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Democracy beyond aggregation: the participatory dimension of public deliberation

Abstract

Democratic theory passed through two major developments during the last 20 years: the first one was deliberative democracy. Deliberative democracy is a critique of the aggregative view of democracy that dominated post-war democratic theory. Instead of aggregation through elections, deliberative democracy proposes different forms of improving the quality of the democratic through public reasoning and argumentation. The second innovation in the democratic debate is the recent theory of representation that assumes that a renewal of representation is needed in order to reconstruct the quality of democracy. Both innovations in democratic theory shared one central assumption, namely that there is a crisis of democracy and that this crisis is linked to lack of quality in political will formation. Deliberative democracy and the new theory of representation disagree on two major issues, one theoretical and the other practical. Theoretically, they go beyond the opposition between representation and participation as they seek to move beyond Hobbes and Rousseau. On a practical level they disagree of the role of broadening participation in the process of improving the quality of democracy. In this article, I propose a different way of going beyond Rousseau that preserves the community of equals dimension. My proposal involves the integration of participation and representation through a new design. This new model, which is being broadly implemented by governments across the developing world, seems more promising because it can accept the critique to the sovereignty side of participation without relinquishing its equality dimension. It is only through the expansion of political equality through both participation and representation that contemporary democracies will be able to overcome their legitimacy crisis.

Keywords

democracy, deliberative democracy, representation, participation

Democratic theory passed through two major developments during the last 20 years: the first one was deliberative democracy.¹ Deliberative democracy is a critique of the aggregative view of democracy that dominated post-war democratic theory². Instead of aggregation through elections, deliberative democracy proposes different forms of improving the quality of the democratic through public reasoning and argumentation³. The second innovation in the democratic debate is the recent theory of representation that assumes that a renewal of representation is needed in order to reconstruct the quality of democracy⁴. Both innovations in democratic theory shared one central assumption, namely that there is a crisis of democracy and that this crisis is linked to lack of quality in political will formation. In this sense, both debates target the declining participation in elections and the distrust of the modern citizen in its political institutions, but this is where their shared consensus stops⁵.

Deliberative democracy and the new theory of representation disagree on two major issues, one theoretical and the other practical. Theoretically, they go beyond the opposition between representation and participation as they seek to move beyond Hobbes and Rousseau⁶. Thomas Hobbes inaugurated the concept of representation in modern political theory by establishing a dichotomy between represented and representatives. His solution was to use authorization as the means to overcome this dichotomy. Jean Jacques Rousseau rejected representation, making it equivalent to slavery. In the current theoretical debates, there are two major recent developments. But they do not lead us to the same place. One line of analysis, led by Nadia Urbinati and Mark Warren rejects Rousseau's critique of representation altogether. Urbianti, for example, proposes a framework that neither resembles Rousseau nor Hobbes by placing greater emphasis on political judgment⁷. The idea of political judgment follows from Kant and intends to be a substitute for Rousseau's conception of sovereignty. It assumes that the legitimacy of political action requires judgment from the represented actors. For Urbinati "...political actions consist in searching for laws that regulate a transitive

¹ See Cohen, 1997; Dryzek, 2000; Gutmann and Thompson, 2004; Fung and Wright, 2003.

² See Przeworski, 2010.

³ See Habermas, 1995; Cohen, 1997; Gutmann and Thompson, 2004.

⁴ See Urbinati, 2006; Warren and Urbinati, 2008; Alonso et al, 2010.

⁵ See Rosanvallon, 2009.

⁶ See Hobbes, 1968; Pitkin, 1967; Manin, 1987 and 1997.

⁷ See Urbinati, 2006.

relation between actors and recipients of law, not merely a physical substitution in the act of decision..." (Urbinati, 2006:104).

On a second front, Joshua Cohen proposed a reconstruction of Rousseau's theory of a community of equals. For Cohen, the key element of Rousseau's conception of sovereignty is the idea of equality and not the critique of representation. In this article, I build on Cohen's work to demonstrate that Urbinati's critique of Rousseau removes the equality dimension of politics; her political model of representation based on political judgment downplays equality. I propose a different way of going beyond Rousseau that preserves the community of equals dimension⁸. My proposal involves the integration of participation and representation through a new design. This new model, which is being broadly implemented by governments across the developing world, seems more promising because it can accept the critique to the sovereignty side of participation without relinquishing its equality dimension. It is only through the expansion of political equality through both participation and representation that contemporary democracies will be able to overcome their legitimacy crisis.

There is a second, and more practical, division within this debate, which is how to improve the quality of existing democracies. Deliberative democracy points in the direction of two dimensions that can improve the exercise of democracy: the first one is a public dimension that can be understood as a sphere for informal public debates⁹. The public sphere helps in the generation of public debate and in the renewal of the stock of democratic practices that very often are limited to political parties. A second dimension in the process of improving democracy is looking for new institutional formats that can enhance practices that are very often devalued in contemporary democracies¹⁰. Civic engagement and participatory formats that include civil society actors are the most important dimensions of institutional renewal. Although the deliberative democracy literature does not directly engage with the issue of representation, it is recognized that improving of representative institutions can occur through new forms of participation.

⁸ See Cohen, 2010.

⁹ See Habermas, 1989 and 1995; Calhoun, 1992.

¹⁰ See Cohen, 1997; Fung and Wright, 2003; Avritzer, 2002 and 2009.

This article is divided into two sections: in the first one, I reconstruct the theoretical foundations of both conceptions of democracy, deliberative democracy (DD) and reconstructing representation (RR). I show how the appraisal of Rousseau's work is the key element that separates them. I demonstrate that the current criticisms of Rousseau's critique of representation are insufficient because they do not incorporate equality into their new theories of representation. In the second part of the article, I develop a specific solution to crisis of legitimacy of representation¹¹ proposed by the different theories. Specifically, I discuss Urbinati's proposal of the temporal expansion of representation and compare it with hybrid designs with civil society participation that have been proposed by deliberation theorists¹².

My contention is that the temporal expansion of influence cannot be considered the only response to the current crisis of representation. I will show the limits of such an approach in two ways: first I will show that recall that is one of the instrument for the temporal expansion of representation is not improving the quality of democracy where it has been introduced¹³. Second, experiments of participation in the developing world that have connected participation and representation such as participatory budgeting or the national conferences in Brazil¹⁴ show that the participatory dimension of participation cannot be underplayed in the process of reconstruction of democratic legitimacy.

From Hobbes to Rousseau: a reassessment of political participation

Democratic theory for very long understood representation and participation as opposite and contrasting views of politics.¹⁵ Those who were in favor of participation need to oppose representation. This was considered the main teaching of the work of Jean Jacques Rousseau who made representation the equivalent of lack of autonomy¹⁶. On the other hand, those who defended representation did not open any space for the

¹¹ See Rosanvallon, 2009.

¹² See Fung, 2006; Baiocchi et al, 2011; Avritzer, 2009.

¹³ See Garret, 2005.

¹⁴ See Avritzer, 2002 and 2011; Baiocchi, 2005; Wampler, 2007 and 2011.

¹⁵ See MacPherson, 1973; Patnam, 1980.

¹⁶ See Rousseau, 1997.

linking of the representative to an outside body of citizens except as an act of electoral accountability.¹⁷ The recent debate on representation and participation has moved beyond this opposition. In this section I will approach this debate in order to evaluate the different way authors such as Urbinati and Cohen evaluate Rousseau`s work.

The modern theory of representation and important remarks on participation have their origins in Thomas Hobbes`s *Leviathan*. In *Leviathan*, Hobbes sought to establish the basis of a non-religious concept capable of breaking free from Christian doctrine. The author examined two secular principles for the notion of representation. The first notion came from Ancient Greece, with the idea of *prosopon*, which is the substitution of one person in the theatre by another. The second notion came from Rome with the idea of the procurator in Ciceron.¹⁸ In this case, the procurator represents a client while carrying out three distinct roles: “my own, my adversary`s, and the judge`s.”¹⁹ These are the two origins of the modern concept of representation.²⁰

Hobbes drew deeply upon the idea of representation in Ciceron which involved two elements: identification and authorization. The procurator identifies him/herself with the condition of the represented before representing the individual, consequently creating a relationship of affinity between them. Nevertheless, only authorization gained relevance in the manner Hobbes dealt with representation in spite of the dual approach. In chapter XVI of *Leviathan*, Hobbes makes the following affirmation: “Of persons artificial, some have their words and actions *owned* by those whom they represent. And then the person is the *actor*; and he that owes his words and actions, is the author: in which case the actor acts by authority.”²¹

Thus, Hobbes` work provides the main elements for a theory of representation as well as a theory of participation (although this aspect receives less attention). Hobbes uses the term “action” to designate all acts taken by individuals; these can be direct as well as transferred by an explicit act of authorization. In the case of representation, the central problem is how to obtain possession of the actions of another actor. As Hanna Pitkin

¹⁷ See Pitkin, 1967.

¹⁸ See Pitkin, 1967.

¹⁹ Ciceron,1942.

²⁰ See Pitkin, 1967.

²¹ Hobbes, 1997:125

pointed out, this debate was central to the discussion regarding legitimacy of power during in the 19th century. In this case, Hobbes is primarily interested understanding what gives legitimacy to the act of authorization. “For that which in speaking of goods and possessions is called an *owner* [...] in speaking of actions, is called *author*. And as the right of possession, is called dominion; so the right of doing any action is called **AUTHORITY**.”²² Thus, Hobbes reduces the problem of representation to the problem of authorization. Hobbes is concerned with whether the actor or political agent has the authorization to act in the name of the represented? Hobbes’ formulation created a new perspective in political theory centred on the issue of authorization.

Another fundamental element in Hobbes’ theory of representation is that it differentiates between the limited author and the free author. Hanna Pitkin observed a long time ago in passages outside of the *Leviathan*, especially in the book *De Cive (On the Citizen)* in which Hobbes discusses this point and makes the following affirmation. “we use the word [person] vulgarly, calling him that acts by his own authority his own person, and him that acts by the authority of another, the person of that other.”²³ In this case, we should return our focus to three different questions: What is the meaning of assuming or renouncing the authorship of certain actions? How and when should individuals renounce the authorship of some of their actions? What are the types of actions that are more susceptible a withdraw of authorship and in which of these actions do individuals tend to maintain their stance of authorship? Although Hobbes was not overly concerned with this topic (given that he was primarily interested in establishing the of the legitimacy of the transference of authorship, and as such, capable of establishing legitimate sovereign power), this issue is very important to contemporary political theory as it approaches the limits of representation and addresses those situations in which actors are not bound by authorization:

all that has been said previously of the nature of covenants between man and man in their natural capacity, is true also when they are made by their actors, representers, or procurators.²⁴

²² Hobbes, 1997:125

²³ Pitkin, 1993, cap. III: 455

²⁴ Hobbes, 1997:126

Certainly, in what pertains to representation, the Hobbesian problem limits itself to the act of providing the legitimacy of agreements signed by the representatives of the actors. However, contemporary democratic theory does not need to stop where Hobbes stopped. Rather, we can use Hobbes' work to give us clues as we develop a theory of civil society participation. Importantly, we see that democratic politics needs both the representative and the free actor, who instead of delegating the representation of one's acts, decides to become responsible for them. Thus, when an actor acts on his/her own account is also acting on behalf of other actors, this does not mean there is no representation but it means that this is both direct participation and representation. This is the issue I will pick up in the rest of this article.

The theory of representation can be approached in two different ways. First, representation takes on a logical-hypothetical side. That is to say, representation by the sovereign is logically deduced from a non-empirical situation. We know there has not been such an original covenant. Its binding nature is logically assumed. There is no political institution capable of instituting the act of representation. The debate surrounding this aspect of representation, therefore, became reduced to the discussion regarding the legitimacy of the social contract in the process of constituting a government. The social contract, in this case, constitutes a merely hypothetical act.

There is a second possibility too often overlooked both by Hobbes commentators and by his critics²⁵. Hobbes uses the social contract theory to propose an unified and monopolistic theory of government. According to Hobbes, the state has the monopoly over the political that excludes only the individual's right to live. For Hobbes the main element of representation is the idea that is assigns to the sovereign the authorization to act as a unified political body. Thus, representation for Hobbes is the act that gives the state its monopoly over the citizens without the need to recur to religion²⁶. Hobbes's aim is to establish the legitimacy and unity of sovereignty. However, he does not preclude the element of participation and he does not have in mind the problem of equality. Both issues are picked up by Rousseau in his critique of representation.

²⁵ See MacPherson, 1962.

²⁶ See Pocock, 1993.

Rousseau's problem is similar and yet different from the Hobbesian problem. The Hobbesian problem, as demonstrated above, is how to explain the state's capacity to act, which Hobbes answered with his theory on political authorization. Rousseau's problem is similar: how can political rule be made legitimate.²⁷ Rousseau's point of departure is different from Hobbes as Rousseau contends that not all states have the legitimacy to act. His point of departure is that man has been free before the emergence of political rule, that political rule is a necessity due to the fact that the primitive state in which all individuals were free could no longer be sustained (Rousseau, 1974:49). For Rousseau, the issue is how to create a form of political rule in which sovereignty is both relinquished to a common association and maintained through the act of being part of a sovereign body. It is in his response to this problem that Rousseau became known as a fierce critic of representation.²⁸

Rousseau answered the problem of the legitimacy of the social order by proposing a notion of the social contract in which the individual engages in three different conditions: as a private individual, as a member of a collective group and as a member of a subset of the population²⁹. It is in this condition that the individual engages with a sovereign creating an institution in which everyone is united in one body. Yet a body of a very specific kind: "... the body politic or the sovereign since it owes its being solely to the sanctity of the contract, can never obligate itself, even toward another, to anything that detracts from the original act..."³⁰ Although this is not everything that Rousseau wrote on sovereignty and representation, it could be said that the criticism of Rousseau are based on these remarks. At its core, it suggests that the social contract is a limited and bounded contract and that no individuals is obliged to anything that was not forecast in the moment of signing the contract.³¹

²⁷ Rousseau, 1997:41

²⁸ However, it is important to pay attention to the fact that Rousseau also drew upon the concept of representation. Richard Frailin in his brilliant book on the issue pointed out many parts of Rousseau's work in which he saw representation in a positive way. For him, Rousseau's objections to representative democracy were essentially pragmatic, which left open a change of heart if we should ever come to perceive representative assemblies as more effective than popular assemblies...there is abundant evidence that this is precisely what happened. Frailin, 1978:11.

²⁹ See Stanford, 2010.

³⁰ Rousseau, 1997:52

³¹ This is one of the elements that distinguished the "Social Contract" in Rousseau and Hobbes. For Hobbes there is just one conditions included in joining the social contract, the life guarantees provided by the sovereign. For Rousseau all the pre-existing conditions before joining the social contract should be preserved after it. See Hampton, 1988.

Rousseau provides two criticisms of representation. The first one is his very well-known remark about the impossibility of alienation of sovereignty. For Rousseau “...sovereignty since it is nothing but the exercise of the general will can never be alienated and that the sovereign that is nothing but a collective being can only be represented by itself. Power can well be transferred but not will...” (Rousseau, 1997:57). Rousseau’s critique of representation is solid ground, although many many authors have overstated the importance of this comment in Rousseau’s work.³² My proposal, then, is to proceed more cautiously; I argue that he is only talking about the general will and not transfers of power that most of the time are involved in the formation of representation.

There is a second statement by Rousseau, about the British electoral system, that has also generated a great deal of debate about the limits of representation. Rousseau points out that elections do not legitimately generate the transference of sovereignty from the people to elected representatives. “The English people thinks it is free. It is greatly mistaken, it is free only during the election of members of parliament; as soon as they are elected they are elected, it is enslaved, it is nothing.”³³ Rousseau’s remarks can be understood as a sharp critique of representation due to the way it employs the analogy with slavery.

Nadia Urbinati launched a series of criticisms on Rousseau’s view on representation by pointing out two aspects of his theory that seem incompatible with a public view of politics, namely the contractual conception of sovereignty and the private model of politics. Urbinati is on a firm ground when she points out that for Rousseau the model of the sovereignty of the general will is a private model based on contract theory.³⁴ Individuals either have sovereignty or not and if they transfer they become slaves, as Rousseau remarks above make clear. This is the core of the private contractual model. According to her, “...reasoning from the perspective of the private paradigm of

³² Richard Frailin called attention many years ago to the fact by pointing out particularly in Rousseau’s writing of the Genevan model that “...a society with healthy political institutions like the cercles (circles) and public festivals could create whatever political institutions it needed.. Joshua Cohen in his excellent book on Rousseau makes the same remark. See Cohen,2010.; (Urbinati,2006; Urbinati and Warren, 2010)

³⁴ Urbinati, 2003; 2006:21

representation, Rousseau correctly asserted that political freedom renders the view of the citizen/state relation as a contract of alienation or transmission illegitimate.”³⁵

However, Urbinati does not distinguish enough between Rousseau view of slavery and his view on the contract tradition. According to Cohen (2010), Rousseau’s social contract has a strong moral condemnation of slavery. Therefore, his view on the private nature of representation cannot be conflated with his view on the contract. Urbinati seems to miss this distinction in her critique of Rousseau, which leads her to downplay the element of participation as a consequence of her critique of Rousseau’s approach to alienation.

Nadia Urbinati’s critique of Rousseau can be summarized by placing the two critical remarks together. She rightly observes that Rousseau used the concept of alienations as the main reason why sovereignty cannot be transferred. However, she misses two important dimensions of Rousseau’s work: She misses the fact that the use of the word alienation and slavery come from different parts of the work, and that the critique of representation only emerges at the end of part three of the Social Contract whereas the critique of sovereignty emerges in the beginning of book two.³⁶ Thus, one is a more principled remark and the second is a specific remark about a system of government than has to be made compatible with other less critical remarks on representation.³⁷ Thus, Urbinati throws out the baby with the bath water, when she discards Rousseau notion of general will. The consequence is that she ignores Rousseau’s remarks on political equality.

The second main problem with Urbinati’s model is that she reconstructs representation from within a theory of political judgement.³⁸ According to Urbinati, political judgement provides for the temporal expansion of representation. This, and not deliberation, is what provides the ground for the reconstruction of the concept.³⁹ Urbinati attempts to integrate elections inside a wider concept of political judgment, which would involve other temporalities and even the possibility of revoking the granted authorization. Despite her brilliant criticism regarding the limits of the concept of electoral representation, Nadia Urbinati’s contribution to the discussion falls short

³⁵ Urbinati, 2006:130

³⁶ Rousseau, 1997:114; Cohen, 2010.

³⁷ See Frailin, 1978.

³⁸ See Urbinati, 2006; Urbinati and Warren, 2008: 398.

³⁹ See Urbinati,2006.

due to one problem: she is not capable of pluralizing the sources that generate political judgment in a way that integrates the forms of participation to the concept she is proposing. Based on Condorcet, she will propose two forms of expanding representation: temporal expansion, through the *referendum* to revoke a mandate and the possibility of revising laws.⁴⁰ Both proposals are important and already constitute part of institutions in the Anglo-Saxon world, but neither of these proposals seem to be even close as an answer to the challenges posed to representative democracy today.⁴¹ Most of all the whole model of reconstruction of representation is falls prey to a hierarchy among representatives and non-representatives that precludes what Rousseau and Cohen call a “community of equals.”

I think that a more balanced criticism of Rousseau’s work is needed to advance a useful view of representation. This view could start with Urbinati’s criticism of the contractual model, because it is possible to relinquish sovereignty without becoming a slave; The way to do this is to continue to participate in politics. This is the equality core highlighted by Cohen in Rousseau’s work: everyone is equal in his or her capacity to participate. To be sure, Urbinati and Warren seek to retrieve the equality dimension of politics when they agree that a deliberative core of democracy: “collective decisions affecting self-determination should include those affected.” (Urbinati and Warren, 2008:395). However, for Urbinati and Warren inclusion is a generic category that fulfils the norm of democratic autonomy through the abstract integration of all interest. There is no political design for participation in this remark.

Thus, we can see that a more detailed analysis of Hobbes and Rousseau’s work points toward the need of going beyond the reconstruction of representation through political judgement as a two-way relationship among representatives and represented.⁴² In my view, Urbinati and Warren’s conception removes the political action dimension of politics, thus reducing democracy to political judgment. In addition, they miss the political equality dimension that Rousseau added to democratic theory through his focus on participation. In the next session of this paper, I will discuss the contemporary issues challenging contemporary democracies and will show how new innovations in democratic theory require the re-evaluation of political participation.

⁴⁰ *idem*:205-206

⁴¹ See Alonso et al, 2011

⁴² See Urbinati and Warren, 2008: 406.

The crisis of political representation and the reconstruction of legitimacy

The crisis of representation is now a well-known phenomenon. In advanced and consolidated democracy electoral turn-out has been decreasing both in United States and most European countries.⁴³ This implies that they are consolidated democracies facing similar problems as the non-consolidated democracies. The identification with political parties that used to be part of the legitimacy of majority government is decreasing and political parties almost ceased to exist in a “consolidated” democracy such as Italy.⁴⁴ Well-established democracies such as the United States have had electoral crisis and legal disputes on election results, a fact that has not been part of the practices of representative government.⁴⁵ Finally, there is an increase of the power of the so called “impartial authorities.” In all major democracies a high number of decisions are taken by non-elected officials such as judges and public prosecutors.⁴⁶ All these aspects together point in the direction of a decline of representative government understood as the capacity to govern sanctioned by majority elections.

Both deliberative democracy (DD) and reconstructing representation (RR) debates have tackled the issue of the declining legitimacy of representative government. Deliberative democracy tackles this problem by arguing that the declining quality of the political process is due to current tools used to aggregate citizens’ opinions. For DD, electoral aggregation poses a significant problem for democracy because it privileges aggregation over the quality of the political debate.⁴⁷ The issue of how to improve the quality of aggregation becomes the centre of DD concerns. As Smith and Wales argue, “...decision-making procedures should not only be concerned with aggregating preferences, but also the nature of processes through which they are formed. All institutions shape how judgments are made... Deliberative democracy offers the possibility of a different form of that division; one in which increased opportunities for citizen participation are taken to be both feasible and desirable.”⁴⁸ This process of extending politics beyond the aggregation of majorities suggests many new strategies of

⁴³ See Schmitter and Trechsel, 2004.

⁴⁴ See Morlino, 2001.

⁴⁵ See Alonso et al, 2010.

⁴⁶ See Ronsavallon, 2009.

⁴⁷ See Cohen, 1997; Knight and Johnson, 1994.

⁴⁸ Smith and Wales, 2000: 52.

inclusion. Some authors would argue for attempt to tie "...action to discussion."⁴⁹ Other authors propose a public debate on value differences⁵⁰. And other authors propose "...active participation... over concrete policy problems."⁵¹ Thus, the critique of aggregation by DD implies moving beyond the process of electoral aggregation in the area of policy-making and democratic governance.

The process of going beyond electoral aggregation proposed by DD implies in the search for new institutional designs for the political system. The reason why new institutional designs are important is that DD assumes that a democratic association has among its many roles to search to the institutional format(s) that overlap the most with the values, interests and preference of informed citizens.

RR also has a diagnosis and an answer to the crisis of representation. In the first place, RR conception of representation is much more positive than the diagnosis provided by DD. Where DD sees aggregation as the foundational problem of political will formation, the RR debate positions representation as a positive part of the process of formation of identities and connection between state and society: "representation is supposed to reflect/interpret/idealize the nascent political identity of social claims in a society that should afford its citizens an equal right to advocate for their interest and acquire discursive visibility. In sum, the challenge of political representation in a democracy is to nourish the relationship between social conflict and the unifying process of politics so as to ensure that neither succumbs to the pressure of the other."⁵² Thus, Urbinati's point of departure is that there is nothing wrong with political or electoral aggregation, or as she puts it "the unifying process of politics". The unification of political views through a selective process is a normal role of politics. The way the author qualifies political representation is by taking a Habermasian stand according to which representation is a desirable process of aggregation but it has imperfections that stems from the fact that it is an imperfect process. "Representation is problematic... because it can never be corroborated by and rendered in terms of the representative actually knowing about what people want and because people's expectations and their representatives' achievements will never correspond exactly."⁵³ In this sense, the

⁴⁹ Fung and Wright, 2003: 5.

⁵⁰ See Gutmann and Thompson, 2004.

⁵¹ Hajer and Wagenaar, 2003:24

⁵² Urbinati, 2006: 35.

⁵³ Urbinati, 2006: 39.

problem with representation is less political than a cognitive problem with a temporal dimension.

Thus, we can see the difference between DD and RR on contemporary political issues. DD seeks to go beyond the current forms of electoral aggregation because it understands the limits of these forms in contemporary politics. These limits are directly related to the crisis of legitimacy of contemporary political systems. Many new institutions have emerged in the last 10-15 years that, to a certain degree, incorporate the promise of more inclusive politics, among them I would like to single out three: participatory budgeting, policy councils and national conferences.⁵⁴ These are attempts made by the new democracies to move beyond electoral aggregation by incorporating civil society actors in the process of decision-making on public policies. Since the design of these institutions is different.⁵⁵ I will briefly describe their deliberative and participatory elements:

Participatory Budgeting, the most well known of these institutions went beyond electoral aggregation by establishing a system of open entrance regional assemblies in the city of Porto Alegre.⁵⁶ The implementation of these assemblies assumed that in spite of an electoral process for picking up the city mayor, this process was not enough to guarantee decision-making on the distribution of public goods in the city neighborhoods. Regional assemblies were introduced to establish a process of deliberation and negotiation on these goods. Participatory budgeting innovated by going beyond representation and tying directly representation and participation. After years of broad participation, the Workers' Party, which introduced participatory budgeting in Porto Alegre, had its city council representation increased precisely because it sponsored broader forms of participation. Thus, the reconstruction of participation takes place through participatory budgeting through the increase in size and scope of participation and its later connection with representation.

Policy councils are a second institution that should be taken into account for its deliberative elements. Policy-making goes beyond the government and involves a

⁵⁴ See Sintomer, 2010

⁵⁵ See Avritzer, 2012

⁵⁶ See Abers, 2000; Baiocchi, 2005; Wampler, 2007; Avritzer, 2009.

hybrid institution in which state and civil society actors debate and share decision-making on these policies.⁵⁷ Particularly in the area of health, decision-making in Brazil has assumed this deliberative format through which deliberation is taken through negotiations between state and civil society actors. In Brazil today, there are more than 10,000 of these councils and more than 100,000 councilors making this format as important as representative at the local level.⁵⁸ Again, what is important to have in mind in this design is that the increase in the legitimacy of public policy at the local level is tied to the increase in deliberation and control by civil society actors. Thus, in order to increase the legitimacy of representative institutions participation is required.

A third participatory design used in today in Brazil are national conferences; there was a significant expansion of the, during President Lula's two terms in office (2003-2010). Among the 115 national conferences that have taken place in Brazil since 1941, 74 took place during Lula's administrations. Lula's government standardized national conferences: they were established by an administrative act (*portaria*). They all involved debates at the three levels of government: city, state and national. All conferences includes deliberations and recommendations to the government. All conferences decisions became law decrees signed by the president. Conferences decisions also became law projects or legal initiatives by the federal government in many cases.⁵⁹ Again, we can see that a well designed participatory experiment increases the legitimacy of representation by generating new patterns of relation between the law-making body and the citizenry. In the case of the national conferences, its decision bring to the National Congress a new drive for legislation that makes it more legitimate for civil society actors..

It is important to point out is that these experiments fit perfectly with DD framework on the crisis of representation. All the three experiments presented above associate a critique of electoral aggregation with a conception of deliberation. In all cases, a new institutional design that involves participation has been introduced. Participation may vary in its scope and intensity. It is more intense in participatory budgeting and more qualitative in the policy councils. However, what is important to point out is that in all three cases participation is introduced to offset the crisis of legitimacy of representation.

⁵⁷ See Avritzer, 2009.

⁵⁸ See Coelho Pereira, 2004; Cornwall, 2008.

⁵⁹ See Progrebinschi, 2010

Thus, it is very clear how DD responds to the crisis of representation. It responds by searching for new institutions that aggregate opinion in a different way than elections. Lots of open participation in non-electoral venues for deliberation help to improve the quality of politics. In this way, DD bets on the emergence of new forms of politics and their intertwining with representation in order to go beyond the current limits of electoral aggregation.

Reconstructing Representation seeks to reconstruct representation from a perspective in which electoral aggregation does not seem to be a limit of contemporary political systems. For RR, the problem with representation is a topical problem linked to the very nature of representation, namely, the fact that those represented change their views of politics. In this regard, no new institutional design going beyond electoral aggregation is needed. According to this view, what is needed is a better coordination between represented and representatives that can be made through the proliferation of forms of self-authorized representation. In this sense, RR sticks with the hierarchical dimension of representation that has characterized most of the recent literature⁶⁰. In contrast to this view, I will argue in the concluding section of this paper that an approach capable of retrieving the “community of equals” aspect of politics is desirable and can be introduced through more participatory designs.

Concluding Thoughts: Hobbes, Rousseau and the contemporary crisis of representation

The debate between Thomas Hobbes and Jean Jacques Rousseau on political authorization versus the establishment of a community of equal is still relevant when we think about the debate between deliberative democracy (DD) and reconstructing representation (RR). Thomas Hobbes inaugurated the concept of representation in modern political theory by establishing a dichotomy between represented and representatives and posing authorization as the way of overcoming the dichotomy. Contemporary political theory understands that representation is part of the current crisis of legitimacy that has plagued contemporary democracies.⁶¹ On the other hand, Jean Jacques Rousseau reified the dichotomy between represented and representatives

⁶⁰ See Manin, 1997

⁶¹ See Rosanvallon, 2009.

making the alienation of sovereignty an act equivalent to slavery.⁶² However, as I argue, we can go beyond Rousseau by criticizing the private model of relinquishing sovereignty present in his work but maintaining the focus on equality, which points toward the broadening of the exercise of politics. This is not merely a theoretical debate but in my view it has a great relevance to contemporary debates on the legitimacy of democracy.

Deliberative democracy and reconstructing representation are two ways to deal with legitimacy issues in both well-established and new democracies. In fact, much of the debate between DD and RR is also a debate on new venues within contemporary democracy. RR assumes that there is a legitimacy problems within contemporary democracies but it has to be solved within the framework of the practices established in the United States and Europe in the last two hundred years. That is one of the reasons why RR rules out any improvement of democracy based on the broadening of participation. It still bases its analysis on old well established democracies.

Deliberative democracy, on the other hand, draws from both well-established and new democracies to seek ways to overcome the current crisis of legitimacy of democracies. DD recognizes the role of civil society in contemporary democracies. Civil society associations, according to DD, also engage in representation of themes and demands in participatory institutions. This is a new way of understanding politics both in developing countries such as Brazil and India as well as in the United States, though in a more limited way.⁶³ Thus, this new form of representation it is partially based on “self-representation” (per Warren) but it recognizes that there are different ways to authorize representation.

In my view civil society representation can be justified through an idea of non-electoral authorization. Across multiple arenas of public policies, organizations created by actors in civil society take on the role as the representatives in councils or in other organisms responsible for public policies. This situation is very specific: on the one hand, there are elections for these representatives as is the case of Brazil’s policy councils. The electorate that authorizes representation is composed by practitioners in the area of public policy. This group can include, or not, relevant associations working

⁶² See Rousseau, 1997.

⁶³ See Avritzer, 2008

in the policy arenas. In addition, there may be individuals and groups not organized in associations, which could limit their influence on deliberations. This case does not have the characteristics of the mathematical equality of sovereignty, so important to the idea of electoral representation, and does not have the monopolist territorial element, given that it shares its capacity for decision-making with other institutions present in the territory. What is important in relation to this kind of representation is that it has its origin in a choice among actors of civil society, frequently decided upon in civil associations. These associations carry out the role of creating intermediate affinities or identities. In other words, they aggregate solidarities and partial interests in a different way. By aggregating these interests, they allow for a form of representation by affinity, which is different from the electoral representation of individuals and yet, involves authorization. These groups established together with state administrators a deliberative forum on public policy issues. Thus, what is important about non-electoral representation is not only that it broadens democracy but also that it creates a new relationship among new and old democracies.

It is possible to see the problems with the current approach of RR to democracy. By abandoning the community of equals component of democratic theory and by criticizing the openness of deliberative democracy towards participation, RR remains bound by an old model of democracy. In contrast to that, I have shown that the DD solution to the problem of representation helps to broaden the scope of representation to include participation. This new design for democracy broadly used in the developing world seems more promising because it can accept the critique to the sovereignty side of participation without relinquishing its equality dimension. Only through the enhancement of political equality through both participation and representation contemporary democracies will be able to overcome their legitimacy crisis. However, in order to overcome this crisis it is essential to integrate new models of democracy emerging in the developing world.

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