CHAPTER 2

Participation, Federalism, and Pluralism: Challenges to Decision Making and Responses by Constitutionalism

Francesco Palermo


The advent of constitutionalism brought about substantial simplification with regard to the status of individuals by inventing citizenship as a unifying factor. Conversely, as far as decision making is concerned, constitutionalism has unequivocally meant more complexity due to the adoption of pluralism as the very foundation of democratic government: unlike in the pre-constitutional era, decisions were no longer taken by one but by many, according to pre-defined rules and controlled by the judiciary. Institutional pluralism was developed both horizontally and vertically, i.e. through division of powers between different bodies and organs, and between different levels of government, respectively.

Democratic decision making is the backbone of constitutionalism. Decisions are legitimate only if taken by bodies and according to procedures, directly or indirectly accountable to the people. Such accountability has normally taken the form of direct or representative democracy, whereby the latter has progressively prevailed alongside the development of ever more sophisticated institutional arrangements.

In more recent times, two factors have begun to cast doubt on this simple scheme. First, population growth, better education and the resulting greater will of individuals and interest groups to participate actively have made the

---


2 In some circumstances, like those when technically complex issues are at stake, democratic legitimacy is partly substituted or at least complemented by technical discretion, but still subject to several forms of control. See D. de Pretis, Valutazione amministrativa e discrezionalità tecnica (Padova: Cedam, 1995).

Thus the phenomena of “Blame Shifting”, i.e. the opportunity for decision-makers to avoid accountability for decisions influenced by other governments, as described by R.K. Weaver, “The Politics of Blame Avoidance” (1986) 6 Journal of Public Policy 371–398. Another frequent consequence is that of overlapping and interlocking jurisdictions, making it difficult to identify and divide political responsibility clearly, a widespread problem first identified by Fritz Scharpf; see F.W. Scharpf et al. (eds.), Politikverflechtung, vol. 1–3 (Kronberg/Ts: Scriptor Verlag, 1976–1979). At European level see F.W. Scharpf, “Die Politikverflechtungsfalle: Europäische Integration und deutscher Föderalismus im Vergleich” (1985) 4 Politische Vierteljahresschrift 323–356.

When more actors participate, the chance of greater transparency increases. Each level is subject to controls, is to some extent interested in keeping its constituency informed, and does not want other levels to take non-transparent decisions against its interests.