Ernesto Bettinelli

The genuineness of vote through e-poll

In order to fully understand the impact and the institutional *opportunities* of leading edge technology applied in relation to voting rights, it is useful to make immediate reference to the *demonstrations* that have been carried out over the last two years within the *E-Poll* project, a project in which a network of different subjects have participated, such as: local authorities, computer companies, specialists and research centres. All participating parties have shared their knowledge and theoretical experience in order to demonstrate that "electronic voting" is not characterised by different conditions for the expression of the people's choices (from the pencil to the key for validating the choice, from the *mute* folded ballot sheet to the interactive screen); but more exactly it represents a "system" based on a comprehensive re-organisation of the electoral process. It is a re-organisation that is aimed at satisfying a number of specific needs: simplifying and streamlining the preparatory phases related to the identification of the electoral body, immediate verification of single voter's right to vote, maximum levels of precision, security and transparency in the organisation of the abovementioned procedures. And as far as the vote itself is concerned: one obtains the certainty of having voted correctly or, at any rate, the certainty of the registration of legitimate manifestations of *abstention,* the certainty of avoiding any doubt (be they in exceptional or unequivocal circumstances) of human error; and last of all the immediacy of automatic scrutiny as soon as the polls close.

The projected diagram illustrates clearer than words ever could the *simple* structure of the computerised-electronic voting system and the roles-tasks of the participants which bring it to life within the limits established by law (not in reference to any specific actual legislation, but in a desirable legislative frame work in the future).

The interaction between citizens and the *e-poll system* recognises to the utmost the civil and political freedom of individuals, while taking into consideration *however* that the electoral affiliation, in a liberal democracy, cannot lose its *public* nature. Which means, importantly, that citizens acquire and exercise their right to vote, or, at times, have been deliberately deprived of it (temporarily or permanently) since they belong to a *body* (i.e. the electoral body) to whom supremacy is attributed to a Community dimension. Due to this fundamental aspect, the exercise of political-electoral rights is a manifestation not only of individual freedom but also of political solidarity, involving the identification of *procedures* and *limits* aimed at rendering *certain* and *equal* the expression of individual suffrage.

The principle of Universal Suffrage becomes effective when the equality between each citizen's right of vote, is recognised.

This concept is a synthesis of a juridical and factual situations which attribute authenticity and genuineness to the vote expressed. Particularly, the Universal Declaration of Human Rights (1948), in the last section of art. 21 declares: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and *genuine* elections which shall be through universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures".

To be equal the vote must be granted by law and through substantial legitimacy, strictly related to the real circumstances of common fairness qualifying each political system.

The secrecy (and security) of the vote can be seen either as an internal freedom of every elector and as external security for all, upon which the legitimation of a public institution election is based. Therefore the elector should feel secure not only when he expresses his vote but also he should be reasonably sure of the secrecy of everybody else's vote.

Secrecy constitutes in truth an important external guarantee on which the legitimation and legitimacy of every ballot depends for the election of public organisms and the assuming of definite decisions through a referendum.

This aspect means that it isn't enough that the individual feels protected alone and secure when voting, but it's also important that all voters feel secure of the authentic secrecy of each vote expressed.

Thus the necessity of public and supervised vote transmission.

It is important that the vote is secret to guarantee the authenticity of the election. The importance of this objective fact is immediately clear if one considers that secrecy could be an option and not a requirement, if the showing of one's vote to third parties can come about then the danger of corruption or electoral exchanges becomes a reality. Authenticity of elections would be compromised because there would be a reasonable doubt about a consistent number of votes being corrupted.

It is a serious risk that can be deduced not only by the even recent situations within the great democracies, but also from a careful general consideration of electoral social and political science regarding the vote "value". In systems where the "electoral indifference" (for whatever the reasons) increases abstention (an average of between 30 and 50 % of voters), the weight and value of each single vote, particularly in marginal electoral constituencies increases; increasing simultaneously the votes saleability, stimulated by the pliability of an absolute vote secrecy.

Such a problem could occur with the introduction of electronic and informatics-procedure votes which would allow a simplification of a complex polling system, while enhancing the possibility and facility of the so-called "home-vote": the voter would avoid reaching or having to be reached by a public voting ballot and would be able to express suffrage directly from home. In a similar situation technical apparatus can certainly guarantee the respect of the vote, *not* that of external secrecy which is only by the single voter's discretion and interests. Consequently there would be a controversy over the effective freedom of vote.

A problem which may occur with the introduction of information and/or electronic procedures is the lack of external security (i.e. for all voters) because the home vote might not respect it.
The question isn't new. It comes about with the "postal-vote" foreseen by the electoral systems of several countries, even European and more recently by Italian electoral laws for Italians residing abroad. This happens with the postal-ballot, as admitted in some foreign set-ups (Anglo-Saxon, in particular), on the basis of a debatable range of values which lay in contradiction with the principle of a genuineness of the electoral competitions.

The question can be explained with an opinion of a Californian judge dissenting the conclusions of his Court in order to the legitimacy of postal vote, as regulated by Californian electoral law:

"I believe, in this state's constitutional mandate that "voting shall be secret." The problem is not simply one of purchasing votes, though a market in that commodity is far more likely if the buyer can see what he is getting. The problem includes the potential for more subtle forms of coercion. To the extent that important elections are conducted by means which permit persons other than the voter to observe the ballot as it is cast, it is inevitable that political and special interest groups will be tempted to "assist" voters in casting their ballots, perhaps at organizational parties at which the marking and mailing of ballots constitute a group activity. If permitting a husband and wife to be

together in the polling booth violates a constitutional requirement for secret voting, can it reasonably be said that no constitutional question exists when the voter may be accompanied in the marking of his ballot by assorted friends and well-wishers?"
(Peterson v. City of San Diego, 34 Cal.3d 225 (1983).

The postal ballot could be admitted in the form of of a "personally delivered vote" (meaning: a public official witnesses the identity of the voter and the effective secrecy of the voting process and afterwards receives the marked and sealed ballot). The conclusion for other advanced modalities of exercising the vote like the "E-poll": the telematic vote should not be different.

This should also be expressed in public and supervised emplacements.

The secrecy of the ballot must be also during the period after voting, meaning that it cannot be exhibited to third party not even after its definitive expression.

The elector (using an assigned code or a secret formula) can subsequently and privately verify (through any domestic PC, for example; or outside at a public emplacement), the real insertion of his vote in the virtual ballot box. A similar "guarantee", in effect, concurring with the voluntary exhibition to third parties of the one's personal expression of ballot, can favour those "trades" (or phenomena of electoral corruption) irreconcilable with the principle of "reasonable certainty" of a genuine expression of ballot from the whole electoral body.

The expression of vote can be defined "certain" when all members of the electoral body have the benefit of *ample opportunities* for participating in the formation of representative and governmental organisations and public decisions. The realisation of such conditions depends largely on the electoral organisation, on its being more or less easily accessible and reliable. Citizens must be certain that their electoral choice is *worthy* and counted without any possibility of manipulation during the operations of scrutiny. In this context the *equality* of the vote acquires "full" worth. Since nobody could appropriate, directly or indirectly, the vote of others, nor could one benefit from *non-desired* absenteeism. In fact not only the phenomena of corruption (characterised by the so-called "exchange vote"), facilitated by private voting methods (such as the postal vote, where allowed), but also the excessive complexity and demanding nature of voting methods, influence negatively on the tendency to vote. And each and every "renunciation", in some way involuntary, or even coerced, increases the *weight* of the participants' votes.

The e-poll is perfectly consistent with all those principles granting the authenticity of voting procedures in democratic countries and, thanks to its immateriality, it may enhance them as well.

The introduction of an integral electronic voting system, which in no way deviates from the fundamental principle of the public and communal dimension of elections, makes it possible at last to concretise the formal guarantee of *freedom, secrecy, individuality* and *equality* of the vote, which together represent the common juridical heritage of liberal regulations. The elastic, moderate provisions contained in some legislations, regarding the secrecy and individuality of a vote, which are aimed at increasing active participation in the elections, (in deference to the "super-principle" of democracy), would for the most part lose their "raison d'être".

The system – overcoming several formal limits pertaining to some demonstrations carried out in Italy in accordance with existing laws – is potentially qualified to offer to certified voters, in a *logical sequence*, all the options that presently characterise active voting and abstention in any type of election at all. Regardless of the totally "abstentionistic" decision of those who do not attend elections at all, citizens, by answering "computerised questions", can:

- *dissociate premeditatedly from voting* (equal to a so-called "vote of protest", which in procedures involving paperwork is achieved by invalidating the ballot paper with writing unacceptable signs);

- *show their uncertainty or indifference* by deciding not to carry on with the voting procedures (equal to a "blank ballot");
- *identify the political subject,* (coalition, party, fixed (closed)) list, uninominal candidate, according to the electoral method adopted for each single vote), to which they wish to assign their vote;
- *express individual votes* (where allowed by existing electoral legislation);
- *show themselves to be favourable or not* (by answering yes or no) to referendum questions.

To avoid confusion and impetuous decisions, every option is subject to confirmation on behalf of the elector (who is offered the chance to modify in the event of inaccuracy). Failure to reconfirm hinders the elector's access to the next phase. It is immediately obvious how such a procedure, entailing a "compulsory sequence" avoids formal errors. In this sense the act of voting becomes "certain" and "secure", and since it is no longer in any way subject to interpretation by human scrutinizers, any possible contention, (the inevitable aftermath of all material elections), loses ground: its raison d'être. Naturally any *definitive* regulatory discipline aimed at precisely regulating *voting* in the Voting Points (as in diagram), must also find a solution for the possible problem of *wilful* disruptive behaviour (bordering on sabotage) on the part of single voters. For instance, to prevent a repeated denial of confirmation from blocking the entire voting point for a lengthy period of time, (and consequently preventing other electors from voting), a system could be established in which, three consecutive denials of confirmation, within a reasonable length of time, would be interpreted as abstention from voting.