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How Should We Deliberate? Between the Argumentative and the Representative Dimensions of Democratic Deliberation*

Abstract: My paper focuses on an important subject of the contemporary theory of democracy: what is the relationship between the argumentative and the representative dimensions of deliberative democracy? Using James Fishkin's account of deliberative democracy and its relations with other democratic models I will argue that there is a severe conflict between these two dimensions: the attempt to enhance the value of argumentation presupposes a decrease in the representative value and the attempt to enhance the representative value results in a decrease in the argumentative value. This conflict is generated by what I call 'the paradox of democratic deliberation': the legitimacy of political decisions demands for the 'raw' opinion of the citizens, while the epistemic rightness of political decisions demands for a 'filtered' public opinion. But we cannot have both. In the final part of this paper I will sustain a moderate conception regarding the role of deliberation in democracy which offers us a way around this paradox but only at the price of significantly reducing the importance of deliberation.

Keywords: deliberative democracy, argumentation, representation, paradox of democratic deliberation

Democracy is often characterized, as the government *of* the people, *by* the people and *for* the people. In order to realize this ideal the democratic form of government is said to give voice to every citizen in the process of establishing the political decisions. Moreover, according to the same ideal, citizens should have access to relevant information and should possess relevant knowledge concerning the social, political and economical system of their society in order to be able to establish the right political decisions. In the last two decades we are witnessing a reorientation in the theory of democracy from the traditional models of direct and representative democracy to a new model of deliberative democracy. The main reason for this 'deliberative turn' is considered to be precisely the fact that it better approximates the aforementioned ideal.

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Deliberative democracy is often conceived as a model that can provide both political legitimacy and epistemic rightness for the public policies. For its defenders it guarantees both the inclusion of common citizens in the process of policy making and the deliberation: it allows every citizen the chance to present his opinion on the matter, to argue for or against a public policy and it promotes the solution which is supported by the best available arguments.

However, these virtues of deliberative democracy depend on whether its argumentative and representative dimensions can be successfully combined. The main thesis that I will defend in this paper is that such an attempt will always be unsuccessful, if deliberative democracy is understood as an authentic alternative to the traditional models of democracy, because of a 'paradox' that this kind of deliberative democracy model has to confront. But, before turning to this matter we have to analyse the relation between deliberative democracy and other democratic models. So, in the following two sections of this article I will present James Fishkin's account of this issue, which is the most systematic approach of this subject that I know of.

1. Four values of democracy

In the recent book, *When the People Speak: Deliberative Democracy and Public Consultation,* Fishkin presents the different models of democracy as different theories regarding the relation between what he believes to be the fundamental values of democracy. He starts by pointing out that democracy presupposes a commitment to fulfil two fundamental values: inclusion and deliberation. Inclusion is realized when three other values are fulfilled: political equality, mass participation and non-tyranny. He defines "deliberation" as the process by which individuals sincerely weigh the merits of competing arguments in their discussions. Therefore, the quality of deliberations is influenced by five conditions:

Information: The extent to which participants have access to accurate information relevant to the issue;

Substantive balance: The extent to which arguments offered by one side are answered by arguments provided by the other side;

Diversity: The extent to which the most important positions in the public are represented;

Conscientiousness: The extent to which participants sincerely weigh the merits of the arguments;

Equal consideration: The extent to which arguments provided by all the parties are considered on their merits regardless of who are the participants that offered them (Fishkin 2009, 33-34).

Political equality is understood as a value that combines equal voting power with an effective political competition that excludes predictable political coalitions which will create permanent minorities.

By *political participation* he means "behaviour on the part of members of the mass public directed at influencing, directly or indirectly, the formulation, adoption, or implementation of governmental or policy choices" (Fishkin 2009, 44-45).

Finally, by *non-tyranny*, he understands the avoidance of tyranny: of the situation in which a winning coalition imposes avoidable severe deprivations on a losing one (Fishkin 2009, 64).

2. Four theories of democracy

In Fishkin's opinion, we can differentiate between four democratic theories in relation with their commitment to these four values. Each theory makes an explicit commitment to two of these values and is agnostic in relation to the other two. In the following table the explicit commitment is indicated by "+" and the agnosticism is indicated by "?":

	Competitive democracy	**Elite deliberation**	**Participatory democracy**	**Deliberative democracy**
Political equality	+	**?**	+	+
Participation	**?**	**?**	+	**?**
Deliberation	**?**	+	**?**	+
Non-tyranny	+	+	**?**	**?**

Hence, in his view, competitive democracy (represented by authors like Joseph Schumpeter and Richard Posner) is committed to political equality in the context of competitive elections and to non-tyranny, but it is agnostic in relation with deliberation and mass participation. Elite deliberation (represented by the conceptions of the founders of American democracy) is committed to deliberation between the representatives of the citizens, which filter the opinion of the people, and to avoiding the tyranny of majority, but ignores mass participation and political equality. Participatory democracy (represented by referenda and other plebiscitary forms of democracy) combines mass participation with a preoccupation for political equality, but offers no significant role to deliberation and non-tyranny. Deliberative democracy is the attempt to combine political equality with deliberation by the people themselves, but is agnostic in relation with mass participation and non-tyranny (Fishkin 2009, 80).

In Fishkin's opinion these are ideal-type forms of democracy or different ideals of democracy that do not converge to a single democratic ideal. They are "ideals without an ideal" as he calls them in the final part of his book (Fishkin 2009, 191). So, no form of democracy could fulfil all the four values we mentioned above. Nevertheless, he argues that some deliberative procedures could approximate the ideals of inclusion and deliberation to a better level. But before I present his solutions for improving deliberative democracy, I will

mention some of the problems of realizing the combination between political equality and deliberation that this form of democracy presupposes.

3. The challenge of combining deliberation and political equality

First, as I already pointed out, many defenders of deliberative democracy (including Fishkin) view deliberation as a normative ideal. In order to obtain something that will deserve the name of "deliberation" we should guarantee the fulfilment of the five conditions mentioned above to a reasonable degree: information, substantive balance, diversity, conscientiousness, and equal consideration. But, these conditions are hard to meet in the context of a deliberation that will include virtually all the citizens. In such a case we will not have an authentic deliberation, but a public communication. Face-to-face argumentation will be possible only in small groups of few hundred citizens or even smaller. So, an authentic deliberation would have to take the form of a *microcosmic deliberation* in which the participants will represent their entire community. Therefore, the need for a genuine process of argumentation between citizens imposes some serious constrains on participation: we have to accept representation instead of direct mass participation.

However, and this is the second problem we reveal, if we focus only on a deliberation between the representatives of a community, this will put a serious tension on the other value that deliberative democracy tries to fulfil: political equality. The decisions were established only by the parties involved in the deliberation process. Hence, the other members of community are not committed to respecting that decision since they did not have the opportunity to cast their vote on the issue. As Fishkin himself affirms, the limitation of this process is that it is a representation and "the entire people do not all deliberate" (Fishkin 2009, 83). Therefore, the decision would not be really legitimate.

4. Fishkin's solutions: social science and national deliberation

Fishkin acknowledges this problem and he offers two possible answers. The first solution is to use social science to assure (by random sampling or by another method) that the selected group of citizens is really representative for the entire community and that the deliberation procedure has both internal and external validity: "social science must form the basis for defending the inference that a given design is producing its conclusions through the normatively appropriate deliberative processes (questions of internal validity) and that it is in principle generalizable to the larger population (questions of external validity)" (Fishkin 2009, 98). He adds that generalizability is an inference about what the public would think "in comparable good conditions".

The second solution he mentions is to develop the scenario of Deliberative Day: a national deliberative event in which the value of mass participation will also be fulfilled. Deliberative Day is conceived as a new

national holiday, which will be held ten days before major national elections. This national deliberative design would presuppose the simultaneous applying of deliberative polls in local deliberative forums that should be organized all over the country. Citizens will be called for two days in small groups of 15 and large groups of 500 to discuss the central issues of the campaign. The national character of the deliberation would be achieved through media coverage. In his opinion, the main outcome of this event will be that the members of the political sphere will change to adapt to a more informed public, and that the people would vote with a better chance of knowing what they wanted and which candidates were more likely to pursue the popular mandate (Fishkin and Ackerman 2005, 6).

5. The conflict between the argumentative and the representative dimensions of deliberative democracy

I will argue that none of the two answers is an authentic solution to the problem of the conflict between the argumentative and the representative dimensions of deliberative democracy. In my opinion, Fishkin underestimates the severity of this problem. In this section I will present some objections which reveal that his solutions are insufficient for solving the conflict between the two dimensions.

The difference between sociological and political representation

First, I don't think that social science would be of any help in solving the conflict because the problem is not if the parties in the deliberative process are really the *sociological* representatives of all the members of the community, but if they are the *political* representatives of the community. And, in the absence of any explicit representative mandate we could say that the parties do not represent the entire community from a political point of view.

Fishkin could reply that we could consider the parties in the deliberative procedure as the political representatives of the community because all the citizens would agree with that decision "in comparable good conditions". Nevertheless, I believe that there is a significant difference between this "hypothetical consent" and the authentic manifestation of will which is associated with a real consent for a political decision. In my opinion, the political consent understood as an expression of the will of a sovereign people could never be "hypothetical" or presumed.

In order to better understand this feature of the political consent, let us imagine a society in which only the experts govern, "epistocracy", a term coined by Cristina Lafont (Lafont 2006, 9). The fundamental principle of this society would be that if the experts established the right solution, then we must presume that all the other people should accept it. And, since their consent should always follow the decision of the experts, it will be futile to organize some sort of voting procedure with the aim of confirming this predictable result. So, it seems

reasonable to think that in such a regime the experts could govern without any form of public consultation. However, we feel that it is something wrong with this scenario. Even if the citizens' consent is considered to be epistemically insignificant, it has a special political significance: it represents the effective manifestation of will of the sovereign people, and a democratic regime could not exist without it. This is the reason why "epistocracy" could not be considered a democratic regime.

The impossibility of a deliberative mandate and of deliberative responsibility

A possible answer to this problem might be to sustain some form of explicit political mandate that will be held by the parties in the deliberative procedure. Let us imagine that they were elected by the community in order to represent it in the deliberative forum.

In my opinion this answer is not satisfactory because of the *special nature* of this *deliberative mandate*. First, in order to be an authentic "deliberative mandate" it would have to be open-ended: since the result of any deliberation is not pre-determined, the citizens would have to agree to any result of the deliberation that would be accepted by their representatives, whatever this result might turn out to be. Second, the open-ended character of the mandate makes the *political responsibility impossible*: the deliberative representatives have no determinate responsibility towards the citizens since they did not have a pre-determined and specific mandate.

Who should be represented?

Moreover, even if such a mandate could exist and function, we should ask which opinions, interests and preferences will be represented in the deliberative forum: the opinions, interests and preferences of every individual or of every significant group of individuals. This is a serious problem because there are many differences between the various and very unique individual positions and the stereotypical position of a group which approximates only to a certain degree the specific position held by each of its members. So, if the answer will be that group interests should be represented, then we would have only a few significant positions which will be imposed on individuals. And, if the answer would be that individual interests should be represented, then we would face another problem: the diversity of individual positions will inhibit the emergence of a common position or of a common interest.

A related problem is that some categories of citizens could manage to dominate the deliberative process because of their better education, social status, information, and so on. This problem is mentioned by Iris Marion Young in the paper *Communication and the Other: Beyond Deliberative Democracy*. In Young's opinion, the significant role that rational argumentation plays in

deliberative democracy has some exclusionary implications: the norms of deliberation privilege the better educated white middle class people, and privilege speech that is formal and general, dispassionate and disembodied. And these norms will exclude those that cannot fulfil them to the required degree (Young 2006, 122-124).

The difference between deliberation and national public communication

The second solution that Fishkin presents is confronted with another serious difficulty. As we already pointed out, when we attempt to bring deliberative democracy to scale, it loses all its argumentative virtues. From an authentic deliberative procedure it transforms itself into a public communication procedure. People will not have the possibility to hear and be heard by every other participant, to present their arguments and objections on the subject, to cast a vote with a relevant and significant weight in favour or against a decision, and so on. This problem is also mentioned by John Parkinson in the book *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy:* "deliberative decisions appear to be illegitimate for those left outside the forum, while bringing more than a few people in would seem to turn the event into speech-making, not deliberation" (Parkinson 2006, 5).

Even if the national deliberation will be conceived as a collection of many local deliberations with a local, regional and national audience (as Fishkin often suggest that Deliberative Day should be), we have to take notice of the fact that as soon as we raise from the local to the national level, every significant vote or decision will be included in the national melting-pot of public opinion. It will become nothing more than statistical irrelevant information. The only important data will be the national dominant tendencies which will represent all the citizens as a whole, and no one in particular.

The problem of an authentic expertise

Another problem will be that the very complex and often very technical issues of a major contemporary society call for a specific expertise from those who establish the public policies. And, in many fields, this requires many years of learning and experience. However, in the deliberative procedures (national or microcosmic), the decisions must be taken by ordinary citizens, which, in my opinion, will usually lack this kind and expertise and could never acquire it in a reasonable amount of time available in the course of a deliberative event. So it is very unlikely that their decisions will be the best available solutions to the public issues they try to solve.

This problem will be even more significant if we consider what Guido Pincione and Fernardo Teson call the "rational ignorance" of ordinary citizens in the complex political problems of the society they live in. They argue not only that common people lack the necessary resources to understand complex

political problems, but also that they usually choose to *remain ignorant* in these matters. This choice is motivated by the perceived inequity between the high costs implied in acquiring reliable social science and the minor impact one vote can have on the outcome of an election (Pincione and Teson 2006, 15-17).

The problem of the standards of argumentation

In my opinion, these are not the most important problems which democratic deliberation has to face. A more significant objection is that the argumentation process, on which every deliberation is founded, presupposes some standards of public reasoning. And, no argumentation process could succeed without a previous agreement regarding the set of standards that will govern argumentation itself. However, if we could believe that such an agreement will be possible on the subject of the formal (logical) and factual standards of argumentation, when it comes to moral, religious, and political standards an agreement seems rather impossible.

But, if this is true, then we would have to ask if the deliberation process could have any significant outcome. I think that in those political issues where there is a substantial moral, religious or political disagreement between the participants there could not be any significant argumentative gain: at most, citizens will reach the agreement that they disagree.

6. An explanation of the conflict: the paradox of democratic deliberation

Hence, if we consider all the problems of democratic deliberation that we mentioned so far, I believe we are entitled to ensue that the conflict between the argumentative and the representative dimension of deliberative democracy is much more severe then Fishkin seems to acknowledge. In order to better understand this conflict, I believe that we should take notice of the fact that the argumentative and the representative aspects of deliberative democracy are two different and independent dimensions, and that we cannot reduce one of them to the other. These dimensions have two different objectives: the argumentative dimension aims at establishing the right decision from an epistemic point of view, and the political dimension of representation aims at establishing the legitimate decision which will be supported by the consent of all the citizens[1].

As I already argued, when I analysed the "epistocracy" scenario, the political aspect of democracy should not be reduced to the epistemic aspect of deliberation without losing something very valuable from a democratic point of view in this process: the political authority (sovereignty) of ordinary citizens.

[1] For a more detailed analysis of this problem see Viorel Țuțui. 2011. "The Epistemic Standards of Public Reason". *Argumentum – Journal of the Seminar of Discursive Logic, Argumentation Theory and Rhetoric* 9 (1): 169-183

We could imagine another scenario in which the argumentative dimension would be reduced to the political one: a society in which every argumentation process would consist only in a public vote on the issue. The principle of this "argumentative" procedure would be something like the classical *ad populum* fallacy: something would be considered to be epistemically right if it was accepted by the mass population. Even if the citizens' consent is considered to be politically significant, it is insignificant from an epistemic point of view. This is the reason why this scenario could not be considered to describe a deliberative form of government. Therefore we could conclude that the two dimensions of deliberative democracy should remain independent from one another.

Nevertheless, this conclusion reveals only a part of the complexity of the relation between the two dimensions of deliberative democracy. It only shows that we cannot reduce one dimension to the other. But, as the arguments we mentioned so far demonstrate, the two dimensions can and often do come into conflict. The attempt to better fulfil the value of an authentic deliberation could be carried out only at the price of losing the representative character of democratic deliberation. And this would mean that we will have to abandon the attempt to fulfil the other important value of deliberative democracy: political equality.

All the problems we talked about so far expose many different aspects of this conflict, but they do not explain the source of the conflict itself. In my opinion, the primary cause of this conflict is represented by the impossibility to create a democratic design that could provide both epistemic correctness and democratic legitimacy for the political decisions. We should take notice of the fact that many defenders of deliberative democracy (Fishkin included) fail to recognize the fact that this is an impossible task. There is what I would call "a paradox of democratic deliberation". In order to establish the *epistemically right* decision by the means of this procedure we cannot rely on the "raw" opinion that the common citizens have on that matter. As Fishkin himself acknowledges, we would need a "filtered" or "refined" public opinion that could be obtained only in an authentic argumentative process. But, in order to establish the *politically legitimate* decision we would have to rely precisely on the "unfiltered" or "raw" political opinion of all the citizens. So, the design of the democratic deliberation procedure should rely on a public opinion that must be "filtered" and "unfiltered" in the same time. I believe that this reveals the internal inconsistency of this kind of account of deliberative democracy.

7. How and when should we deliberate?

The conclusion of the last section concerning the relation between argumentation and representation in democracy seems to be too radical if we consider the various deliberative designs which are already implemented in different countries around the globe with some significant results. The character of the political life in these communities is significantly influenced, especially at

the local level, by deliberative procedures like deliberative polls, citizen juries, consensus conferences, planning cells, and so on. How do we explain this influence if we consider the conflict between the two dimensions of deliberative democracy?

In my opinion the conflict is manifesting with all its force only when we try to maximize the value of argumentation and the value of representation at the same time and by the means of the same deliberative procedure. As I argued in the previous sections, the conflict appears when we try to combine the two dimensions in the same design, and it is caused by the fact that these dimensions are independent from one another. There is a paradox of deliberative democracy because argumentation demands a "filtered" public opinion and representation demands "raw" public opinion and no procedure can provide both in the same time.

Nevertheless, I believe that the paradox will not appear if, instead of trying to combine the two dimensions, we will carefully distinguish them. As I argued in the paper *The Epistemic Standards of Public Reason*, if we acknowledge the difference between the epistemic and the political dimensions of deliberative democracy, then we will understand that each one of these dimensions has its own objective: *epistemic rightness* and *legitimacy*. And the task of fulfilling these two objectives at the same time and by way of the same procedure is a very difficult one. However, it is much easier to fulfil these objectives by the means of two different procedures: an aggregative procedure of voting or bargaining in order to reach the legitimate political decision, and a deliberative procedure in order to reach the right decision (Țuțui 2011, 172-182).

A consequence of this view is that the value of deliberation for democracy will not be conceived as intrinsic, but only as *instrumental*: even in the absence of deliberative procedures democracy could still exist. Hence, deliberation events should be organized only when the costs of organizing such an event do not exceed the benefits.

If we take these arguments into consideration, then we could appreciate the role that deliberation can play in a democratic society by improving the level of information, of political participation, of political inclusion, of political expertise, of open-mindedness and so on. So every kind of deliberation forum that could have such a positive effect will be welcomed: governmental or civic deliberation, national, local or international deliberation, and so on. Moreover, not only rational argumentation, but also rhetorical and other persuasive type of discussions could contribute to this process as well. As long as the political autonomy and sovereignty of the citizens depends only on the possibility to cast their vote in an aggregative voting procedure, these deliberation and public communication designs will not have an exclusionary effect.

So, we could conclude that we have a way around the paradox of democratic deliberation if we distinguish the argumentative and the representative dimensions of deliberative democracy and we do not try to combine them into one design. Needless to say, this conception will significantly

reduce the role that deliberation could play in the democratic decision-making process. According to this view, the deliberative design is not an authentic alternative to the traditional models of democracy, as many of its defenders construe it. It is not a procedure that could ensure by itself legitimacy to the political decisions. However, if it is not conceived as a substitute of the aggregative procedures, then deliberation can reveal its potential for improving the democratic life of a political community.

References

FISHKIN, James and ACKERMAN, Bruce. 2005. *Deliberation Day*. New Haven and London: Yale University Press.

LAFONT, Cristina. 2006. "Is The Ideal of a Deliberative Democracy Coherent?". In *Deliberative Democracy and its Discontents,* edited by Samantha Besson and Jose Luis Marti. Burlington: Ashgate Publishing Limited.

PARKINSON, John. 2006. *Deliberating in the Real World: Problems of Legitimacy in Deliberative Democracy*. Oxford: Oxford University Press.

PINCIONE, Guido and TESÓN, Fernando. 2006. *Rational Choice and Democratic Deliberation: A Theory of Discourse Failure*. Cambridge: Cambridge University Press.

ȚUȚUI, Viorel. 2011. "The Epistemic Standards of Public Reason". *Argumentum – Journal of the Seminar of Discursive Logic, Argumentation Theory and Rhetoric* 9 (1): 169-183.

YOUNG, Iris Marion. 2006. „Communication and the Other: Beyond Deliberative Democracy". In *Democracy and Difference: Contesting the Boundaries of the Political*, edited by Seyla Benhabib. New Jersey: Princeton University Press.