mandate theory, which is explained by the fact that the nation does not alienate the sovereignty of his elect, but gives them a delegation to represent it; the elected is a simple agent bound to comply with the nation's will, and who can be revoked at any time during the mandate

- The representative mandate theory established that the election in a certain district gives the elect a social function, based on which he is called to express the general will of the nation

- The election theory, that considers being elected in function as a simple process of designation, and the elected enjoy full liberty in their legislative activity

The current Constitution repudiates the imperative mandate and establishes the representative mandate as a fundamental method.

Indirect democracy is analysed by Paul Negulescu starting with Montesquieu's theory. He sustains that the nation cannot evince its will directly and that this manifestation must be made by means of delegation, representation. The people send delegates, representatives and these representatives assembly and decide on behalf of the people. In many states, Montesquieu's theory prevails because the people's representatives give orders and make laws on behalf of the nation. Therefore the sovereignty is not evinced directly, but by delegation, a principle that was introduced in the Romanian Constitution in 1923.

Representative democracy is defined by Ioan Muraru and Elena Simina Tănăsescu as the electoral system according to which citizens can participate "directly at exerting the state power by designating some representatives who, once chosen, during the mandate that they have been given, will exert the power in the name and on behalf of the entire nation."⁸

The idea that the people have direct access to state power encounters the fact that, even though they exert it on behalf of the people, the elected are a stage of the nation's exercise. This government procedure is the most common nowadays, being "a viable model of political regime".

The authors point out that representative democracy is not without drawbacks, the most obvious being the fact that the governors distance themselves so much from the ones they govern that they end up exerting the state power for themselves and not for the nation. Multiple mechanisms have been established in

⁸ Ioan Muraru and Elena Simina Tănăsescu, *op. cit.*, p. 132.

order to limit such failures: separation of powers, forms of control of the people on their representatives, such as liability in public law.

3. Semi-direct democracy

Tudor Drăganu denotes two forms of semi-direct democracy: by the involvement of the electorate in the Parliament's legislative activity and by establishing a law-making process exercised by the President of the Republic in competition with the electorate.⁹

The first method of exerting the semi-direct system implies the use of a collective that, in some cases, would make the direct participation of the nation to the process of government possible. Even though there is a Parliament which exerts the legislative function, previous consult or ulterior vote of acceptance is required. The consultation is made by a vote introduced in an urn. The procedures of direct involvement are: referendum, popular veto, popular initiative, option, recalling court decisions.¹⁰

The second semi-direct democracy means described by Tudor Drăganu is achieved by introducing a regulation process by which the President should enact legislation on the proposal of the Government and overpassing the power of the Parliament, through a direct consultation of the electorate. It is a method introduced in France, from General de Gaulle's conceptions, and put in practice by presidential or governmental referendum.

Paul Negulescu describes the semi-direct government as a compromise, which consists in the fact that the political organization implies a representance, a Parliament, but also the nation's intervention in the process of government by exerting the right to referendum, to veto or to initiative. It applies only to ratify laws already voted by the representatives.¹¹

According to Dan Claudiu Dănișor, the semi-direct government's objective is bringing democracy closer to perfection, by transforming the liberty of participation from an utopia or a desideratum into reality. The foundation of the semi-direct government must therefore be searched in the deficiencies of the representative system. This is a "correlative of these deficiencies"¹².

⁹ Tudor Drăganu, *op. cit.*, p. 243.

¹⁰ *Ibidem*, p. 245.

¹¹ Paul Negulescu, *op. cit.*, p. 61.

¹² Dan Claudiu Danisor, *Drept constituțional și instituții politice*, Curs de bază, Universitaria, Craiova, 1999, p. 261.

Ioan Muraru and Elena Simina Tănăsescu believe that “in an attempt to remove the drawbacks of the two systems of government¹³ and to emphasize their positive aspects, especially after World War II, along with the traditional rules of representative democracy, some specific instruments of direct democracy were registered in Constitutions.”¹⁴

The democracy’s most used tool was and still is the referendum, because it is the most efficient and the clearest way of directly consulting the people’s will, the authors also quoting other instruments: the plebiscite and the popular initiative.

“The governmental system born out of the combination of representative democracy with some instruments of direct democracy received its name of semi-direct democracy in the doctrine, or participatory democracy, in the case that direct participation of the people is done not only through legal instruments, but also by some evident politically-based ones (public discussion of draft laws, popular veto etc.)”¹⁵

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¹³ The two systems of government referred to the authors are direct democracy and representative democracy.

¹⁴ Ioan Muraru and Elena Simina Tanasescu, *op. cit.*, p. 133.

¹⁵ *Ibidem.*