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The challenge of complexity and the possible role of public ethics

Abstract

The paper deals with complexity as perceived by jurists, as the result of social pluralism, highlighting on the one hand the overcoming of conceptions aimed at governing it through reductionist authoritarianism and, on the other hand, the problems deriving from the lack of ideologies and values sufficiently shared and perceived in society. The awareness of the interconnection, interaction and feedback between individuals and social formations, together with the strong evolution of technical knowledge and digitization, push towards new horizons, also with regard to key concepts such as democracy and that of legitimizing public power. The legal paradigms, which have already evolved over time, must be adapted. Representation (even with all its problematic aspects) retains its own role, but appears destined to increasingly hybridize with other forms of participation. In this framework, public ethics, especially if developed in the form of legal discipline of politics and political action (still largely absent), can provide an important contribution by favoring a recovery of credibility of institutions and public apparatuses and, therefore, a support for desirable spontaneous rearrangements of society, in the sense of cooperation between its parts and hopefully the reconquest of some unifying elements. The perspective remains, however, not that of tension towards a static ideal objective, but that of an accompaniment of irrepressible dynamics and evolutions of the substratum of law.

Keywords: complexity – social pluralism – democracy – public ethics

1. Unavoidable complexity

Italian public-law jurists are also beginning to take an interest in complexity, which is no longer understood merely as a condition arising from regulations and the resulting cumbersome rules that complicate and slow down certain processes and that can be avoided or reduced by technical means like the conference of officers ("conferenza di servizi"), widespread forms of silent approval, etc..

It is now well understood that complexity corresponds to a much broader and deeper phenomenon, nourished by the substratum of law and, therefore, by dynamics linked in particular to social, economic and political aspects, which are in themselves complex and increasingly integrated in law.

In addition, new technologies contribute to making this state of affairs more evident and can, in turn, be complicating (not just simplifying) factors.

Issues that have already been pointed out, in particular, by philosophers, come to the fore, such as the interconnection between the various branches of knowledge, in our case, in particular, the legal one with those of the political and social sciences; the hyper-specialisation of sciences and techniques, the results of which are clearly increasingly relevant to law; the continuous interactions and feedback between all these elements, in an unceasing becoming[1].

Complexity, therefore, does not appear realistically avoidable, yet this does not exclude that thought can and should be given to reducing, as far as possible, its negative impacts.

2. Approach to complexity from the origin of the modern science of administrative law to the Constitution

At the origin of the modern science of administrative law, the concern of scholars to create a branch of knowledge autonomous from the other social

1 See E. MORIN, *La sfida della complessità*, Florence, 2017; *Id, La crisi della cultura*, in C. Simonigh, *Pensare la complessità per un umanesimo planetario,* Milan, 2012, 13. Moreover, about the migration of complexity theory from physics to human and social sciences, see M. C. TAYLOR, *Il momento della complessità. L'emergere di una cultura a rete*, Torino, 2005.

sciences, together with the historical propensity to work based on dogmas, theories and general institutes, considered to be basically invariant, did not facilitate openness to complexity, which was, moreover, in line with the political system of the time.

Legal historians do not hesitate to speak in this regard of reductionism[2], i.e., of an apparent simplicity due to the legal system's indifference to society and its intrinsic and complex variety.

This, however, began to manifest itself as a problem rather early on, with the transition from the liberal state to the multi-class state.

As early as 1909, Santi Romano's Pisan lecture entitled «The Modern State and its Crisis»[3], marked the identification by one of the most magisterial jurists of the germs of what we understand today as complexity.

The heterogeneous character of the social sphere, gradually reflected in political representation and thus in public institutions, and with it the variety of expectations and needs that have become relevant to law and administration, challenges the legal framework and the basic approach of public law of the time.

Totalitarianism perhaps represents the first tragic attempt to respond in the sense of a simplification practiced through the authority of public power, to the detriment of people, organisations and ideals that were not aligned with the regime.

Later came the Constitution of 1948, which broke with and reacted to the experience of fascism, recognising fundamental rights and incorporating the idea of a personalistic and pluralistic order, destined to function through forms of synthesis of its different souls, thanks to a role assigned to political parties, as a hinge between the (overall and complex) society and the institutions, and also thanks to the parliamentary system.

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2 See P. GROSSI, *Oltre la legalità*, Bari, 2020.
3 Now in *Riv trim. dir. pubbl.*, 2006, 97.

The latter, through the law (and other instruments of government), is designed to direct a public administration that is neither sovereign, nor self-referential, but rather intended to ensure the execution of the political will and the value and social program of the Constitution.

In the overall design of the Charter, one can see a strategy aimed at reducing complexity in stages, first by reflecting and organising social complexity in the parties and then by doing the same with the political complexity (generated in this way) in parliament (and to a lesser extent also in the local autonomies).

The ideal of a common good and a general interest (however controversial) is still strong; institutions must pursue and ensure it, albeit through compromising solutions with respect to social and political complexity and the heterogeneous demands arising from it.

The constitutional design is ideally aimed at legitimising plurality but not particularism.

It was also able to come into being thanks to the presence, at the time, of strong ideologies (the catholic, the liberal and the communist) with corresponding reference subjects - organised internally free of particular legal constraints and, therefore, by natural selection - capable of aggregating social strata and reducing the complexity within each through the foundation on value patterns, a sense of belonging and *leadership*.

The narrowness of the information channels, combined with the control of them (by the parties themselves) have contributed to a certain resilience of the system.

The Republic, in this idealised vision, is one and indivisible. Each social, economic, and political sub-system is framed within the general system. It must bring lymph to it, but at the same time it develops in a coordinated manner with it, within the framework of the forms mentioned above of organisation and compromise management of complexity.

3. Approach to complexity after the Constitution

Through the lens of our present time, more than seventy years later, one can see the limits of the described constitutional, institutional and juridical strategy.

It is undoubtedly true that the social, economic, and political complexity is finally recognised in the Charter and thus projected into the institutions and the legal-administrative system, but without being fully managed. In fact, it remains constrained in the forms of synthesis due to the ideologies (and dogmas) dominant at the time, to the action of the corresponding political parties and the transformation of these factors - through the institutions - into binding legal devices, justified in terms of the pretended realisation of the common good and the general interest.

It must be added that, historically, the refined constitutional design could not even effectively realise itself, in the face of triggering a series of those interactions between different spheres, typical of complexity, which entail a continuous process of transformation.

From the outset, political parties overstep the function assigned to them by the Charter, ending up becoming unregulated centres of interests in their own right and consequently contaminating the institutions, with a resultant loss of credibility, of both, in the eyes of the citizens. Or, to put it another way, from society as whole more well-equipped and ambitious individuals emerge, who manage to carve out roles and privileges for themselves in the political and party system and by such means in the institutions – to the detriment of other groups of people – managing to justify such outcomes in the name of the common good.

The government and administrative apparatuses continue to exercise public power in an authoritarian form, with the justification of being oriented towards the public interest, but in reality, not always in adherence and/or plausibly concerning the needs felt by the community and its widespread sense of

justice; also due to the intrinsic pluralist nature of the democratic system and a certain abstractness and elusiveness of the public interest itself, which tends to be recognised ex-post in legislative and governmental choices, rather than pre-defined in a substantial key[4].

Meanwhile, the face of society also changes. The former beliefs, ideals and sense of collectivity and solidarity fade away as secularisation, individualism, and opportunism take hold.

At the same time, in the fields of science and economics, enormous developments are taking place with unprecedented speed, and, for its part, finance is taking precedence over economics and politics. Technical knowledge is becoming more complicated and articulated, gradually fragmenting into specialisation and hyper-specialisation in every field[5].

The media, too, are undergoing a significant development, which on the surface offers citizens more opportunities for knowledge and interaction, but in fact also brings with it new problems concerning the reliability and quality of content and mass manipulation[6].

The culmination of this evolution is the ongoing transition to the algorithmic society, in which artificial intelligence further changes the configuration of social life and the way decision-makers make choices and, thus, some important dynamics of the democratic process, posing yet new challenges to political society and the legal system[7].

Thus, the scenario is profoundly evolving in so many interconnected and interacting aspects, and the complexity with which public institutions and law, together with their scholars, are confronted is becoming more pronounced in correspondence.

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4 On this subject see E. Cannada Bartoli, *Interesse,* in *Enc. Dir.,* vol. XII, Milan, 1972, 1; D. Sorace, *Diritto delle amministrazioni pubbliche. Una introduzione,* Bologna, 2018, 26.

5 See E. Morin, *La crisi*, cit.

6 See E. Manca, *Frammenti di uno specchio. I media e le politiche della postmodernità*, Venezia, 2006.

7 See C. A. Ciaralli, *Intelligenza artificiale, decisione politica e transizione ambientale: sfide e prospettive per il costituzionalismo*, in *Federalismi*, 2023.

4. Evolutions in the science of administrative law

In the science of administrative law, as early as the prodromes of the described evolutions, the terrain proves fertile for the launch of new currents of thought, which give rise to a sort of reversal of the front, inasmuch as they no longer focus on public subjectivity, on political-administrative policy, on administrative (discretionary) power and on the corresponding subjection of citizens, but instead move from the centrality of the latter[8], by the fundamental rights recognised to them in the Constitution, by the functionality of public powers and by the consequent duties assigned to republican institutions[9].

In this new perspective, one begins to see in the administration an apparatus devoted to impartiality and the realisation of fundamental rights rather than a *longa manus* of the political institutions at the top of the system and the political parties that captured them[10].

Significant achievements mature, such as the distinction, within public administrations, between policy-making and management bodies; the proceduralisation of the exercise of powers and, therefore, of public decision-making; citizen participation.

The organisational and disciplinary design of government and administration is thus becoming more complicated; power is fragmented and distributed in order to better adhere to the complexity of the object of its action and to a society increasingly crossed by the search for forms of protagonism in the public sphere that do not correspond to the more traditional forms of representation and the consequent arrangements.

At times, the administrations, the independent and regulatory ones, are even disengaged from political power and called upon to act for specific missions, in turn interfering in a quite deep and innovative way on the whole.

8 See F. Benvenuti, *Dalla sovranità dello Stato persona alla sovranità dell'ordinamento*, in *Jus*, 1995, 2, 193; *Id, Il nuovo cittadino: tra libertà garantito e libertà attiva*, Venwzia, 1994

9 See M. Monteduro, *Doveri inderogabili dell'amministrazione e diritti inviolabili della persona: una proposta ricostruttiva* in *P. A. Persona e Amministrazione*, 2020, no. 2.

10 See L. Perfetti, *I diritti sociali. Sui diritti fondamentali come esercizio della sovrazione popolare nel rapporto con l'autorità*, in *Dir. pubbl.*, 2013, 1.

Even more recently, the elaboration of legal science has gone so far as to theorise models in which the administration is imagined as a kind of platform or professionally organised space, to function in such a way that public decisions emerge and are formed within it, through procedural interactions between all stakeholders and on an a priori open and tendentially consensual basis[11].

At times, it seems to imply that, at least in certain areas, the mediation of political direction (of parties, of representation) can be dispensed with in favour of a direct and immediate protagonism of society in public decision-making processes.

As a result of these developments, an even further face of complexity begins to appear in the institutions, which no longer claims (through adjustments and compromises) the political composition towards unity, albeit in the pluralistic order, but instead opens up to the unpredictability of lines of action, starting from interactions organised on a procedural level but rather free in content and open and fragmentary in the outcome. With a circuit that is accessible (at least theoretically) to vast circles of protagonists acting in a not necessarily coordinated manner, all in the perspective of interests abstractly considered worthy of recognition and protection on a legal level and not orderable a priori by relevance.

These landfalls are also favoured by the involvement of fundamental rights themselves in the web of complexity and their attitude.

In fact, the list of these rights is becoming richer and more sophisticated, also as a result of the influence of supranational law and thus - mediately - of the interaction between the civil societies of the various countries, with implications that are not insignificant in terms of the traditional ethical conceptions locally rooted in the community. Moreover, the techniques of the legal protection of fundamental rights are oriented in the sense not of a hierarchy but

11 See M. Bombardelli, *Decisioni e pubblica amministrazione. La determinazione procedurale dell'interesse pubblico*, Torino 1996.

rather of the need for reasonable and proportionate balances to be struck on a case-by-case basis[12].

The true and the false, the just (or the fair) and the unjust - albeit debatable and differently framed (as they were at the time of the great ideologies mentioned above) - no longer occupy centre stage as a supreme common reference for the different groups or social and political components that play a leading role in the democratic game and administrative life.

The proliferation of relevant values due, through the work of jurists, to the opening up of the law to the secularised and pluralist society exalts complexity and suggests an essentially procedural[13] and interactive approach, with an open plot, that gives legitimacy to solutions worked out on a case-by-case basis, according to reasonableness and proportionality, not necessarily traceable to a pre-established system of guidelines and a stable systematic framework.

The most recent developments linked to the bursting onto the scene of artificial intelligence are factors enhancing the characteristics of the landmarks, as well as (obviously) the starting point for further developments still largely to be imagined.

5. Public and administrative law facing complexity nowadays

The problem of complexity nowadays partly overlaps and intertwines with that - well perceived by scholars - of the legitimisation of public institutions and public powers, ultimately of democracy itself.

Based on the prevailing opinions, very schematically, one can say that there arises the idea, or the suggestion, of being at a crossroads, with two somewhat known - but problematic - paths and the wish for others, not yet fully explored, to open up.

One path, which is being discussed, is that of an adaptation of the traditional schemes of the legal-institutional order and politics, in the form of pre-

12 See the fundamental Constitutional Court decision no. 85/2013 on the so-called Ilva case.

13 See N. Irti, *Il salvagente della forma*, Roma-Bari, 2007.

sidential and majoritarian systems, with strong leaderships consolidated through media, advertising- or populist-style communication, for a simplified representation of the public sphere and public decision-making, consisting in the suppression of a part of the expectations, aspirations, ambitions and related values (or rights?) that emerge from social components organised enough to make inroads into the public debate but outside the sphere of the ruler.

The output should be tangible results of government and administrative action (however likely to be controversial) offered to citizens.

This scenario has traits common to past experiences, which would see the public administration somewhat subservient to politics in an essentially executive position.

From the administrators' point of view, this raises the issue of the recognition and extension of fundamental rights when antagonistic to the public authorities. The neutrality and impartiality of the jurisdiction become the fundamental guarantee of these rights.

Undermining such a legal system are the concrete risks of social laceration and institutional conflict between political power and judicial power.

A different and in many ways opposite path is that of insisting on essentially enhancing the public decision-making processes, focusing on institutions capable of supporting them, including through the formation and provision of adequate knowledge bases and analyses, as well as on public confrontation and debate. Here, the roles of the highest political and institutional offices, of political direction and parties are attenuated, while a more direct role of the (other) components of society is accentuated, which comes to be expressed in a less intermediated manner. The role of the administration tends to become that of becoming the place of maturation and formation of public choices 'reflecting' society in a more direct and broader manner. Jurisdiction, in turn, should remain underexposed (unless it transforms itself into a decision-maker of last re-

sort even with respect to an administration thus conceived, in the case on uncertain grounds of legitimacy).

In this perspective, public decision-making processes become more complicated, due to the opening up to broad circles of stakeholders and, thus, the incorporation (rather than the elimination) of complication. The outcomes are less and less predictable *ex ante* and are gradually the open fruit of interactions between the actors.

A true output does not exist or lie in the neutral regularity of interactions and, thus, procedures. The outcomes are not in themselves completely validatable and there is no need for them to be systemised. Public authorities are therefore not justified by their own aims and outcomes (in supposed adherence to a higher common good), but simply to allow each active social actor within the liquefied society to pursue their own goals and outcomes in a framework that is both peaceful and highly interactive and changing.

Undermining the system are the power of lobbies; the difficulty for citizens, individually or united in grassroots associations, to effectively influence processes even for their most common and basic needs; the cost and time of procedures. Strong players, linked in particular to economic and financial interests (rather than to solidarity and social justice) easily gain the upper hand, undiscovered.

The most ambitious and well-equipped individuals and groups here shift their attentions from the capture of a political top-down decision-maker to the capture of public decision-making processes ostensibly oriented towards influence from the bottom of the social body.

After all, the public interest remains predominantly formally defined and therefore recognisable *ex post* based on choices made by the legislative power and the administration rather than *ex ante* as a constraint for them.

Such outcomes of substantial posthumous ratification of spontaneous social dynamics may not justify a complex and costly public institutional system, nor do they in turn fuel public confidence.

Faced with the fork in the road between the proposed models and their limitations, it was said it is also possible to seek other paths.

6. Public ethics can help

A new starting point can be sought in a full recognition of complexity as a reflection of a social body that has moved from a state of passive subservience to that of an active and heterogeneous democratic protagonism.

It can now be said that society has passed by osmosis within the institutions and, at the same time, still relates to them from the outside, in dialogue and in opposition.

This assumption makes it possible to embrace a more modern, broader and more flexible conception of the democratic principle (called to completely different challenges from those of Montesquieu's time and the following two centuries).

The mere idea of a public power - of which a sort of unrealistic omnipotence has long been postulated (at times unconsciously) through politics and law - that governs and orders the legal and social system, starting with the law and cascading through plans and programmes to the exercise of specific powers, authoritatively selecting and imposing values and realising objectives that would otherwise be beyond the reach of economic and social forces, no longer seems satisfactory.

In many areas, the driving force, the impetus and lymph, the direction towards objectives, are now to be recognised in the economic and social forces and their dynamics; society and the economy are no longer to be regarded as something completely different from the institutions and administrative apparatuses, being rather integrated and interfaced with them, with a driving role.

The formation of collective imagination is mainly located in the new digital spaces disclosed by technological evolution.

From this point of view, the jurist's classical toolbox, with the principle of legality, public subjectivity, competence, the theory of the organ and organic imputation, and authoritative power, restores a version of administration that is no longer completely up to date with the changed scenario. A version that risks to appear increasingly anachronistically bureaucratic.

The time is ripe to realise that people working at various levels in the public apparatus are called upon to contribute to government and administrative action (in the broad sense of the term) by committing themselves for what they are, i.e. as parts of the social substratum of reference, and thus by developing and deploying a social conscience and orienting themselves to its canons, albeit appropriately filtered and refined through legal instruments and the work of jurists.

Society is no longer only in dialogue with legislation and administration (through its role in the provision of elected bodies and procedural participation) but is also to be recognised in the legislature and the administration, which reflect it.

This is a more up-to-date concept of democracy, among the many possible due to the vagueness of this notion, which can perhaps at least be used to alleviate its proclaimed crisis[14].

The arrangement described can be said to be democratic because it is based on the entire community, which as a whole forms society, open to equality and the values that society expresses, with a broad fragmentation of public power.

The latter remains necessary, albeit with all its well known problems, because the conversion of the sum of single individuals into an at least peaceful

14 On this subject, see, for example, D. Zolo, *La democrazia difficile,* Roma, 1989, while the position of N. Bobbio, *Il futuro della democrazia*, Torino, 2014, is well known, according to whom democracy has intrinsic characteristics of weakness, which do not allow it to manifest itself in the ideal form, but it nevertheless remains an ideal to be pursued.

and ordered society is not a phenomenon that takes place spontaneously and harmoniously; it requires rules, to protect the individuals considered not only in their individual dimension but also in the light of the inescapable connection that takes place in the social relationship.

In the studies of our time, the legitimising factors of public power and their guiding criteria are identified not only in political representation (which is becoming increasingly 'ignorant') but also in fundamental (civil and social) rights, which can be derived with the techniques of jurists from the constitutions, traditions and evolutionary dynamics of complex societies[15].

The space previously occupied by general, abstract, detailed and rigid laws and regulations should be partly freed, where this proves appropriate, in favour of principles, general enough to flexibly orient and regulate social complexity in adherence to fundamental rights but open to the spontaneity, planning and creativity of the social body[16].

A possible characteristic of the future public law is thus to be able to seek new ways of tracing fundamental finalist tracks, within dynamic, interactive, open-ended frameworks, with a skilful mix of various ingredients and technical means.

This is not to argue that representation is necessarily in its twilight years. On the contrary, it seems significant that the European Union, a rather recent institutional subject and product of the influence of the most refined legal cultures of our continent, accused in the past of a democratic deficit, has intended to move towards a broader centrality of representation - on the axis of citizenship and the European Parliament - and is sticking to that purpose[17].

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15 See P. Rosanvallon, *La legittimità democratica,* Torino, 2015, proposes the idea of an increasing decentralisation of democracy from political power.

16 A limit to such a regulatory technique is encountered, according to case law, in the event of the regulation of offences to which sanctions correspond, as recently emerged from the opinion of the Council of State, Sez. atti norm., no. 93/2023, on the amendment to the code of conduct for public employees, concerning the use of social media.

17 See Senate of the Italian Republic, Dossier XIX Legislature, *Conferenza interparlamentare sulla democrazia in Europa*, 2023.

Rather, in the medium term it is to be expected that representation will be flanked and intertwined, in a hybrid model, with forms of participation of society and its articulations in public choices and policies, as recent research suggests precisely with regard to the institutional future of the European Union[18], now also with the support of artificial intelligence.

What we are looking at is thus a scenario in which, despite its complexity, the time does not yet seem ripe to replace the fundamental scheme of democratic-assembly representation, and yet the reduced distance between the legal system and its substratum entails new forms of connection between social actors and public decisions.

If these are the outlines of reasoning on the legitimisation of public powers and decisions in the age of complexity, a further step proves important.

It is necessary to recognise public ethics as indispensable, in the twofold dimension that pertains, on the one hand, to the inescapable and ever closer interconnection existing between citizens (despite a strong and widespread ideology of freedoms and rights) and, on the other hand, to the spirit of service that must animate every agent of institutions and administration. At both levels (citizens and public bodies), albeit with obvious differences in intensity or degree, the sense of solidarity and social responsibility must be thematised, recognised, cultivated[19].

Belonging to a social context does not mean being just a sum of individuals each with a sum of rights.

Being called upon to reflect society within public apparatuses, which are and remain holders of powers to allow a peaceful and as far as possible, orderly unfolding of social dynamics (in themselves often competitive, controversial and conflictual), while respecting fundamental rights and sustainable develop-

18 European Commission, Directorate-General for Research and Innovation, V. Ingelom., *Research on deliberative and participatory practices in the EU*, Publications Office of the European Union, 2023.

19 According to E. Morin, *Dialogo tra Edgar Morin e Gustavo Zagrebelsky*, in C. Simonigh, *Pensare la complessità,* cit., 30, social solidarity and responsibility are the sources of public ethics.

ment, entails the need for a healthy and robust social conscience, capable of distinguishing what pertains to the public sphere from personal self-interest and factional interests.

Holders of public offices in institutions and administrative apparatuses may legitimately embody specific sensitivities and conceptions of the society they are called upon to reflect, in part different from each other (as long as they are within a spectrum of plausibility), but they cannot, on the other hand, claim to disregard or pretermise certain social demands (out of a sort of partisanship), nor give space *a priori to* particular interests, simply with the idea that the satisfaction of these can bring some form of benefit to society as well, for example in terms of overall economic growth, or even by concealing them in the folds of complexity, as if particularism and profiteering were somehow justifiable because they are within reach of every other fellow citizen and widespread.

The constitutional obligations of general solidarity and, for holders of public offices and employment, those of loyalty to the Republic and exclusive service to the Nation are invoked in support of the above.

Despite recognising the osmosis between society and public institutions and apparatuses, a distinction between what is public and what is purely private therefore remains and is clear in theory[20]. The public sphere (as well as public finance) cannot be instrumentalised for essentially private and particular purposes.

An important challenge of complexity, for a renewed and more solid key to the legitimisation of public powers and a resurgence of democracy, therefore, appears to be that of public ethics, which still largely needs to be studied

20 A couple of examples may help. Within a certain framework of local healthcare provision, a private contracted structure may be socially useful (albeit organised in the form of a business aimed at legitimate profit), or instead prove to be a disruptive element to the detriment of users or the cost-effectiveness of the public health service. The placement of a person in a given public office may be functional to the profitable use of his skills and passion in the service of the community, or on the other hand be improperly conceived as an instrument for his personal interests (career, 'influence', subsistence, etc.).

and developed, as well as (and this is of enormous importance) to be penetrated into the culture, which in Italy still appears to be oriented somewhat differently.

In perspective outlined above, the idea of a gradual process of regulating political parties, political activity and the action of the institutions in relation to it appears topical[21], even in the face of major innovations and progress made in the meantime in the field of legislation and supervision in the area of anti-corruption and public ethics with regard to the apparatus of administrations[22].

It is evident how today the political activity of individuals, formations and parties no longer represents a factor of synthesis and social aggregation, but almost an element of disturbance, the expression of a 'bad complexity' with its own self-referential logics, the broad risk of orientation towards essentially private interests and simulacra of democratic forms entrusted to the bamboozlement, if not the deception of an unmatured and largely resigned or complicit public opinion.

Relevant aspects on which to work in a reform perspective could be those of the financing of politics; the stability and effective representativeness of formations; the legal value of electoral programmes; the rules of communication and propaganda; fact checking; the qualifications, careers and ethics of the ruling class.

Codifying the rules and limits of competition, communication and party or political action - not unlike what has been done for economic activities and business - would at the same time enable public institutions to focus and make them more credible on their service role and their substantial legitimisation factors linked at least to fundamental rights, and to recover, over time, the trust

21 See G. Taccogna, *Disciplinare la politica per valorizzare l'amministrazione ?* in *P. A. Persona e Amministrazione*, 2020, 2. The topic is recently revived by R. BIN, *Riforme costituzionali per rafforzare l'esecutivo. Qualche riflessione*, in *Federalismi*, 2023

22 For a joint study about public ethics applied to politicians and administrative officers see G. Sirianni, *I doveri dei politici e degli altri decisori pubblici in Italia*, Napoli, 2019.

and mature adherence and effective participation of citizenship in the functioning of the administrative system.

This would not result in overcoming complexity.

New rules would be added, but they would replace the unwritten yet existing ones of today, concerning the functioning of politics and parties; the balance could be, in this respect, in the name of simplification, as well as of indispensable transparency.

Moreover, it would result in apparatuses and devices of public power that are legally oriented in such a way as to be more adequate to listen, understand and administer in a sensitive, expert and sustainable manner, in the medium and long term, the inevitable complexity of society and human coexistence within an increasingly interconnected society, coping with its unstoppable dynamics.

A better institutional and administrative quality, destinated to what is actually common from the point of view of public ethics, should foster and accompany social dynamics, even spontaneous ones, of recovery of some form of cooperation[23] and of convergence towards and an updated face of essential common values, secularly understood (unless anomie prevails[24]).

The goal should not be seen in the attainment of a fixed point of arrival, identifiable in a certain desired standard, but rather in the improvement of certain components and trajectories of the game of complexity, of the interactions and developments that characterise it, for a more heartfelt legitimisation and greater resilience of the legal system, at the service of society, under the profiles examined, while awaiting the further inevitable evolutions that the scenario of complexity will bring with it and that will demand further new reflections and impulses.

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23 See R. Sennett, *Insieme. Rituali, piaceri, politiche della collaborazione*, Milano, 2012.

24 See V. Ferrari, *Diritto che cambia e diritto che svanisce*, in P. Rpssi, *Fine del diritto* ? , Bologna, 2009.