

THREE NORMATIVE MODELS OF DEMOCRACY

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I would like to sketch a proceduralist view of democracy and deliberative politics which differs in relevant aspects from both the liberal and the republican paradigm. Let me (1) remind you the opposite features of these two established models. I will then (2) introduce a new proceduralist conception by way of a critique of the “ethical overload” of the republican view. The last part of the paper further elaborates (3) the three normative models of democracy by comparing their corresponding images of state and society.

(1) The Two Received Views of Democratic Politics

According to the “liberal” or Lockean view, the democratic process accomplishes the task of programming the government in the interest of society, where the government is represented as an apparatus of public administration, and society as a market-structured network of interactions among private persons. Here politics (in the sense of the citizens’ political will-formation) has the function of bundling together and pushing private interests against a government apparatus specializing in the administrative employment of political power for collective goals. On the “republican” view, however, politics involves more than this mediating function; it is rather constitutive for the processes of society as a whole. “Politics” is conceived as the reflective form of substantial ethical life, namely as the medium in which the members of somehow solitary communities become aware of their dependence on one another and, acting with full deliberation as citizens, further shape and develop existing relations of reciprocal recognition into an association of free and equal consociates under law. With this, the liberal architectonic of government and society undergoes an important change: in addition to the hierarchical regulations of the state and the decentralized regulations of the market, that is, besides administrative power and individual personal interests, *solidarity* and the orientation to the common good appear as a *third source* of social integration. In fact, this horizontal political will-formation aimed at mutual understanding

or communicatively achieved consensus is even supposed to enjoy priority, both in a genetic and a normative sense. An autonomous basis in civil society, a basis independent of public administration and market-mediated private commerce, is assumed as a precondition for the praxis of civic self-determination. This basis preserves political communication from being swallowed up by the government apparatus or assimilated to market structures. In the republican conception, the political public sphere acquires, along with its base in civil society, a strategic significance. These competing approaches yield two contrasting images of the citizen.

According to the liberal view, the citizen's status is primarily determined according to negative rights they have vis-à-vis the state and other citizens. As bearers of these rights they enjoy the protection of the government, as long as they pursue their private interests within the boundaries drawn by legal statutes – and this includes protection against government interventions. Political rights, such as voting rights and free speech, not only have the same structure but also a similar meaning as civil rights that provide a space within which legal subjects are released from external compulsion. They give citizens the opportunity to assert their private interests in such a way that by means of elections, the composition of parliamentary bodies, and the formation of a government, these interests are finally aggregated into a political will that makes an impact on the administration.

According to the republican view, the status of citizens is not determined by the model of negative liberties to which these citizens can lay claim as private persons. Rather, political rights – preeminently rights of political participation and communication – are positive liberties. They guarantee not freedom from external compulsion but the possibility of participation in a common praxis, through the exercise of which citizens can first make themselves into what they want to be – politically autonomous authors of a community of free and equal persons. To this extent, the political process does not just serve to keep government activity under the surveillance of citizens who have already acquired a prior social autonomy in the exercise of their private rights and pre-political liberties. Just as little does it act as a hinge between state and society, for administrative authority is not at all an autochthonous authority; it is not something given. Rather, this authority emerges from the citizens' power produced communicatively in the praxis of self-legislation, and it finds its legitimation in the fact that it protects this praxis by institutionalizing public liberty. So, the state's *raison d'être* does not lie primarily in the protection of equal private rights but in the guarantee of an inclusive opinion- and will-formation in which free and equal citizens reach an understanding on which goals and norms lie in the equal interest of all.

The polemic against the classical concept of the legal person as bearer of private rights reveals a controversy about the concept of law itself. While in

the liberal view the point of a legal order is to make it possible to determine in each case which individuals are entitled to which rights, in the republican view these “subjective” rights owe their existence to an “objective” legal order that both enables and guarantees the integrity of an autonomous life in common based on mutual respect:

For republicans rights ultimately are nothing but determinations of the prevailing political will, while for liberals some rights are always grounded in a ‘higher law’ of (. . .) reason.¹

Finally, the different ways of conceptualizing the role of citizen and of law express a deeper disagreement about the *nature of the political process*. In the liberal view, the political process of opinion- and will-formation in the public sphere and in parliament is determined by the competition of strategically acting collectivities trying to maintain or acquire positions of power. Success is measured by the citizens’ approval, quantified as votes, of persons and programs. In their choices at the polls, voters give expression to their preferences. Their voting decisions have the same structure as the acts of choice made by participants in a market. They license access to the positions of power that political parties fight over in the same success-oriented attitude.

According to the republican view, the political opinion- and will-formation occurring in the public sphere and in parliament obeys not the structures of market processes but the obstinate structures of a public communication oriented to mutual understanding. For politics, in the sense of a praxis of civic self-legislation, the paradigm is not the market but dialogue. This dialogic conception imagines politics as contestation over questions of value and not simply questions of preference.

(2) Proceduralist vs. Communitarian Views of Politics

The republican model as compared to the liberal one has the advantage that it preserves the original meaning of democracy in terms of the institutionalization of a public use of reason jointly exercised by autonomous citizens. This model accounts for those communicative conditions that confer legitimating force on political opinion- and will-formation. These are precisely the conditions under which the political process can be presumed to generate reasonable results. A contest for power, if represented according to the liberal model of market competition, is determined by the rational choice of optimal strategies. Given an indissoluble pluralism of pre-political values and interests that are at best aggregated with equal weight in the political process, politics loses all reference to the normative core of a public use of reason. The republican trust in the force of political discourses

stands in contrast to the liberal skepticism about reason. Such discourses are meant to allow one to discuss value orientations and interpretations of needs and wants, and then to change these in an *insightful way*.

But contemporary republicans tend to give this public communication a communitarian reading. It is precisely this move towards an *ethical constriction of political discourse* that I call into question. Politics may not be assimilated to a hermeneutical process of self-explication of a shared form of life or collective identity. Political questions may not be reduced to the type of ethical questions where we, as members of a community, ask ourselves who we are and who we would like to be. In its communitarian interpretation the republican model is too idealistic even within the limits of a purely normative analysis. On this reading, the democratic process is dependent on the virtues of citizens devoted to the public weal. This expectation of virtue already led Rousseau to split the citizen oriented to the common good from the private man, who cannot be ethically overburdened. The unanimity of the political legislature was supposed to be secured in advance by a substantive ethical consensus. In contrast, a discourse-theoretic interpretation insists on the fact that democratic will-formation does not draw its legitimating force from a previous convergence of settled ethical convictions, but from both the communicative pre-suppositions that allow the better arguments to come into play in various forms of deliberation, and from the procedures that secure fair bargaining processes. Discourse theory breaks with a purely ethical conception of civic autonomy.

According to the communitarian view, there is a necessary connection between the deliberative concept of democracy and the reference to a concrete, substantively integrated ethical community. Otherwise one could not explain, in this view, how the citizens' orientation to the common good would be at all possible. The individual, so the argument goes, can become aware of her co-membership in a collective form of life, and therewith become aware of a prior social bond, only in a practice exercised with others in common. The individual can get a clear sense of commonalities and differences, and hence a sense of who she is and who she would like to be, only in the public exchange with others who owe their identities to the same traditions and similar formation processes. This assimilation of political discourses to the clarification of a collective ethical self-understanding does not sit well with the function of the legislative processes they issue in. Legal statutes no doubt also contain teleological elements, but these involve more than just the hermeneutic explication of shared value orientations. By their very structure laws are determined by the question of which norms citizens want to adopt for regulating their living together. To be sure, discourses aimed at achieving self-understanding – discourses in which the participants want to get a clear understanding of themselves as

members of a specific nation, as members of a locale or a state, as inhabitants of a region, etc.; in which they want to determine which traditions they will continue; in which they strive to determine how they will treat each other, and how they will treat minorities and marginal groups; in short, discourses in which they want to get clear about the kind of society they want to live in – such discourses are also an important part of politics. But these questions are subordinate to moral questions and connected with pragmatic questions. Moral questions in the narrow sense of the Kantian tradition are questions of justice. The question having *priority* in legislative politics concerns how a matter can be regulated in the equal interest of all. The making of norms is primarily a justice issue and is gauged by principles that state what is equally good for all. And unlike ethical questions, questions of justice are not related from the outset to a specific collective and its form of life. The politically enacted law of a concrete legal community must, if it is to be legitimate, at least be compatible with moral tenets that claim universal validity going beyond the legal community.

Moreover, compromises make up the bulk of political processes. Under conditions of religious, or in any way cultural and societal pluralism, politically relevant goals are often selected by interests and value orientations that are by no means constitutive for the identity of the community at large, hence for the whole of an intersubjectively shared form of life. The political interests and values that stand in conflict with each other without prospects of consensus are in need of a balancing that cannot be achieved through ethical discourses – even if the outcomes of bargaining processes are subject to the proviso that they must not violate a culture's agreed-upon basic values. The required balance of competing interests comes about as a compromise between parties that may rely on mutual threats. A legitimate kind of bargaining certainly depends on a prior regulation of fair terms for achieving results, which are acceptable for all parties on the basis of their differing preferences. While debates on such regulations should assume the forms of practical discourse that neutralize power, bargaining itself well allows for strategic interactions. The deliberative mode of legislative practice is not just intended to ensure the ethical validity of laws. Rather, one can understand the complex validity claim of legal norms as the claim, on the one hand, to compromise competing interests in a manner compatible with the common good and, on the other hand, to bring universalistic principles of justice into the horizon of the specific form of life of a particular community.

In contrast to the ethical constriction of political discourse, the concept of deliberative politics acquires empirical reference only when we take account of the multiplicity of communicative forms of rational political will-formation. It is not discourse of an ethical type that could grant on its own the democratic genesis of law. Instead, deliberative politics should be

conceived as a syndrome that depends on a network of fairly regulated bargaining processes and of various forms of argumentation, including pragmatic, ethical and moral discourses, each of which relies on different communicative presuppositions and procedures. In legislative politics the supply of information and the rational choice of strategies are interwoven with the balancing of interests, with the achievement of ethical self-understanding and the articulation of strong preferences, with moral justification and tests of legal coherence. Thus “dialogical” and “instrumental” politics, the two ideal-types which Frank Michelman has opposed in a polarizing fashion, do in fact interpenetrate in the medium of deliberations of various kinds.

(3) Three Images of State and Society

If we start from this proceduralist concept of deliberative politics, this reading of democracy has implications for the concept of society. Both the liberal and the republican model presuppose a view of society as centered in the state – be it the state as guardian of a market-society or the state as the self-conscious institutionalization of an ethical community.

According to the *liberal view*, the democratic process takes place exclusively in the form of compromises between competing interests. Fairness is supposed to be granted by the general and equal right to vote, the representative composition of parliamentary bodies, by decision rules, and so on. Such rules are ultimately justified in terms of liberal basic rights. According to the *republican view*, democratic will-formation takes place in the form of an ethical-political discourse; here deliberation can rely on a culturally established background consensus shared by the citizenry. Discourse theory takes elements from both sides and integrates these in the concept of an ideal procedure for deliberation and decision-making. Weaving together pragmatic considerations, compromises, discourses of self-understanding and justice, this democratic procedure grounds the presumption that reasonable or fair results are obtained. According to this proceduralist view, practical reason withdraws from universal human rights, or from the concrete ethical substance of a specific community, into the rules of discourse and forms of argumentation. In the final analysis, the normative content arises from the very structure of communicative actions. These descriptions of the democratic process set the stage for different conceptualizations of state and society.

According to the republican view, the citizens’ political opinion- and will-formation forms the medium through which society constitutes itself as a political whole. Society is, from the very start, political society – *societas civilis*. Hence democracy becomes equivalent to the political self-organization of society as a whole. This leads to a polemic *understanding of politics*

directed against the state apparatus. In Hannah Arendt's political writings one can see where republican argumentation directs its salvos: in opposition to the privatism of a depoliticized population and in opposition to the acquisition of legitimation through entrenched parties, the public sphere should be revitalized to the point where a regenerated citizenry can, in the forms of a decentralized self-governance, (once again) appropriate the power of pseudo-independent state agencies. From this perspective, society would finally develop into a political totality.

Whereas the separation of the state apparatus from society elicits a polemical reaction from the republican side, according to the liberal view it cannot be eliminated but only bridged by the democratic process. The regulated balancing of power and interests has need of constitutional channeling, of course. The democratic will-formation of self-interested citizens is laden with comparatively weak normative expectations. The constitution is supposed to tame the state apparatus through normative constraints (such as basic rights, separation of powers, etc.) and to force it, through the competition of political parties on the one hand and that between government and opposition on the other, to take adequate account of competing interests and value orientations. This *state-centered understanding of politics* can forego the unrealistic assumption of a citizenry capable of collective action. Its focus is not so much the input of a rational political will-formation but the output of sensible and effective administrative accomplishments. Liberal argumentation aims its salvos against the potential disturbance of an administrative power that interferes with the spontaneous forces of a self-regulating society. The liberal model hinges, not on the democratic self-determination of deliberating citizens, but on the legal institutionalization of an economic society that is supposed to guarantee an essentially nonpolitical common good by the satisfaction of private preferences.

Discourse theory invests the democratic process with normative connotations stronger than those found in the liberal model but weaker than those of the republican model. Once again, it takes elements from both sides and fits them together in a new way. In agreement with republicanism, it gives center stage to the process of political opinion- and will-formation, but without understanding the constitution as something secondary; rather it conceives the principles of the constitutional state as a consistent answer to the question of how the demanding communicative forms of a democratic opinion- and will-formation can be institutionalized. Discourse theory has the success of deliberative politics depend not on a collectively acting citizenry but on the institutionalization of the corresponding procedures and conditions of communication. Proceduralized popular sovereignty and a political system tied in to the peripheral networks of the political public sphere go hand-in-hand with the image of a *decentered society*. This concept

of democracy no longer needs to operate with the notion of a social whole centered in the state and imagined as a goal-oriented subject writ large. Just as little does it represent the whole in a system of constitutional norms mechanically regulating the interplay of powers and interests in accordance with the market model.

Discourse theory altogether jettisons certain premises of the *philosophy of consciousness*. These premises either invite us to ascribe the praxis of civic self-determination to one encompassing macro-subject or they have us apply the rule of law to many isolated private subjects. The former approach views the citizenry as a collective actor that reflects the whole and acts for it; in the latter, individual actors function as dependent variables in system processes that move along blindly. Discourse theory works instead with the *higher-level intersubjectivity* of communication processes that flow through both the parliamentary bodies and the informal networks of the public sphere. Within and outside the parliamentary complex, these subjectless forms of communication constitute arenas in which a more or less rational opinion- and will-formation can take place.

Informal public opinion-formation generates “influence”; influence is transformed into “communicative power” through the channels of political elections; and communicative power is again transformed into “administrative power” through legislation. As in the liberal model, the boundaries between “state” and “society” are respected; but in this case, civil society provides the social basis of autonomous public spheres that remain as distinct from the economic system as from the administration. This understanding of democracy suggests a new balance between the three resources of money, administrative power, and solidarity, from which modern societies meet their needs for integration. The normative implications are obvious: the integrative force of “solidarity,” which can no longer be drawn solely from sources of communicative action, should develop through widely expanded and differentiated public spheres as well as through legally institutionalized procedures of democratic deliberation and decision-making. It should gain the strength to hold its own against the two other mechanisms of social integration – money and administrative power.

This view has implications for how one understands (a) legitimation and (b) popular sovereignty.

(a) On the liberal view, democratic will-formation has the exclusive function of *legitimizing* the exercise of political power. Election results are the license to assume governmental power, whereas the government must justify the use of power to the public. On the republican view, democratic will-formation has the significantly stronger function of *constituting* society as a political community and keeping the memory of this founding act alive with each election. The government is not only empowered to exercise a largely open mandate, but also programmatically committed to carry out

certain policies. It remains bound to a self-governing political community. Discourse theory brings a third idea into play: the procedures and communicative presuppositions of democratic opinion— and will-formation function as the most important sluices for the discursive rationalization of the decisions of an administration constrained by law and statute. Rationalization means more than mere legitimation but less than the constitution of political power. The power available to the administration changes its aggregate condition as soon as it emerges from a public use of reason and a communicative power which do not just monitor the exercise of political power in a belated manner but more or less program it as well. Notwithstanding this discursive rationalization, only the administrative system itself can “act.” The administration is a subsystem specialized for collectively binding decisions, whereas the communicative structures of the public sphere comprise a far-flung network of sensors that in the first place react to the pressure of society-wide problematics and stimulate influential opinions. The public opinion that is worked up via democratic procedures into communicative power cannot “rule” of itself, but can only point the use of administrative power in specific directions.

(b) The concept of popular sovereignty stems from the republican appropriation and revaluation of the early modern notion of sovereignty initially associated with absolutist regimes. The state, which monopolizes all the means for a legitimate implementation of force, is seen as an overpowering concentrate of power – as the Leviathan. This idea was transferred by Rousseau to the will of the united people. He fused the strength of the Leviathan with the classical idea of the self-rule of free and equal citizens and combined it with his modern concept of autonomy. Despite this sublimation, the concept of sovereignty remained bound to the notion of an embodiment in the assembled, physically present people. According to the republican view, the people are the bearers of a sovereignty that in principle cannot be delegated: in their sovereign character the people cannot have others represent them. Liberalism opposes this with the more realistic view that in the constitutional state any authority originating from the people is exercised only “by means of elections and voting and by specific legislative, executive, and judicial organs.”²

These two views would exhaust the alternatives only if we had to conceive state and society in terms of the whole and its parts – where the whole is constituted either by a sovereign citizenry or by a constitution. To the discourse theory of democracy corresponds, however, the image of a decentered society. To be sure, with the political public sphere the proceduralist model sets off an arena for the detection, identification, and interpretation of those problems that affect society as a whole. But the “self” of the self-organizing legal community here disappears in the

subjectless forms of communication that regulate the flow of deliberations in such a way that their fallible results enjoy the presumption of rationality. This is not to denounce the intuition connected with the idea of popular sovereignty but to interpret it in intersubjective terms. Popular sovereignty, even if it becomes anonymous, retreats into democratic procedures and the legal implementation of their demanding communicative presuppositions only in order to make itself felt as communicatively generated power. Strictly speaking, this communicative power springs from the interactions between legally institutionalized will-formation and culturally mobilized publics. The latter for their part find a basis in the associations of a civil society quite distinct from both state and economy alike.

Read in procedural terms, the idea of popular sovereignty refers to a context that, while enabling the self-organization of a legal community, is not at the disposal of the citizens' will in any way. Deliberation is certainly supposed to provide the medium for a more or less conscious integration of the *legal community*; but this mode does not extend to the whole of society in which the political system is *embedded* as only one among several subsystems. Even in its own proceduralist self-understanding, deliberative politics remains a component of a complex society, which as a whole resists the normative approach practiced in legal theory. In this regard the discourse-theoretic reading of democracy has a point of contact with a detached sociological approach that considers the political system neither the peak nor the center, nor even the formative model of society in general, but just one action system among others. On the other hand, politics must still be able to communicate, through the medium of law, with all the other legitimately ordered spheres of action, however these happen to be structured and steered.

NOTES

1. F. I. Michelman in *Florida Law Review* 41 (1989): 446 f.
2. Cf. *The Basic Law of the Federal Republic of Germany*, article 20, sec. 2.