

Democratic constitutions and education to freedom

Constituições democráticas e a educação para a liberdade

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Hans Sachs

Dem Volke wollt ihr behagen;
nun dächt' ich, läg' es nah,
ihr liebt es selbst euch auch sagen,
ob das ihm zur Lust geschah. [...]

Konrad Nachtigall

Wenn spricht das Volk, halt'ich das Maul.

(R. Wagner. *Die Meistersinger von Nürnberg*, 1st Act)¹

Abstract: This essay shall analyze the idea of the possibility of education to freedom through democratic institutions and the role of the constitution in this process. The question shall not be considered from an empirical perspective, but from a theoretical perspective. In the first part democratic institutions will be defined in such a way, that it is possible to speak of democratic habit as a necessary component of democracy. The second part shall introduce a concept of State constitution that takes seriously the hope that such a constitution could be the major tool for the education to freedom of citizens. Finally, this paper shall try to make sense of the very idea of democratic participation as education to freedom: firstly by identifying the conditions in which the latter is possible, and secondly by offering a certain definition of freedom. In this context, freedom shall be defined as political autonomy and deliberative power, taking distance both from the traditional liberal definition of freedom and from the traditional republican one, while accepting partially what is something referred to as the (radical)

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¹ *Sachs*: You want to please the people; well, I should have thought it in your interest to let them tell you themselves whether they took delight in it. [...] *Nachtigall*: When the people speak, I hold my tongue.

<i>Civitas</i>	Porto Alegre	v. 9	n. 3	p. 472-495	set.-dez. 2009
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democratic definition of freedom. However, the impact of the latter will be limited by referring to what we may call the constitutionalist tradition.

Keywords: Democracy; Constitution; Political participation; Political education; Citizenship

Resumo: O presente ensaio tenta analisar a idéia da possibilidade de uma educação à liberdade por meio de instituições democráticas e o papel da constituição neste processo. A questão não será considerada de uma perspectiva empírica, antes de uma teórica. Na primeira parte as instituições democráticas serão definidas de maneira que seja possível falar dum hábito democrático como de um componente necessária da democracia. A segunda parte introduzirá um conceito de constituição estatal que leve a sério a esperança de que ela possa ser um importante instrumento para a educação dos cidadãos à liberdade. Finalmente, o ensaio tentará dar um sentido à idéia de participação democrática como educação à liberdade: primeiramente, ao identificar as condições nas quais esta seria possível e, em seguida, ao oferecer uma definição de liberdade. Neste contexto, a liberdade será definida como autonomia política e como poder deliberativo, tomando assim distância quer da tradicional definição liberal quer da tradicional definição republicana, aceitando, ao mesmo tempo, em parte aquela que é chamada às vezes de definição (radical-)democrática de liberdade. Contudo, o impacto desta aceitação será limitado recorrendo àquela que pode ser chamada de tradição constitucionalista.

Palavras-chave: Democracia; Constituição; Participação política; Educação política; Cidadania

In place of an introduction: Bobbio on democratic institutions and habit

In October 1945, shortly after the end of World War II and of the Italian “Resistenza” (the bloody guerrilla war against the German occupation army and against its collaborationist allies, the fascists of the so called Republic of Salò), in an article on “Democratic Institutions”, Norberto Bobbio assigned to democracy an end of its own: the education of citizens to freedom (“l’educazione dei cittadini alla libertà”):

Only the free man – Bobbio goes on with Kantian pathos – is responsible; but man is not born free, except that in the abstractions of the Enlightenment: man becomes free in a social environment, in which the economical, political, cultural conditions are such that they bring him to become, even despite him, conscious of his own worth as human being, and therefore of his own chances and limits in the world along the other human beings. To pursue this end one needs democratic institutions (Bobbio, 1996, p. 29; my transl.).

In the following November, in an article on *Democratic institutions and habit*, Bobbio stresses the important role of a constitution in this process, since

it is the democratic constitution of a State that founds the democratic habit of the citizenry:

The constitution will take roots in the habit of the people. And the habit will be the best guarantee of the constitution. It is absurd to hope that a constitution will last in time, if it is not supported by the belief in its conformity to the demands of freedom and justice, which a people developed in a certain moment of its history, [if it is not supported] by that belief from which a habit arises. Democratic institutions and democratic habit support each other: the habit needs the institution to arise; the institution needs the habit to last (Bobbio, 1996, p. 31; my transl.).²

These words echo in a sense the famous Kantian sentence “For it is not the case that a good State constitution is to be expected from inner morality; on the contrary, the good moral education of a people is to be expected from a good State constitution” (Kant, 1996, p. 335f). Like Kant, Bobbio believes that good institutions, which he identifies with democratic institutions, will bring about the moral education of the people: the democratic habit Bobbio refers to in the second article is namely the highest expression of that freedom as moral responsibility, which is the object of the first article. A democratic constitution creates a democratic habit and therefore it makes men free (and morally responsible). Bobbio goes even further than Kant, who never thought of the “moral education of a people” as an education of individuals to freedom and moral responsibility (Pinzani, 2003).

Bobbio’s words must be read in the context of the historical moment and political atmosphere in which they were written: they arose from the debate on the reconstruction of democratic life in Italy after twenty years of fascist dictatorship. But beyond their historical contingency, they retain an appeal that I find fascinating and worthy of deeper consideration. Bobbio’s words both touch upon questions that are still open and, at the same time, suggest solutions that are still captivating. This essay will therefore analyze Bobbio’s seminal idea of the possibility of education to freedom through democratic institutions and the role of the constitution in this process.

It is not my intention to consider this question from an empirical perspective; this is the task of social scientists, and there are in fact works on this topic (one of the most celebrated being notably Putnam’s study on

² Both articles were published in *GL*, the newspaper of the Partito d’Azione, a small party of radical and moderate liberal intellectuals, which had a very short life (on the causes of this shortness s. the explanations of Bobbio himself in Bobbio [1996, p. 101 ff]). The letters G and L stay for *Giustizia e Libertà*, which was the name of the partisan organization founded by the *Azionisti*.

Italy, i. e. on the country, on whose democratic future Bobbio was so keen: Putnam, 1993). I shall instead approach this theme from a more theoretical perspective.

My first move will be to define, roughly, democratic institutions in such a way, that it is possible to speak of democratic habit as a necessary component of democracy. This is not tantamount to claiming that this would be the only or the “best” definition of such institutions; rather, this definition will show that, from the point of view of formal or economical theories of democracy, democratic habits are not just a contingent element of democracy itself. The second part of the paper will present a concept of State constitution that takes seriously Bobbio’s (and Kant’s) hope that such a constitution will be the major tool for the education to freedom of citizens.

Finally, this paper shall try to make sense of the very idea of democratic participation as education to freedom: firstly by identifying the conditions in which the latter is possible, and secondly by offering a certain definition of freedom. In this context, I shall present a concept of freedom as political autonomy and deliberative power, and in doing so it shall distance itself both from the traditional liberal definition of freedom and from the traditional republican one, while accepting partially what is something referred to as the (radical) democratic definition of freedom. In doing so I will nevertheless limit the impact of my acceptance of the (radical) democratic position by referring to what we may call the constitutionalist tradition.

I am aware, that this is a very ambitious proposal. In this context I shall be content with sketching a possible way of dealing with this topic. A more in-depth treatment will take place elsewhere.

Democratic institutions

One could say that there are as many definition of democracy as political theories or political thinkers (not even considering the different definitions of it that the same thinker may have given at different moments). The most generic definition is that of a form of government in which sovereignty belongs to the people. Difficulties arise as soon as one asks how this sovereignty is exercised. This is a central question, since the differences between, say, representative and direct democracy, or between constitutional or moderate and “unrestrained” democracy are not secondary ones, and since they affect both the concept of popular sovereignty and the means of exercising this sovereignty (some contemporary advocates of direct democracy for instance dismiss representative democracy as not democratic at all: cf.

Barber, 1984). But what do we mean, when we speak of “democratic” institutions?

I shall turn again (and for the last time) to the young Bobbio, who in 1945 wrote:

Democratic institutions [...] are those institutions, which call the largest possible number of citizens to the responsibility of power without tying them to it; which – by enlarging suffrage, participation, control – prevent the few ones from transforming the State in a stronghold of privileges and from claiming for themselves all the advantages of power while refusing to assume all its responsibilities (Bobbio, 1996, p. 25; my transl.).

And further:

Democracy means nowadays in the first instance giving the State to the citizens, to fill as much as possible the gap between individual and State; in a word, it means to bring back the State to the same level as men by taking the citizen to the government and to the administration – not only in the town halls, but also in the factories, in the professions, in the school etc. –, by assigning directly – and not only indirectly – to individuals the duties and responsibilities of citizens (Bobbio, 1996, p. 29; my transl.).

The language of Bobbio in the quoted passages is worth stressing. He insists very much on the responsibilities connected with the fact of being a citizen, much more than on the rights which arise from this fact – and this after a period in which Italians have had very few rights for such a long time! Yet he also insists on the fact that democracy should not be limited to voting, but is also bound up with forms of direct exercise of power, and not only in immediately political spheres like work and school. He understands therefore democracy as *democratization*, as the extension of democratic forms of decision-making and of control to spheres others than the strictly political (i.e. the sphere of law-creating institutions such as parliaments etc.). Bobbio evidently advocates here a concept of democracy which we can designate as “strong”, if compared for instance to Schumpeter’s almost contemporary economical theory of democracy (Schumpeter, 1942) or to the formal conception of democracy, which Bobbio himself will later develop (Bobbio, 1984).³

This “strong” concept recalls the classical republican tradition, particularly because of its insistence on direct participation and on the political responsibility of all citizens, and because of the warning of the risks

³ I shall not compare here Bobbio’s early conception of democracy with his later one, nor with other conceptions: this is not an essay on Bobbio’s political thought.

represented by the concentration of political power in the hands of “the few ones”. In the republican tradition however, one can find also a certain mistrust directed towards direct popular participation in the decision- and law-making processes (James Harrington and John Adams being notably the fiercest opponents of such participation, but even Rousseau had at least a certain distrust of such populism, which led him to deny the possibility of public political debates and to reduce the role of popular assemblies to the approval or disapproval of governmental deliberations – on this point s. Manin (1987). Republicanism is not necessarily democratic: the kind of democracy or – better – of republic desired by most Founding Fathers, for instance, could be seen as a kind of “elective aristocracy”, i. e. as a form of government, in which the people are called merely to elect their representatives without interfering either in the definition of the political agenda, or in the process of decision-making (Schudson, 1999).⁴ The latest point is decisive: not every form of representation leads necessarily to elective aristocracy, but only the form of government, in which (1) the people are called to participate merely in the election of representatives and are deprived of any other possibility of political participation; (2) the representatives have a commitment exclusively towards the nation in its whole and not towards their voters as private citizens. In other words, our contemporary democracies are not elective aristocracies in so far as they do not satisfy at least one of the previous criteria, for instance through the existence of parties (which would suspend partially or completely the second condition) or through the existence of forms of participation other than the vote, like referenda, popular bills, petitions etc. (which would leave the first condition unfulfilled). However, the mere existence of parties as agencies that organize, channel and help to realize the interests of individuals is not in itself a guarantee of democracy. Parties are also compatible with oligarchy, and even with autocracy or despotism (in this case they would simply be lobbies, of course, since no free party would be allowed). And when popular participation is limited to elections, the people are *de facto* excluded from the decision-making process in favor of parties. Here, the people would devolve the sovereignty to parties instead of individuals (as in elective aristocracy), and we would have what one could define “partyism” or “partyocracy”.

⁴ Robert A. Dahl distinguishes between two strains of republicanism: a more aristocratic or conservative one and a more democratic one. In the aristocratic republican view, the most difficult problem is to create a constitutional structure that will restrain the impulses of “the many”: “The proper function of the people is not to rule [...], but rather to choose leaders”. Democratic republicanism fears rather the aristocratic and oligarchic elements and aims to create a constitution that will prevent the elite from seizing power (Dahl, 1989, p. 25ff).

Democracy can therefore be defined roughly as a form of government, in which (1) people (i. e. the citizens as a whole) have an influence both on the definition of the political agenda and on the process of decision-making, *and* (2) this influence is not limited to casting their ballots at the end of every legislature. In this sense the alternative between direct and representative democracy is a false one: a real representative democracy (i. e. a form of government which is neither an elective aristocracy, nor a mere partyocracy) does not rule out the possibility that the people intervene directly in the decision-making, while at the same time releasing the citizens from the burdens connected to what I shall call a *pervasive direct* democracy (it is pervasive since it is not limited to certain forms of participation, but covers the whole democratic process, and, since it covers every aspect of law-making, it is therefore pervasive both with regard to the institutional mechanism of decision-making and to the contents of it, i. e. to the concrete policies).⁵

Political participation in a pervasive direct democracy requires from the citizens a strong willingness to take concrete responsibility (e. g. as public officials) as well as the willingness to invest considerable resources of time, information, and interest for, attention to and knowledge of publically relevant themes. Such requirements are very difficult to meet, even on small scale. The usual examples offered by advocates of direct democracy (Swiss cantons, ancient Athens, Italian medieval town-states) are in fact not particularly relevant. In terms of direct participation in public offices, it is very difficult to see how this could be possible in our complex societies, except for limited forms such as jury duty or the like. Secondly, political participation in decision-making as intended by this vision of pervasive direct democracy was (in past times) or is (in the case of Switzerland) always limited to a relatively small number of citizens,⁶ and precisely to those citizens, who were/are interested in and had/have the resources for participating. Direct democracy works only if citizens (1) have time to devote themselves to politics and (2) have the necessary knowledge to take meaningful decisions. Since it is practically impossible for these two conditions to be met by all citizens (particularly in our highly complex societies), direct democracies tend to become sorts of aristocracies in which sovereignty is exercised by those individuals who have

⁵ In a pervasive direct democracy, citizens are called – at least theoretically – to take decisions on such disparate issues as tax-policies, educations, health-care, financial matters, economical development, foreign policies, etc.

⁶ Not all the Athenians took part in the assembly and even less took the floor; decision-making institutions in the Italian *comuni* were mostly composed by representatives (elected by vote or by lot); and also in the many referenda that take place in the Swiss cantons, the percentage of voters is quite low.

either the intellectual faculties or the economical resources⁷ that are necessary to take part in a continuous and pervasive decision-making process.⁸

If we want that democracy entails a “giving of the State to the citizens”, as Bobbio wrote, we cannot therefore realize this ideal by establishing a pervasive direct democracy. Instead we must turn to some form of representative democracy corrected by mechanisms of direct popular participation in the process of decision-making. Representation releases the citizenry from the burden of constant participation: they are not required to have the interest, time, and material resources necessary to take part in the decision-making process. However, the corrective represented by mechanisms of direct popular participation allows the citizenry to take back into their hands the concrete exercise of sovereignty every time they deem it necessary. The more numerous and extensive these mechanisms are, the more the democratic institutions will meet the ideal sketched by Bobbio (and similar ideals outlined by many other thinkers). This will not prevent the possibility that only a small group of citizens take political participation seriously, but, where this is the case, this will be the contingent result of circumstances and not the necessary consequence of institutional arrangements as in the case of pervasive direct democracy.

By defining democracy as a form of government in which sovereignty is concretely exercised by elected representatives, and in which the people influence the political agenda and the process of decision-making through certain mechanisms, one avoids the need to take a position on the question of whether political participation should be conceived in terms of a theory of deliberative democracy. In other words, I do not want – for the moment and in this context – to specify whether the individual who takes part in the democratic process does this from a strategic attitude of an interest-oriented actor or from the less egoistical attitude of a member of a community, whose aim is to reach a general consent on the common interest, on the common good, on a shared way of life etc. (different theorists of deliberative democracy give different ends to the participation of individuals in political life).⁹ My reason for avoiding this question is that it is not necessary to find an answer to it in order to sustain the claim that democracy implies the existence of a democratic habit.

Even if we should consider egoistical private interests as the only motive leading citizens to participate politically; even if we should define democracy

⁷ In Athens, for instance, this was made possible through the existence of slave labor.

⁸ This aspect leads Arendt to the conclusion that there is no place for real political action in our society (Arendt, 1958).

⁹ A good presentation of this alternative is offered by Elster (1997).

as a form of the regulation of conflicts among individuals through the search for compromises – a search in which every individual attempts to maximize her own interests –; even if we should therefore define democracy as a form of cooperation, in which all pursue primarily their own individual goals and views the democratic process merely as a way of pursuing these goals; even in such cases, we should expect that individuals manifest certain attitudes, the lack of which would make co-operation impossible. I will develop this point by referring to the concept of constitutional consent advanced by John Rawls in *Political Liberalism*.

Constitution and consent

In *Political Liberalism*, Rawls sketches a two-stage process through which an overlapping consensus might arise in a society (Rawls, 1993, p. 158ff). The first stage leads from a *modus vivendi* based on principles of justice to a situation of constitutional consent. The *modus vivendi* is reached when individuals or rival groups agree on terms of co-operation that will avoid an open conflict for reasons of mutual advantage. This equilibrium is a weak one and can be easily broken – namely every time that one of the parties thinks itself strong enough to do so and to impose its own will on the others. From a strategic point of view, in such scenarios co-operation would not be rational for the more powerful (this recalls the argument of the Fools, which Hobbes discusses in chapter XV of the *Leviathan*: s. Hobbes (1996, p. 101ff). Rawls' idea is that, over time, the benefits of co-operation will lead citizens to what he calls “constitutional consent”. They will agree on a basic catalogue of rights and liberties and respect them on every occasion. Moreover, they will necessarily make use of a limited public reason in order to present arguments that can be discussed and accepted (or rejected) by everyone. The consequence of both elements (the agreement on basic rights and the use of public reason) will be the promotion of liberal virtues, namely: “the virtue of reasonableness and a sense of fairness, a spirit of compromise and a readiness to meet others halfway, all of which are connected with the willingness to cooperate with others on political terms that everyone can publicly accept” (Rawls, 1993, p. 163). This should lead to the second stage of Rawls' model, in which an overlapping consensus arises.

Rawls claims that the limits of constitutional consent lies in the lack of an underlying conception of person and society common to all citizens, and in the fact that it does not touch the basic structure of society. Questions such as the distribution of basic goods or questions concerning the economical

structure are impossible to solve from the mere point of constitutional consent (Rawls, 1993, 164f). I agree with Rawls on this point, but note that even at this minimal level of consent, it is necessary for individuals to show attitudes that are neither commonly found, nor easily developed

Advocates of economic theories of democracy would deny that this is necessarily the case. They would concede that the form of co-operation required by democratic institutions must be a stable one, and therefore rather similar to that which in the Rawlsian model is based on constitutional consent. If democracy were just a precarious *modus vivendi*, there would be no reason to prefer it to the autocracy of a Hobbesian Leviathan. However, economic theories of democracy assume that co-operation could work without individuals' assuming attitudes like those listed by Rawls.

On this point, these theories may be right. While it is clear that, in order to avoid instability, individuals should reach consent on some basic rights and on some minimal procedural rules for agreements, it is not easy to see how this should lead necessarily to the development of all the attitudes detailed by Rawls. What is required – from the point of view of economic theories of democracy – is merely the willingness to co-operate with others in a generic way (i. e. in a less demanding way than that claimed by Rawls, which is connected to public acceptance by everyone of the political terms of cooperation itself),¹⁰ the acknowledgment of the existence of different interests, and the necessity of articulating one's own interests in such a way that others can understand them and take them into account. These are neither "liberal virtues", nor elements of a democratic habit. The idea that a constitutional consensus on basic rights and on a limited use of public reason will lead to the development of liberal virtues is therefore a *non sequitur*.

In order to overcome this difficulty, I suggest that we (1) define constitutional consent (as the next stage following the precarious *modus vivendi* of unstable cooperation) in a different way to Rawls: in a way, namely, that gives a better account of the reality of our democracies; and that we (2) raise the bar with regard to the individual attitudes necessary to live in a democracy, even when this is understood merely as co-operation among egoistical individuals. These two goals are connected to each other in the sense that the second will follow from the first.

In Rawls' opinion, constitutional consent differs from overlapping consent in lacking an underlying conception of person and society. This is its weakness

¹⁰ From the perspective of an economic theory of democracy, one could think of a co-operation reached by a majority to the detriment of a minority, as long as this minority did not rebel or seek open conflict. This seems in fact to be what actually happens in some countries.

for Rawls, but it is also its strength, since this aspect makes constitutional consent less exposed to criticism. While Rawls' overlapping consent requires from individuals a far-reaching agreement not only on common goals but also on basic ideas and attitudes (such as, for example, a sense of justice as fairness), a constitutional consent requires only that the members of a political community agree on certain basic constitutional arrangements. However, I think that the latter are not limited to basic rights and to a limited use of public reason, as Rawls claims.

A constitution is more than a collection of individual rights and liberties. It includes also the basic rules of the processes of decision-taking, law-making and law enforcement: in other words, the rules, according to which the co-operation game of political society is played. A constitution reflects the values and the beliefs of a political community, as Rawls points out; but these are the values and beliefs of that community *in a certain historical moment* (a constitution reflects in this sense the history of that community). With time the same community may alter its constitution, or even write a new one altogether. More likely, the community will re-interpret it according to the changing values and needs, and to the modified historical situation. Constitutions offer the basis for and draw new impulse from public debates about the meaning of their principles and articles. They embody the idea of political community as a common project. A constitution can be seen therefore as the expression of the intention of the members of a community to call to life a State entity. But it is neither stable, nor invariable – just as State entities are not (States may merge into a wider organism, like Italy by its reunification in 1860, or break off into smaller entities, like Czechoslovakia in 1993). Therefore, when citizens reach a common constitutional consent, they not only agree on some basic rights or rules, but on the very legitimacy (1) of the State, (2) of its political institutions, (3) of the decision-making process as a whole, and (4) of the results of this process (even if they may not agree with single decisions: to question the rightness of a law or decree is not tantamount to questioning its legitimacy).

Constitutional consent goes therefore further than Rawls assumes: it is the consent of players to the rules of the game. Whoever expresses this consent, declares her intention to respect these rules or to accept punishment as a consequence of their violation. When a soccer player enters the field, he agrees implicitly on not playing the ball with his hands, for instance, and he accepts the legitimacy of punishment for such a violation of the rules (even if he may contest the judgment of the referee in a particular situation). Our democratic States are all organized according to a constitution (even

when it is a not written one, like in the United Kingdom). Citizens of these States are expected to respect the constitution and therefore the legitimacy of State institutions and of the decisions taken within them. We can say that there is constitutional consent if most citizens acknowledge this expectation. On the contrary, if a relevant amount of citizens (it is impossible to determine a priori how many) do not acknowledge it, there will be both a legitimacy and a stability crisis, which could lead to the substitution of the current constitution by a new one, or eventually to the dissolution of the State itself.

What is to be expected from the citizens of our democratic States is therefore more than how economic theories of democracy think we should act, and less than what Rawls claims for us. As a reminder: economic theories expect minimal attitudes like a generic willingness to cooperate with others, the acknowledgement of the existence of different interests, and the necessity of articulating one's own interests in a way understandable to the others; Rawls expects firstly "the virtue of reasonableness and a sense of fairness, a spirit of compromise and a readiness to meet others halfway, all of which are connected with the willingness to cooperate with others on political terms that everyone can publicly accept" (Rawls, 1993, p. 163), and secondly and most importantly, a consensus on basic conceptions of person and society leading to overlapping consent. Democratic constitutional consent as sketched above expects from the citizenry, in addition to the minimal attitudes stretched by economic theories of democracy, the acceptance of the "game rules" defined by the State constitution (including elements as individual rights, procedural rules, definitions of number, kind and composition of the State organs, determination of competences, and so on). While it is true, that every constitution is based on a certain conception of person and society (and some constitutions will try to fix it in a non-modifiable way, exposing themselves to a considerable risk of non-acceptance in future times), this does not require that the individuals who consent to 'play the game' according to the rules fixed by a constitution to share its underlying conceptions. On the contrary, they may question these very conceptions and try to modify the constitution according to changing values and ideals, *without withdrawing their consent to the existing rules*. Most constitutions make provisions for possible revisions or for new interpretations of the underlying values, (as, for example, with the concept of 'the family', the value and role of which has been much questioned in many Western societies in the last decades). Democratic constitutional consent is not a blind belief in the conceptions of person and society from which a constitution historically arose; it is a general agreement to the "game rules" fixed by that constitution,

and it does not rule out the possibility of criticizing (and of attempting to modify) either individual rules or the constitution as a whole.

Constitutions are open plans for those open projects called political communities. The latter ones resemble the fabric of a medieval cathedral, the construction of which normally spans many generations, so that as the years go by new architects modify the original plan according to new circumstances or requirements. In democracies this takes place in the basis of public debates, the outcomes of which are normally “translated” either into new constitutional norms by the legislative or into a new interpretation of the existing norms by the judiciary. Every citizen has then the power of suggesting and discussing modifications – a power which should be guaranteed by the constitution itself. A democratic constitution makes provisions for its revision through the citizens (even if mostly indirectly). In this sense it “gives the State” to them, as Bobbio desired, and it does this on a much greater scale than he probably conceived.

Is education to freedom possible?

Both republican and communitarian thinkers often claim that one of the main issues that the State is called to face is that of the morality of its citizens. In classical republicanism, for instance, it is necessary for the survival and the flourishing of republican institutions that citizens develop civic virtues such as patriotism, solidarity with fellow citizens, military courage, even some form of religiosity (cf. Bellah, 1975; Galston, 1991; Machiavelli, Hobbes or Rousseau – just to mention a few – had already considered religion as a pillar of a stable republic). Generally speaking, these thinkers believe that citizens ought to be willing to sacrifice their own interests to the common good of their political community; further, they hold that this willingness is not natural,¹¹ but must be created and preserved. Citizens become good citizens only if they are educated to be such. In opposition to the classical liberal position of Mandeville or Smith, which holds that the egoistical interests of citizens could unintentionally harmonize and result in common benefits for all, republicans and communitarians believe that private interests are highly dangerous for the public good and for its institutions. Citizens must therefore be taught to restrain themselves in their pursuit of their private goals.

¹¹ Some of them believe that patriotism is a natural attitude, but even patriots are not necessarily willing to sacrifice their particular interests to the common one. They may love their country more than their soul (as Machiavelli once wrote), but nevertheless pursue their private goals at the expense of public ones, as long as they do not believe this to be too perilous for the State.

This is also the position of many liberal thinkers, beginning with Hobbes (whose liberalism is a continuous point of dispute) and Locke. However, what they do not accept is the notion that the State must assume an *educational* role. Instead, they argue that citizens would come to realize by themselves that self-restraint is the most rational choice, since it is to their own advantage that private interests do not prevail in the State. These thinkers believed therefore that citizens will learn to accomplish their duties toward the State once they have understood that strong and efficient State institutions lead to an increase in their own benefits, and that such institutions are possible only if every single individual contributes to their maintenance by sacrificing some of her private goals. The kind of education that liberals have in mind is therefore different from that sought by republicans. For liberals, the State “educates” the citizenry simply by working efficiently.

Republicans would claim that this classical liberal position is circular: a good working State will lead its citizens to civic virtue, but in order to function efficiently a State must rely on the civic virtue of its citizens. However, the classical republican position is itself circular: the citizen’s education to virtue presupposes the existence of a wide, strong agreement on the values that should be shared by good citizens, and on those goals that constitute the common good. For this reason most republican theorists claim that there is no hope of saving a republic once the citizens no longer agree on those issues or once moral decadence erodes the ethical basis of society. In a sense, republican civic education presupposes already both the moral stability and the reliability of the citizenry, which is meant to be its final outcome.

It is worth noting that the republican position is directed principally towards the stability of political institutions, not towards the morality of individuals. Civic morality is judged positively only insofar as it contributes to the main goal of strengthening the republic. Judith Shklar seems to be right in pointing out that in such cases citizens are educated less to a genuine civic morality than to conformism and adaptation to the currently dominating moral beliefs (Shklar, 1984, p. 236). This kind of “education” can be an effective way of safeguarding political institutions, but reveals its weakness when the consent of the dominating morality decreases, as is happening in our pluralistic, secular societies.

A further possible objection to the traditional liberal position consists in pointing out the low motivational force of purely functionalistic considerations. Claus Offe maintains, for example, that our complex societies require their members to operate with a certain amount of self-restraint, a denial that can only be motivated by an ethical attitude of the people as a whole. Complex

societies need a civic sense grounded in ethical dispositions that have the “quality of moral norms” (Offe, 1989, p. 759). The main difficulty with regard to civic morality or civic sense is not therefore so much a theoretical one (it would not be so difficult to show the necessity of civic virtues), as rather a motivational one (how are we to motivate people to develop the required virtues or attitudes?). Of course the two aspects are intertwined. As Robert Goodin observes, “sometimes *getting people to do* what is morally correct involves the more familiar task of *getting them to see* what is morally correct in first place” (Goodin, 1992, p. 4; italics mine). Nevertheless, the most difficult issue could be to get the people to do what they see is correct: the implication that someone will do the morally right thing once she or he realizes what the right thing is, is a strong claim concerning the mechanisms of humane action and, ultimately, human nature itself. While liberal theories on civic sense do rely on this claim, republican (and communitarian) theories prefer to rely on forces that are common (though external) to the members of the political community – forces such as tradition, solidarity, patriotism. These forces should motivate individuals within a political community to act in conformity with certain values, to take a certain attitude (a civic sense), or even to develop civic virtues. Thus, the ethical motivation that appears to be necessary to the citizens of a democracy should come from these forces and not be based on a rational, functional consideration of the benefits of living in an efficiently working State.

In explicit contrast to Rawls, Jeffrey Stout claims that

Democracy [...] is a tradition. It *inculcates* certain habits of reasoning, certain attitudes toward *deference* and *authority* in political discussion, and love for certain goods and virtues, as well as a disposition to respond to certain types of actions, events, or persons with admiration, pity, or horror. This tradition is anything but empty. Its ethical substance, however, is more a matter of enduring attitudes, concerns, dispositions, and patterns of conduct than it is a matter of agreement on a conception of justice in Rawls’s sense (Stout, 2004, p. 3; italics mine).

If Stout is right, then education to freedom is possible only as a *forced* (“democracy ... inculcates habits etc.”) education to the values, habits and attitudes of a certain tradition (in this case a democratic one). Yet, it seems to me that a genuine democratic tradition cannot be conceived of as a tradition imposing itself on individuals without taking into account their personal beliefs, life projects, and interests. In other words, the “habits of reasoning” and the dispositions that are supposed to characterize democracy are precisely those that were sketched above: a generic willingness to co-

operate with others, the acknowledgment of the existence of different interests, the necessity of articulating one's own interests in a way understandable to others, and the acceptance of the rules of the democratic game. In this sense, they are dispositions of a peculiar kind, since they admit and even promote/advance moral pluralism (i. e. a *plurality* of values and habits), celebrate tolerance, and recognize that a certain amount of conflict is inherent to society and not undesirable since it is an expression of individual personality. In other words, the liberal view of democracy (both in the economic and in the Rawlsian version given above) relies on the idea that the flourishing of democratic institutions needs individuals with strong personalities and even with some egoistic tendencies; and it holds therefore that the main problem democracies face is how to reach an equilibrium between the citizens' egoism and pluralism and the stability of society. Liberal theorists try to draw the line beyond which a society will fall apart because of the excessive individualism of its members and consider admissible any behavior or attitude on 'this' side of the line. Republicans and communitarians seem to believe that *any* form of individualism represents a threat to society, or at least tend to draw the line much earlier than liberals do.

As for the "attitudes toward deference and authority in political discussion" that Stout refers to, it seems to me that Shklar is right when she claims that a reasonable amount of suspicion should be a characteristic trait of the citizens of a democracy, since "only a distrustful population can be relied on to watch out for its rights" (Shklar, 1984, p. 238). What characterizes the citizens of modern democracy (as opposed to, say, the subjects of an absolute monarch or to the members of a strongly traditionalistic society) is precisely an attitude of *limited* and *conditional* deference towards the authority both of their institutions and of their present government. It is a limited and conditional deference, since it depends on the judgment the citizens formulate with regard to the activity and policies of the government, on one hand, and on their perception of the adequacy of their institutions, on the other. If they come to think of a single law, of a certain institutional arrangement (e. g.: a procedure of law-making, an institutionalized form of political participation, the competences of a branch of the government, etc.), or of their constitution as a whole as inadequate or even illegitimate, they will withdraw their support for that institution. In this view, there is nothing sacred in a democracy, not even in the constitution, which is thus far from being a holy book. Republican and communitarians, however, point out the importance of viewing institutions as having some sacred sheen. They give an interpretation of the Platonic idea of the empire of laws, which sees in the latter laws the almost unquestionable

principles that the republic is meant to follow. Laws (not any law, but basic laws such as constitutions) are the groundwork on which the State is founded and cannot therefore be radically discussed or questioned. From Machiavelli to Viroli, republicans (contrary to what they claim) entrust the survival of the republic to its basic laws rather than to its citizens' morality, attitude or behavior.

In this sense, an apparent paradox which seems to characterize the position of republican and communitarian thinkers, is worth noticing. On the one hand, they make the individuals responsible for the survival and the strength of the State; on the other hand, they mistrust the same individuals, since they do not share the above mentioned implication according to which individuals will always do what they think is the morally right thing to do, once they see it, and since they prefer to rely on institutions (laws) and on forces such as tradition, solidarity, and patriotism. The paradox consists therefore in the fact that, notwithstanding their trust in these impersonal elements, republicans and communitarians seem to believe that the present crisis of democracy (which is both a legitimacy and efficiency crisis) has its primary roots in the attitude of the citizens. They tend to blame the individuals for the crisis and tend to exclude from their criticism the social, political and economic context in which these individuals happen to live. In this sense, there was a major shift from the classical republican position to the contemporary one, namely a hardly explicable lack of consideration for the important issue of the relation between political and economic power within a society.

Those who wish a more active role and a growing participation of the citizens in political life should also advocate a decrease in the concentration of economic and political power, since such a concentration damages the individual's freedom, empties out the ideal of civic sense, and threatens the political community itself, as classical republican authors since ever pointed out (and it is not important whether they were referring to Julius Cesar, to the Medici family, or to big companies). What really links to each other thinkers distant in space, time, context, and political ideas such as Cicero, Bruni, Machiavelli, Rousseau, Jefferson, Madison, etc. is their concerned warning with regard to the concentration of power in the hands of elites.

Interestingly enough, this theme has almost disappeared both from the political and the philosophical debate in Europe. In the past, Marxism had taken it over, albeit on a different basis and with different goals than republicanism. In the U.S., though, this topic was developed not so much by Marxist theorists but primarily by thinkers who saw their roots in the America of the Pilgrim Fathers, of the Puritan Town Councils, or of the Founding Fathers: Josiah Royce, Walter Lippmann, John Dewey, Louis D. Brandeis, even Theodore

Roosevelt (all cited by a communitarian thinker, Michael Sandel, in his book on civic virtues; cf. Sandel, 1995, p. 59ff). Brandeis, a Supreme Court Justice, thought that the uncontrolled concentration of capitalistic power represented a threat to democracy and to the freedom of its citizens. He pointed to the necessity of educating citizens and to the close relation between this task and the question of labor. In his opinion, the education of the citizenry must be a continuous one, since only by such a method could they reach the knowledge necessary for democratic life. But this implies that the labor conditions are such that citizens have a guaranteed source of income and enough spare time to develop that “freshness of mind” necessary for their education (Strum, 1995, p. 27f). Brandeis insists very much on this point: “The educational standard required of a democracy is obviously high. The citizen should be able to comprehend among other things the many great and difficult problems of industry, commerce and finance, which with us necessarily become political questions”. It is therefore impossible that the education of the citizenry stops at the age of fourteen (i. e. with the end of the common school), since the real democratic education starts precisely at that point (quoted in Strum 1995, 93). The true conditions for the democratic education of the citizenry, i. e. for a real, active political participation, should be sought less in the individual attitude of the member of a political community and rather in the political, social, and economical context in which they live.

Those contemporary thinkers (Pettit, 1997; Skinner, 1998; Viroli, 2002) who do not consider this issue offer therefore a partial version of republicanism. A republican democracy can flourish only if social inequality, economic injustice, and political exclusion are eradicated. In this sense, if democracy is bound “to give the State to the citizens”, then it should also create the material conditions in which citizens can exercise their democratic power. This means that democracy cannot be understood merely as a political phenomenon. Democracy necessarily implies a certain democratic control over the economic life of a country. This is not to advocate a State controlled economy or the creation of a socialistic economic system; but the economic policies of a democratic government should obey less the allegedly “natural and neutral” imperatives of the market (which normally tend to favor elites) and be concerned rather with the needs of the people. But this is too a complex theme to be fully taken up in this context;¹² I shall therefore leave it aside and move on to consider the final point: the kind of freedom that democracy is meant to educate the citizenry towards.

¹² On the relation between political and economic power, see Pinzani (2005).

Freedom and constitution

New republican theorists such as Philip Pettit or Maurizio Viroli distinguish notably between three different concepts of liberty: namely, liberal, democratic and republican liberty (cf. Pettit, 1997; Viroli, 2002). Inspired by Constant's classical distinction between the liberty of the ancients and of the moderns on the one side and Berlin's (meanwhile also classical) distinction between negative and positive freedom (Berlin, 1969), Pettit distinguishes among three forms of freedom: negative freedom as non-interference, positive freedom as democratic self-mastery and republican freedom as non-domination.

In Pettit's view, liberalism conceives freedom as non-interference, following a form introduced by Hobbes in *Leviathan* against republicans (Pettit, 1997, p. 271). This conception justifies the existence of law: "The argument was that since all law is a form of interference all law reduces people's liberty and no legal system [...] can be dismissed as singularly inimical to freedom" (p. 271). According to liberals, liberty is the freedom of individuals from any interference in their action. When absolute freedom is either impossible or undesirable (as shown by the mental experiment of the state of nature) interference may become necessary. Every legal system implies therefore some sort of interference to one's freedom, and what matters is only that this interference is as limited as possible (as for Locke) or as effective as possible (as for Hobbes). Liberalism is therefore compatible with any form of government, even with a despotic one. Viroli says that, on the contrary, no republican would call freedom that which subjects enjoy under a "liberal" despot who allows them graciously free to do what they want, but who could deprive them at any moment of their liberty at will (Viroli, 2002, p. 40), e. g. Hobbes' sovereign.

The distinction between interference and domination plays a central role in the distinction between liberalism and republicanism, and therefore is worth considering more closely. "Interference involves an intentional or quasi-intentional worsening of someone's choice situation. [...] Interference will occur on an arbitrary basis to the extent that is controlled by the *arbitrium* – the will or judgment – of the interferer: to the extent, in particular, that is not forced to track the interests of those who suffer the interference" (Pettit, 1997, p. 272). Domination occurs precisely when one party has "the capacity to interfere on an arbitrary basis in some of the other's choices". Domination is arbitrary interference even when no actual interference occurs (as in the case of the "liberal" despot described by Viroli, even where he grants liberties to

his subjects). The very risk of an arbitrary interference, i.e. also a potential or virtual arbitrary interference, allows us to speak of domination. I shall come back to this arbitrariness shortly.

Republicans also reject the positive conception of freedom as self-mastery or self-government, which is a typical democratic idea. Democracy is defined here in a very classical sense (for example, following Plato, Rousseau and Kant) as the government exercised by the whole of the individuals, i.e. mostly by their majority, since unanimity is seldom possible. Democracy is therefore a form of political life in which men and not laws rule (Viroli, 2002, p. 47). And since men rule, the law is an arbitrary one, even when it is chosen democratically: “A law accepted voluntarily by members of the most democratic assembly on earth may well be an arbitrary law that permits some part of the society to constrain the will of other parts, thus depriving them of their autonomy” (Viroli, 2002, p. 43). However, the republican conception of freedom does not identify it with self-government but relies on the government of laws and not of men.¹³ The necessary condition for the survival and independence of the liberty of the republic (and of its citizens) does not consist in the fact that the laws are created by the citizens, but rather in the fact that the laws promote the public good and not the interests of individuals or groups. The democratic process of law-making does not represent a guarantee in this sense, since it is quite probable that citizens in their role as law-makers will try to improve their personal interests at the expense of the common interest.

Republican freedom consists, therefore, not in the mere absence of a *real* arbitrary interference, but in the absence of any *possible* arbitrary interference, and it does not correspond to the legislative autonomy of citizens, but rather in the safeguarding of law’s empire. Both views seem questionable to me. First, it seems to me that no liberal thinker would ever defend a conception of freedom as a simple absence of concrete interference by the political authority or by any other subject (a partial exception could be represented by Hobbes because of

¹³ Viroli quotes three classical texts on this theme, which constitute the core of modern republicanism: “The first is Livy’s statement that the liberty the Romans regained after the expulsion of the kings consisted first and foremost, in having the laws be more powerful than men. The second is the speech, reported by Sallust, in which Aemilius Lepidus proclaims that the Roman people were free because they obeyed no one but their own laws. The third is the passage from Cicero’s *Pro Cluentio*, quoted countless times by political writers in the Renaissance and later: ‘All of us obey the law to the end that we may be free’” (Viroli, 2002, p. 48). The passages quoted by Viroli are taken from: Livy, *Ab urbe condita*, II.1.1; Sallust, *Orationes et epistulae excerptae de historiis*, 4, Loeb Classical Library; Cicero, *Pro Cluentio*, trans. H. Grose Hodge (1927; Cambridge, Mass.: Harvard University Press, 1990), IX.146 (Viroli, 2002, p. 116).

his peculiar mechanistic view of freedom). On the contrary, liberalism arose from the need to guarantee to every individual an unconditional respect for her or his private sphere, i.e. for her or his individual liberties (even if, historically, this idea was often limited in its range by the very liberal authors who hold it, as when they then exclude women or slaves from the concept of individual that possesses those liberties: cf. Losurdo, 2005). No liberal thinker would ever accept the situation imagined by Viroli, i. e. the idea of a benevolent despot willing to concede liberties to his subjects, but maintaining the absolute right of violating those liberties. Liberal thinkers (including Hobbes) have always insisted on the creation of a state of juridical security according to the idea of due process, which became the germinal idea of the liberal *Rechtsstaat*, i. e. of a State organized according to the principle of the Rule of Law. Citizens should be sure that their rights are inviolable and not at the sovereign's disposal (even when the sovereign is the people itself). At least on this point, republicans and liberals seem to build on the same concept of freedom as independence from domination.

However, a real difference does appear to exist between the republican and the democratic, or rather the radical democratic, concept of freedom. According to the view of (radical) democracy exposed by the New Republicans, popular sovereignty is unlimited and stops before nothing, not even individual liberties. In a (radical) democracy, we would face the above mentioned situation in which individual rights were dependent on the sovereign's arbitrary will. This may be true for radical democracy, but it is not true of our contemporary democracies, which are rather the result of a combination of the above mentioned traditions, i.e. liberal, republican and radical democratic. In some cases, notably with the Welfare State, one can even speak of the influence of a further tradition, socialist, which introduced the idea of social rights (whose legal status as compared to other basic rights is still the object of dispute). In this sense, one could claim that our contemporary democracies are the expression of a peculiar mixture of traditions. This mixture has a name: constitutionalism, which represents itself as an autonomous tradition traceable back to Plato and his theory of the mixed constitution.

If we were to attribute to each of these traditions a basic principle, we could say that: (1) republicanism consists in the double idea that political autonomy is the highest good, and that it can be reached only in the context of republican institutions; (2) liberalism consists in the idea that all individuals are politically and legally equal, and that this equality is inviolable; (3) radical democracy claims that only those institutions and norms that are the expression of the genuine popular will may be considered as legitimate; (4) constitutionalism

states that legitimacy can be claimed only by those institutions and legal orders that are organized according to constitutional norms (be they written or not), which are not at the sovereign will's disposal – except in situations in which the sovereign decides to change, reform or abolish the present constitution. Nevertheless, in such cases, the process of constitutional revision is complex and regulated by rigid rules that are established by the very constitution that is to be revised. Mixing together elements of the other traditions, constitutionalism offers therefore a view according to which: (1) individuals have inalienable rights protecting them from the arbitrary will of others, including the State (this is a classical liberal claim), (2) all individuals are at the same time authors and addressees of the laws (as the radical democratic tradition would have it), and finally (3) valid norms are only those which result from a rigorous process, whose rules are to be strictly observed and cannot be lightly modified (according to the republican idea of law's empire being superior even to the principle of popular sovereignty). For this reason, constitutionalism shares with liberalism a certain suspicion towards State power and consequently a great attention to its possible abuses; with radical democracy, the idea of an unlimited participation of citizens in political life and in the legislative process; and with republicanism, a certain distrust against the multitude and the possible abuse of legislative power by individuals, by a majority, or even by the people as a whole.

Returning now to Bobbio's initial claim, according to which citizens will be educated to freedom only through a democratic constitution, in the context of the above considerations of freedom and constitutionalism. What Bobbio appears to suggest is that a democratic constitution is more likely to educate citizens to exercise precisely that kind of freedom which is necessary in order to maintain the constitution itself and which consists essentially in accepting and respecting the basic rules of the 'democratic game'. It does not educate them towards being civically virtuous, nor to establishing 'strong' forms of liberty (such as the positive liberty identified by Isaiah Berlin). In this sense, a democratic constitution does not enhance the morality of its citizens (as Kant desired), but reinforces itself against Ernst-Wolfgang Böckenförde's pessimistic diagnosis that the secularized democratic state lives on ideological bases which it cannot reproduce itself (Böckenförde, 1991, p. 112). However, our democratic societies do in fact face a motivational crisis that is at the same time an ideological one. Yet, whether this has to do with the loss of public morality, civic virtues etc., or rather (as I suspect) with the fact that constitutions are less and less respected by the very institutions created by them, is a question that cannot be answered here.

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Recebido em: 02/09/2009

Aprovado em: 15/10/2009