

HUMAN RIGHTS AND DELIBERATIVE DEMOCRACY

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ABSTRACT

This work reviews the relation of deliberative democracy and the human rights corpus in context of the contemporary debates about the immediate form of creation of politics and political decision making. The latest model of democracy here is reviewed as something that could potentially wear the basics of the human rights concept, whereof loudest in the defense are the so called authors - anti-foundationalists. In this text an attempt has been made to differentiate the sociological and the politological foreshortening in the perception of the deliberative engineering. In the end, an indication is provided about the weaknesses and the criticism of the compatibility of the deliberative democracy as the latest model of creation of political decisions and political decision making and the compatibility with human rights in regard to the politological and sociological views of this ratio.

Keywords: democracy, deliberation, deliberative democracy, liberal democracy, human rights, Seyla Benhabib.

INTRODUCTION:

Ever since the first insight in the literature about the deliberative democracy, one can easily notice the connection of this model with the corpus of human rights. A series of authors (part of them) in the definiendum of deliberative democracy emphasize the process of extensive and deliberate arguing and counseling of political themes between free and equal citizens (Habermas, 1996; Rawls, 1971; Dryzek, 2000, Benhabib, 1996; Gutman and Thomson, 1996). This moment of deliberation is of key importance and always necessarily precedes the final political decision making. However, there are serious remarks from the critically minded authors that the deliberative democracy in its full and efficient functioning, not only protects the basic human rights and liberties, but it also threatens them in an indirect manner. In most cases, the arguments of the criticism of this type are grouped into two major categories: the first criticism indicates that one of the highest priorities of deliberation is achieving a high extent of agreement (consensus) or unanimity about the value of the public problem, and hence it considers that this agreement most frequently silences the disagreements and viewpoints of the minorities educated according to most different bases. These political minorities in the public scene are most commonly recognizable through the specific social situations of marginalization. And these are the factors that enrich the democratic setting and the diversity of views. The second group of criticism addresses the possible tyranny over the majorities by imposing their selection and norms (Benhabib, 1996:77).

THE COMPATIBILITY OF THE MORAL BASICS OF THE DELIBERATIVE DEMOCRACY AND THE HUMAN RIGHTS:

The authors - conspirers of the deliberative democracy mostly locate the response, that is, the solution of the imposed challenge, in the reaffirmed Kant's liberal attitude, which rests on the assumption that "the moral respect of the autonomy of the person is the basic norm of morality and democracy". Hence, the deliberative model of democracy is imagined as a supplementation of the general moral principles, on which the demands for the respect of human rights and liberties rest on. In fact, even in the discourse theory of ethics, which is part of many theoretical views about the deliberative democracy, equal treatment of all participants-deliberators is assumed:

treatment of the participants in the political deliberation as equal and free beings, equally titled to participate in that type of discourses, which determine the rules that impact their lives, and extends from the position which considers the persons as beings with rights of certain "moral rights" (Benhabib, 1996: 78).

These and similar remarks consist the content of the moral justifiability and sustainability of the deliberative democracy – which, not in a small part of the viewpoints represents the bearing principle of argumentation and defense. Some authors, this minimum of moral standards and moral rights, call this *universal moral respect* and relate it to the standards of symmetry of rights. The universal moral respect implies an equal possibility for initiation of a theme for deliberation, exposure to a personal attitude in a form of speech and similar tools of the deliberation. This is what Sayla Benhabib calls principle of *egalitarian reciprocity*, and basically animates the representation of the individuals included in the political process as moral personalities, which also entails appropriate forms of responsibility (Benhabib, 1996:78-9).

However, considering the existence of very different moral views, which the individuals use for performance on the public scene, the problem of the frame of moral in politics occurs. Since the process of creation of politics, and accordingly political decision making, does not take place in conditions of pure initial position or moral *ground zero* situation, the egoistic impulses which dominate with the world of politics, must be overwhelmed and overcome with the few-century long rationality and mutual recognition of the right of different attitude and voting. Hearing the echo from Hegel's philosophy, many representatives of the theory about the deliberative democracy, comprehend the relatedness of the concept of human rights and the moral in one lively and tempestuous atmosphere of constant struggles, denials and recognitions of the interest. The evolution of conflicting impulses of the political process **should** ultimately (again the normative constant of the discourse) be exposed to one procedure of recursive justification."¹ The essence of this justification successfully overcomes two of the key attitudes of the liberal criticism about the fatal side effects of the deliberative

¹ As a reminder, Habermas in the most appropriate work about the issue of the deliberative democracy *Between facts and norms* 1996, reviews precisely this moment, that is, the potential tension between the semantic and the sociolinguistic interpretations of the normativity and the justifiability i.e. between the factual and the normative (Habermas, 1996).

democracy – too firm and rigid positioning of the conditions of a game within deliberation and the tyranny of the majority. The rules of universal applicability of moral respect for the individual and the assumed egalitarian reciprocity, enable the minorities and to those who disagree with the given solution of the issues of public interest, a right, not to approve the decision, to change the rules and the agenda of the public debate (Benhabib, 1996: 79).

DELIBERATIVE LIBERAL DEMOCRACY:

This representation of the relation between human rights and deliberative democracy is most commonly referred as the so called anti-foundationalism position. This position is shared by many authors. The attempt to reduce the tension which exists between the “universal demands for the respect of basic human rights” on one hand, and the “individual efforts for enjoying a wider autonomy” – which are set by different cultural, language, religious and other groups, on the other hand – has consequences on the integration of the society at macro level. Certain authors, see the decision for overcoming this tension in the emphasizing of the, up to that time, unfamiliar and insufficiently argued theorizing which they call *deliberative liberal democracy*. The proponents of these views are called deliberative liberal democrats. Their attempts to develop academic view about the applicability of the universal human rights and the growing demands for fostering the cultural diversity of the contemporary migrant societies penetrate also in the debates about the political engineering of the plurality of the societies, as well as on the multicultural programs for adaptation to the individual cultural practices and beliefs. One of such broad views of the issue is the one of Fabrizio Trifiro. Surrounding the schematized metaphysical and epistemological frame for deliberation of democracy and human rights, he creates a normative concept, with an expressed full awareness about the sociocultural rootedness of all our views, demands and ideas about the good and the bad, the forbidden and the justified. Expressed in one stage, this view claims that, although human rights are a concept with universal pretensions of applicability, its content is actually culturally determined². In order to achieve this, Trifiro makes a distinction between the epistemic and the moral legitimacy. He claims that the first does not assume the second and he relativizes the need of anti-foundationalists³ (as he himself claims to be) to take care about the compliance of human rights with the politics of multiculturalism.

If one takes into consideration that every attempt to identify the core of liberalism as a study, but also as a political agenda for organization of political life, almost with no exception ploughs in deep disagreements and partial contradictions, the minimum common denominator which is assumed by authors during the conceptualization of the theory about the deliberative democracy is the equal respect to all human beings, expressing the autonomy of their own life and their position in the possibility to “seek for their happiness”. In the observations of the relation of liberalism and human rights towards the deliberative democracy, the basic principle or impulse, which is led by the scientific interest, is the one which perceives ONLY those practices and rules, which can be considered as politically legitimate, and which are a result of free and equal process of PUBLIC decision making. Such process includes all those affecting the consequences of its implementation (Trifiro, 2005: 5). However, what imposes as something essential for the complete functioning of this imagined procedure of deliberation, with no doubt, is the crystallization of the procedural rules and constitutional limitations, which determine who and under what conditions could someone participate in this process. The conclusion according to which, sooner or later, filters will have to be placed which will limit the access to the deliberative forum and space for political decision making, as much as it represents an unavoidable element of the theoreticians, worried about the operability of this model, also reminds of the certainty of the aggregation, which stifles the initial and recognizable mark of the deliberative democracy. Taking the perceived necessary concession as the point of departure, Trifiro exposes one alternative source position from the one about the “well-ordered society” of Rawls. There he attempts to answer the challenge for maintaining the liberal premises of the society, which respects the individual autonomy, but tries to conform the political solutions to the imperatives of deliberation:

² Trifiro exposes his views in parallel with the criticism for encouraging relativism and ethnocentrism. He responds to the suspicions and the accusation for the unsustainability of this culturally embedded and anti-foundationalistic conception, since he glorifies one view of the world (one culture) and challenges the others to start delivering maximalist demands, thus only intensifying the cultural conflict (Trifiro, 2005:3).

³ Anti-foundationalists or anti-foundationalism represent a group of authors-theoreticians, who in their starting determinations allow neglect or relativization of part of the basic human rights in favor of the new politics and legal solutions. Specifically, in the case with deliberative democracy, they claim that the right of association may be slightly neglected considering the immediate access to the bodies for creation of politics and political decision making.

A society that attempts to stay faithful to the demands for freedom, equality and human dignity, should not only give equal value to each vote, to all people concerned with the public decision, but it should also be ready to be open for public dispute and reassessment of the solutions, same as for the most basic assumptions, conditions for participation in the political life, the content of the constitutional rights, its (constitutional – AJ) procedural rules and their practical and institutionalized realizations (Trifiro, 2005:6)

The most important contribution from the portrayal of the liberal deliberative democracy as a collection of liberal-procedural and deliberative-revisionist views, according to this author, represents the revolutionary insisting on a general and comprehensive flexibility for potential revision in all political domains of decision making and of all written procedures, confirmed in the constitutional texts. As he emphasized “we must avoid the belief that the individual procedures and institutions of our society, understood as *sub specie aeternitatis* are immune to revision”⁴.

LIBERAL DEMOCRACY AND HUMAN RIGHTS:

The connective tissue which connects them, the essence of the liberal (normative) democracy and human rights with the non-foundational basics of the deliberative democracy (rejection of any attempt to identify a rigid procedure and rules for creation of politics and political decision making, which most commonly is a privilege of a certain group of citizens) represents the *culture of deliberation* in which the precondition for equal respect of the dignity⁵ of every human being is entirely effectuated.

...the anti-foundationalism is particularly adjusted for liberal democratic culture, since with the denial of an absolutely privileged authority of a certain procedure over others, and through the reminding of the contingency of our convictions and procedures, as well as of the fact that each consensus which has been achieved represents only a timely point for rest, which is prone to propel us into a repressive status-quo, leads the liberals to keep open the solutions and the procedures for deliberation for disagreement and change... (Trifiro, 2005:7).

The purpose of the indicated extracts is to recapture the relatedness of the concept about the deliberative democracy with the frame of universal human rights as compatible and desirably woven into a set of attitudes, which are called liberal deliberative democracy. However, it is much more important that this relatedness serves as an attempt to mitigate the tension between the growing demands for cultural and individual particularism (separation and special treatment of the minorities by the country) and the universal nature of human rights. The above indicated arguments point out the fact that this type of relatedness is not only possible, but desirable as well. At the same time, this justifies the position for perspective of the deliberate engineering in the strengthening of the legal bases (normativity of human rights) through the political practice (use of deliberation in most available disputes and solutions about issues with public interest). This inter alia enables satisfactory resolution of problems that appeared in the emigrant plural societies which seek for an answer about the tension that appears inside, so called deep diversity and balance between the protections of the group from the assimilative potentials of the majority culture (external protections) and the abuse of personal rights and

⁴ The need of keeping an open debate for changes of the procedure itself is shared by an important part of the authors – conspirers of the model (Gutman and Thomson, 1996; Benhabib, 1996; Cohen, 1996; Young, 1996; etc.), while, some, such as Benhabib, in the recent views, repeat and strengthen this thesis in the direction of its evolution in a coupling by determining the conditions for participation in political life and political decision making, altogether explained and supplemented with the concept about “democratic repetitions” (Benhabib, 2004)

⁵ The relatedness, that is, the conditionality between freedom and dignity, is related by certain authors with the independence of the will of others (the general will), and an entirely dignified individual is considered to be a person who in the relations with the others does not enter in his/her sole discretion, thereto not owing anything to the community, the country and the others, and with no aspiration towards achieving his/her own personal interests. This portrait of the individual with dignity and freedom in acting was typical of the theorizings of the sociologists in the period of the great revolution from 1989 and the break-down of the socialist social-state orders. The insisting on the atomism and the individuality represented an agenda of the liberalization and the democratization of the scientific communities. Implying the individualization and raising of the activity of civil association and (political) participation (see Trajkovski 1997:233-4), from today’s distance and from a position of the deliberative democracy, these postulates seem challenged, maybe even inhibiting, in regard to the crystalized interest which the self-conscious individual clearly delivers in a situation of competition and contest with the others (Rawls), as well as in regard to the crypto-solidaristic nature of the communicative acting (Habermas) as a base of the advisory process, which precedes to the political decision making.

freedoms within the minority group from the non-liberal nomos⁶.

The problem with the imperative for liberal treatment or justification (by the state) of the non-liberal cultural practices, the defense and the promotion of human rights on universal foundations, as well as the solutions of the deliberative democracy, place a new and refreshing dimension in the development of discourse. This is an indication of the necessity of deeper plunging in the insufficiently conquered and processed areas of the procedures for the creation of politics and political decision making. The specific conditions which determinate instruments or the greater applicability of the specific democratic forms of decision making, entail a review of the variety of aspects in which the normative dimension of the theory about deliberative democracy relatively easily floats, faced with the danger of being submerged by the aggregatist demands for efficiency and anti-metaphysics.

AN ATTEMPT TO RESPOND TO THIS CHALLENGE IS THE FOLLOWING PROPOSAL BY TRIFIRIO:

The basic principle that should guide the deliberative democrats in their elaborations of specific politics of intervention in the internal affairs of the repressive states and the will of the communities, of course would be the giving of priority to the inclusive and self-reflective discursive means, for the purpose of resolution of conflicts and the collective decision making, in relation to the violent, exclusionary and dogmatic means. This will impose diversity in the dedication to make as much as possible, to include and strengthen (the positions of – AJ) the oppressed and dissident parts in those countries and communities, and to use power only as the last instance, and then only on the basis of profound and transparent review of the gravitation of the execution of threatening of human rights, with the most serious care for protection of the civil association and punishment only of the oppressor, and with an exclusive goal to return the source self-decision making (Trifirio, 2005:13).

CONCLUSION:

The limitation of such observation of the relation between human rights and deliberative democracy, seems to arise from the strictly normativistic view of political theoreticians. Taking into consideration that the problematic of the deliberative engineering in the creation of politics and political decision making implies sociological approach, which provides the least comprehensive insight in the cultural and social factors of diversification and division of contemporary societies, the relation between these two categories of instruments and procedures for the time being will remain at the level of imperatives for normative fulfillment of the minimum for application of the political novum. The social theory attempts to answer these questions, in debates which are outside the research interest. However, part of the unresolved dilemmas open in the tapping of the deliberative democracy in regard to the constitutionalism, the civil companionship and consociative democracy.

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⁶ Most extensive attention to this issue is dedicated by Will Kymlicka in his work *Multicultural citizenship* from 1995, where the ontological conflict between the individual rights and the collective demands for protection of the distinctiveness of the cultural community and its special forms of life, is reviewed through the prism of the liberal justification of the multicultural engineering and affirmation of cultural rights which do not threaten the individual autonomy (Kymlicka, 1995). Certain authors, (Trifirio, 2005) consider that the procedures of the deliberative democracy give the possibility to resolve the conditionality of the protection of communities from the influence of the wider society with extensive individual rights and freedoms inside the minority. This is achieved in a manner according to which “each group and individual, will be free to shape and perform its cultural and political practices, if these are in accordance with the equal right to autonomy which has been offered to individuals and cultural groups” (Kymlicka, 1995: 11).

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