The relationship between civil society and state institutions in deliberative democracy

Introduction

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The long and complex history of democracy reveals a difficult struggle to define its proper meaning, and models of democracy show how this issue has been resolved and evaluated at different times and periods. Within the democratic thought, there is a clear division between those who value political participation for herself and conceive it as a fundamental mode of self-realization, and those who adopt a more instrumental and understand democratic politics as a means of protecting the citizens of regulation arbitrary, expressing (via mechanisms of aggregation) their preferences. From the classic Democrats, Republicans, liberals and participatory democrats, from the design of these various approaches to democracy is deliberative democracy. The key focus for deliberative democrats, as well pointed out by Bernard Manin, is the need to "radically alter the common vision for the theories of the liberal and democratic thought: the source of legitimacy is not the predetermined will of individuals, but instead, the process of its formation, the actual determination" (MANIN, 1987, p. 351).

The biggest fight of deliberative democrats is to discard any notion of fixed preferences and replace it by a process of learning. Focus is not the simple imposition of a pattern of abstract reasoning, pre-designed, but a commitment to politics as a learning process always open, unlimited and continuous, in which the roles of "teacher" and "resume" are raised, and where the question of what should be learned has to be established in the learning process itself (OFFE; Preuss, 1991, p. 168).

According Held, the aggregation democracy model is problematic for several reasons. Undermines the ideal of democracy, as it fails to meet satisfactorily the emphasis on effective participation and enlightened understanding, two criteria that deliberative democrats believe are vital to the achievement of a more fair. According to

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the aggregation model of democracy, citizens participate in decision-making process, first making their preferences known by voting. The vote is, thus, conceived as the first political act. However, deliberative democrats reject this narrow conception of participation and argue that for this practice of self-determination can take place fully, the individual must be able to take part in authentic deliberation and not simply express their preferences. According to Habermas the formation of opinion and political will, both within the public and in parliament, does not obey the logic of the market, but the structures of political communication oriented to mutual understanding, the very paradigm of this type of model is the dialogue.

The resolution refers to one’s attitude toward social cooperation, i.e., that openness to persuasion by reasons relating to the claims of others as our own. The medium is a deliberative exchange of views well-intentioned - including reports from participants about their own understanding of their vital interests [...] in which a vote, if made, represents a set of judgments. (Habermas 1995, p. 283)

This determination requires that the parties abandon strategic behavior characteristic aggregative model of democracy and, instead, try to reach a consensus among free and equal participants. Participate in this discursive practice is very different to share in decision-making model of aggregation democracy (see Held, 2006, p. 230-234). Deliberative democrats characterize participation in democratic processes as a transformative process:

Through the process of public discussion with the plurality of views and situated opined unlike the others, people often gain new information, learn from different experiences of their collective problems, or find that their initial opinions are based on prejudice or ignorance, or they have misunderstood the relationship of their own interests with others. (Young, 2000, p. 26).

If the result of the deliberative process of decision-making aims to achieve the consent of all participants, these participants have, consequently, the right to express their views, challenge the claims of his opponents, trying to build with others a consensus based on the argument, free of coercion of all possible involved. Thus, as Held (2006), committing ourselves to the determination we are implicitly defending certain ethical principles, which is why Habermas describes his theory as a "theory of
discourse." Therefore, even the defense of procedural legitimacy of Habermas provides a basis for ensuring the timeliness and basic freedom2[1]

When the core of democratic theory becomes the procedural concept of deliberative politics, has resulted in a different pattern of both the liberal position the state as a defender of economic society, as the republican view, which considers the state as an ethical community.

Habermas seeks a third way, that is, restore the state in the dimension of Lebenswelt. This means inserting it again at the institutional framework in which politics ceases to be a simple technique for silencing, a form of manifestation of instrumental rationality, that depoliticizes the affairs of state, returning to the polis, ie that locus of life corporate in which major decisions are taken as a whole, based on theoretical and practical discourses. The state would again be, as in ancient Greece, a space of Lebenswelt to social integration and not guaranteed a subsystem co-opted to the economic system, governed by the principal of expanded accumulation (..). Habermas does not dare answer about which way to go for capitalist societies. But it seems certain that the current crises of rationality and legitimacy tend to a solution, and hence, the medium or long-term, a restructuring of the state and society on other foundations. (Freitag, 1990, p 103/104).

The Habermasian Deliberative Democracy combines elements of both liberalism and communitarianism and integrates the concept of an ideal procedure for the counseling and decision-making. This structure produces a procedural link between domestic negotiations, speeches and discourses of self-understanding of justice, as well as the underlying assumption that, under such circumstances, the results now crave rational, fair and honest sometimes. Thus, the practical reason moves from the universal rights of man or the ethical character of a particular community, and is limited to rules discursive and argumentative forms of action-oriented construction of rationally motivated consensus, that is, the structure of linguistic communication (cf. Habermas, 2002, p. 284). The deliberative theory becomes dependent on the institutionalization of procedures relating to them, not operating from a concept of the social hole centered in the state, understood as a certain subject-oriented goals. Just as it also includes social

[1] Habermas, in addressing the relationship between the principle of discourse and the categories of law that produce their own legal code, demonstrates how the normative idea of self-government, united in order to regulate human interactions through the instrument of the law, gives rise to five categories of rights. See Habermas (1996, chapter 3).
space as a system that articulate the constitutional balance of power and interests, unconsciously and heat market.

This understanding of democratic results, by rules, requiring a shift of weights that apply to each element in the relationship between the three resources from which modern societies meet their integration and lack of direction, namely: money, administrative power and solidarity. The policy implications are clear: the power of integrative social solidarity, which can no longer take only the sources of communicative action must unfold on public opinion and largely autonomous disseminated, and on institutionalized procedures by-state legal, for democratic formation of opinion and will, moreover, it must also be able to assert themselves and to oppose to the other two powers, namely, money and administrative power (Habermas, 2002, p. 285-289).

With the discourse theory a new perspective comes into play: communication procedure and assumptions of democratic formation of opinion and will serve as major sinks of discursive rationalization of decisions of a government and administration associated with the right and the law. Rationalization means more than mere legitimation, is the very action of building power. The power available administrative changes its state of mere aggregate retroalimentado is provided by a democratic formation of opinion and will not only exerts further control the exercise of political power, but also the program in one way or another.

Despite this political power can only "act". It is a partial system specializing in collective decisions binding, whereas the communicative structures of the public make up a widespread network of sensors that react to the pressure of the whole social problem situations and simulating influential opinions. The Public opinion turned into communicative power second democratic procedures can not "master", but only direct the use of administrative power to certain channels. (cf. HABERMAS, 1995). Thus, the central objective of this work is to understand how Habermas builds his concept of Deliberative Democracy from concepts used separately and in many cases, considered as dichotomous in the process of legitimation of the democratic rule of law, in short, to understand how to deconstruct Habermas one's perception of political science on the concepts of popular sovereignty and human rights for, then build a theory of democratic legitimacy from such concepts, to seek this goal will be addressed in the chapters that theoretical path that allowed the joint and Habermas consolidation of this theoretical
framework, which has its central aspect ruled by a dialogical approach of making and legitimization of the legal system, a process capable of ensuring, in modern societies, a coexistence between private and public autonomy, within the democratic state.

The concept of democratic rule of law in Habermas: an approach equiprimordial.

The difference between the modern understanding of democracy and the notion is related to the classical conception of law which, lately, is endowed with three main features: the modern law is good, cogent and structured individualistically, being as the result of rules produced by a political legislator and approved by the state, with the primary objective of ensuring freedom subjective. According to Habermas, for a current interpretation of liberal, democratic self-determination can only come about through the medium of those rights - subjective - which provide structurally freedoms. Therefore, the notion of a rule of law (rule of law), which expresses the idea of human rights and popular sovereignty is understood as a second source of legitimacy. At this point, Habermas presents itself to an issue that should be discussed: the relationship between the democratic principle and rule of law. In the classical view, laws are the expression of the will of citizens gathered unlimited.

[...] No matter how the ethos of the common way of life is reflected in the laws, this ethos is not a limitation, as it gets valid through the process of training the will of citizens, while the beginning of the exercise of the rule of law seems to place limits on the sovereign self-determination of the people, because the "power laws" requires the democratic will-formation does not put positivized against human rights as fundamental rights. However, in the history of political philosophy, the two sources of legitimacy of the democratic state of law arise, competing against each other. (Habermas, 2003a, p. 153-154).

Will these conflicts that arise questions about what kind of freedom should more correctly be understood as the ultimate source of state legitimation, the dichotomy, as in classical political science, and freedom of modern vs. freedom of the ancients. According to Habermas, the main issue to be raised is: "[...] what should come first: the subjective rights of freedom of the citizens of modern economic society or the rights of political participation of democratic citizens" (Habermas 2003a, p.154-155). For the German theorist, most researchers understand that the private autonomy of citizens
takes shape in the core of fundamental rights, in opposition, we can find interpretations that see political autonomy of citizens in the incorporation of self-organization of a community that creates their own laws. In summary, based on these interpretations, there is a hierarchy between the principle of human rights and popular sovereignty, so that in each of the interpretations, the democratic legitimacy resides in one of the poles seen as antagonistic.

However, for Habermas, these positions are in the opposite interpretation of a very strong, in his view, the human rights perspective, transformed into fundamental rights, can not be required outside the sovereign legislature, as a kind of limitation, nor can be used in an instrumental way, as a functional element facing a particular purpose. Therefore, these principles, usually seen as dichotomous, can be understood as constituting two sides of the same structure, ie, popular sovereignty and human rights comprise two interdependent moments of the same process, namely the formation of the democratic state of law. According to Habermas, this co-originariedade can also be understood from the perspective of autonomous public / private, to the extent that are interdependent based on its implication material. To make a proper use of their public autonomy, guaranteed by political rights, citizens have to be sufficiently independent in setting up his private life, provided symmetrically. However, the "citizens of society" (Gesellschaftsbürger) can only enjoy their private autonomy symmetrically, if, as citizens of the State (Staatsbürger) make proper use of their political autonomy, since the subjective freedom of action, equally, has for them the "same value". (Habermas 2003, p. 155).

Law and Democracy, Habermas proposed that the normative foundations of the democratic state were analyzed as a result of deliberation and decision-making processes with the aim of creating an autonomous association of participants in the free and equal right. Within this objective, this perspective seeks to respond as satisfactorily as possible the question of what the necessary rights, conversely, to allow a legitimate regulation of our lives in society with the means provided by law positivist (cf. Habermas 2003, p. 163). From this position and these questions, two findings deserve attention: first, could only be considered legitimate resolutions that can be accorded by all potential participants, under the conditions of rational discourse (cf. Habermas, 1992, p.
Secondly, the participants undertake, through questions directed to consider modern law as a means to regulate their coexistence. Thus, how legitimacy is constructed of a general consensus on the basis of a rational discourse and public use of reason, as well as notions of laws that allow binding to a corresponding field subjective freedom, is line with the concept of political autonomy of Kant, that "no one is free, while there is a single citizen is unable to enjoy equal freedom under the law that all citizens gave themselves up, following a rational deliberation" (Habermas 2003, p. 162).

To understand how the relationship between popular sovereignty and rule of law does not constitute a paradoxical relationship, but interdependent, we must understand the fundamental rights, in general, not just the political rights of citizens, appear as components for autolesgislação itself. Discourse theory, and theories of social contract, are based on an initial state which serves as a starting point, "in this state, people come in for any number resolve themselves into a constituent practice" (Habermas 2003, p. 168). That is, the constitution, while institutionalizing fundamental freedoms, is the initial element of the process of democratic self-legislation.

This fiction of freedom of will fully meet the requirement, extremely important, equality among the participants. Beyond this first condition, we present certain functional requirements, namely: citizens must meet under the same decision to legitimately regulate their life together later by positive law, and secondly, must be willing to participate in practical discourses, ie, satisfy the requirements that make a pragmatic action argumentative. However, it is important to note that this assumption of rationality is not confined to considerations of instrumental rationality, as is the case of modern natural law tradition, likewise, is not limited to morality, as in Kant and Rousseau, to the extent that presents the basic condition of communicative reason. As

[2] "This does not exclude, of course, the possibility of fallibilism, since the search of the only correct answer is not able to guarantee, by itself, a correct result. Only the discursive character of the deliberation process is able to substantiate the possibility of repeated and self-correction, Thus, the prospect of rationally acceptable results" (Habermas, 2003a, p. 162).

[3] According to Habermas, "We must go further and demonstrate how democratic principles are inherent in the establishment of democracy itself" (Habermas, 2003a, p. 167).
a final condition, it is necessary that each one is willing to express the sense of their practice in an explicit theme, namely, first the practice aims to reflect on the meaning of the project and make it explicit in a second time. "And that reflection is able to draw attention to a series of constructive tasks that must be undertaken before the start of concrete work constituents" (Habermas, 2003a, p. 168).

In Habermas, the logical genesis of rights is in the process of applying the principle of speech to subjective rights to freedom of action, and focuses on the institutionalization of the legal form of the elements necessary for guaranteeing the discursive practice of political autonomy, which allows to equate private autonomy, once abstract, with the legal form. Thus, the very principle of democracy can only be understood as the core of a system of rights. "The logical genesis of rights as a circular process, in which the code of law and mechanism for the production of legitimate right, so the principle of democracy, if so are co-original" (Habermas, 1997, Volume I, p 158 .)

The principle of discourse (D) is a normative principle neutral with regard to morality and law, so that, for moral, takes the form of a universal principle - principle (U) - to test the possibility of accepting a standard, and takes to the right, as a principle of democracy - the principle (De) - towards the legitimacy of legal norms.

The principle of democracy presupposes the possibility of rational decision to practical issues in general, more specifically, refers to the legitimacy of those norms of action that arise in the form of law. The principle of democracy as such is not a rule of argumentation, he says nothing about whether and how it is possible to discuss practical issues and moral discourse: refers to the abstract conditions of formation of the institutionalization of rational opinion and will, through a system of rights that guarantees each an equal share in the process of legal regulation. (Werle, 2009, p 280).

The circular process of structure formation of the rights an interdependent relationship between the code of law (legal form) and the mechanism for the production of the legitimate right of speech poured in principle, starting from this entanglement, the principle (D) assumes, through the legal institutionalization, the figure of the principle of democracy which gives strength to the process of legitimation norms. To the extent that the rights system ensures both the public and private autonomy, it operationalizes the tension between facticity (positive) and validity (legitimacy) of the law, these moments come together at the intersection between form and principle of the right of speech, including the double face of Janus volves the right: on the one hand, to their recipients,
and another for their authors. Here seems to lie a new tension between facticity and validity, the result of circumstance, at first sight paradoxical "that the fundamental political rights have to institutionalize the public use of communicative freedoms in the form of subjective rights" (Habermas, 1997, Volume I, p 167). According to Habermas, the code does not open the right choice, the rights related to communicative freedom need to be formulated in a language that edge to choose the subjects of law in their use or non-communicative freedoms. The appearance of legitimacy by legality is not paradoxical unless we start to move from a perspective in which the rights system is legitimized himself.

Fundamental rights are constitutive for any legal association of free and equal members. This law reflects a horizontal socialization of civilians, however, such an act of legal institutionalization of political autonomy is incomplete at certain points, which prevents it can stabilize itself. In order to become real entanglement between private and public autonomy, it is necessary that the process of juridification is not limited to subjective freedom of private individuals as well as the communicative freedoms of citizens. Within a discursive conception of democracy political power is understood as a process permeated by negotiations and argumentative processes. Thus the creation of the self-law depends on a number of stringent conditions which only can be implemented by examination and communication processes in which the ratio assumes a procedural FIG. According to Habermas, "a sociological reconstruction of democracy has to choose its basic concepts so that they identify in the political fragments of an" existing right ", even if distorted" (Habermas, 1997, Volume II, p 9).

In short, jurificação should extend both to political power - the assumption of duty as a medium - which depend on the requirement of normalization, and implementation of the law. This co-creation of original and interconnection between law and political power comes a second need for legitimacy, ie, the exercise of the executive needs, it also processes of legitimation. Is this structure that rests on the concept of a democratic state.

In rebuilding the inner connection between the rule of law and deliberative democracy, presented at the horizontal level of socialization of self-determination of citizens, Habermas's argument is to emphasize the intersubjective meaning of the rights of democratic citizenship: are relationships that have their basis in the structures of recognition reciprocal have the same assumptions of communicative
rationality. The assumptions of the quasi-transcendental experiences of mutual recognition, experienced in face to face in everyday life and in the reflexive form of speech, are embedded in the very modern system of rights, which allows different experiences of respect and mutual recognition between individuals strangers to each other, and who want to remain strangers. (Werle, 2008, p. 284).

**Theory of discourse, public sphere and deliberativismo.**

With the discourse theory a new perspective on the scene: procedure and communicative presuppositions of democratic formation of opinion and will serve as major sinks of discursive rationalization of decisions of a government and administration associated with the right and the law. Rationalization means more than mere legitimation, even more than the action itself constitute power. The power available administrative changes its state of mere aggregate retroalimentado is provided by a democratic formation of opinion and will not only exerts further control the exercise of political power, but also the program in one way or another. Nevertheless, political power can only "act". It is a partial system specializing in collective decisions binding, whereas the communicative structures of the public make up a widespread network of sensors that react to the pressure of the whole social problem situations and simulating influential opinions. Public opinion turned into communicative power second democratic procedures cannot "master", but only direct the use of administrative power to certain channels5[4].

5[4] There has been much debate within the democratic theories on the institutionalization of social participation in the process of agenda setting and standardization of public law. Within these discussions, Habermas's theory has received some criticism. To Avritzer (AVRITZER, 2000, p. 40), whose position illustrates the critical number of authors to Habermas, there is a contradiction within the theory of Habermas: on one hand, the concept of deep deliberation throughout the process of legitimation of rights policy to the extent that the administrative power does not have the ability to generate legitimacy. On the other hand, it is not able to produce institutional arrangements, because its shape does not imply anything more than the influence in the political system. Thus, the author fails to give an institutional form of deliberative democracy, according to Habermas, the institutionalization of these spaces has resulted in a break with the social dynamics that it was present due to its shape the same fluid and non-bureaucratic. For Habermas, institutionalize the interaction spaces of the intersubjective life-world means a systemic colonization of these spaces by the logic of power and money. Within these discussions about whether or not the institutionalization of participatory spaces, Joshua Cohen argues that "because the members of a democratic association regard deliberative procedures the source of legitimacy ... institutions in which they prefer connections between deliberation and results are more evident than institutions in
In discourse theory, the flourishing of deliberative politics does not depend on a citizenry able to act collectively and yes, the institutionalization of the corresponding communication processes and assumptions, as well as the interplay between institutionalized deliberations and public opinions that are formed in an informal manner. (Habermas, 1997, Volume II, p 21).

The concept of popular sovereignty is due to the republican ownership and the revaluation of the notion of sovereignty that emerged in early modern and initially associated with the despots who ruled so absolutist. The state, which monopolizes the means of legitimate application of force, is designed as a concentrated power, able to prevail over all other world powers. Rousseau transposed this figure of thought (initially proposed by Bodin) the unified will of the people, mixed with mastery of the classical idea of free individuals and equal and superseded the modern concept of autonomy. Despite this normative sublimation, the concept of sovereignty remained with the notion of an embodiment in its people. According to the republican conception, the people (at least potentially present) is a carrier of sovereignty, which in principle cannot delegate: it is unacceptable that, in its capacity as sovereign, the people would leave play. The liberalism that opposes the design more realistic that the democratic rule of law state power that is born of the people is exercised only "in elections and voting and by specific legislative bodies, bodies of executive power and jurisdiction.

The concept of discourse on democracy represents the image of a decentralized society, which actually distinguishes and empowers the public with a favorable scenario for finding, identifying and treating problems relevant to society as a whole. When sacrifices concept formation linked to the philosophy of the subject, sovereignty does not need to focus on people as Concrete, nor exile in anonymity of powers under constitutional law. The self-legal communication that organizes disappears into forms of communication-free subjects, which regulate the flow of discursive formation of opinions and desires, so that their results unreliable to keep the which such connections are less clear. " (Cohen, 1989, p. 73). A theoretical attempt Cohen is the transformation of the argumentative discussion process proposed by Habermas in an institutional process of deliberation. Your goal is therefore to transform the overlapping consensus in a hypothetical mode of operation of political institutions, in a situation of pluralism. Unlike Habermas, Cohen argues that there may be decisions that do not occur by consensus and still be legitimate. The argument used is that if the decision process, even for most, is an inclusive process and guided the exchange of reasons, this process will be accepted by most as the legitimate (Cohen 1989, p.73).
assumption of rationality itself. Thus, intuition linked to the idea of popular sovereignty is not weakened, but interpreted intersubjective. A popular sovereignty, even if it has become anonymous, only houses in the democratic process and the legal implementation of their communicative assumptions, very demanding by the way, if you intended to confer validation itself as power generated by communicative. Rather, this validation comes from the interactions between the formation of the will so institutionalized state and legal-culturally mobilized public opinion, which of you are a basis of associations of civil society equally distant from the State and the Economy.

The self-regulatory demands of democracy for the legal community a way of social collectivization, this same mode of social collectivization, however, do not settle for the whole of society in that settles the political system consisting of state-legal way. Also in yourself, deliberative politics remains a constitutive element of a complex society that is exempt in whole to assume a normative point of view as the theory of law. In this sense, the reading of democracy from the discourse theory is connected with a distant approach to which the political system is neither the top nor the center of society, much less the model that determines its structural mark, but an action system along the other.

In any case, this model of democracy no longer operate with the concept of a social totality centered on the state, represented as an oversized guy and acting upon a goal. He also does not represent the totality of a system of constitutional rules that govern in a neutral balance of power and interests according to the market model. For the theory of discourse dispenses the clichés of the philosophy of consciousness that ascribe recommend that on the one hand, the practice of self-determination of private individuals subject to a society taken as a whole, and, secondly, that the domination imputes anonymous laws of the particular individuals that compete with each other (Habermas, 1997, Volume II, p 21).

As the policy is to reserve a kind of ballast in the solution of problems that threaten the integration, it certainly has to be able to communicate with the right medium for all other fields of action legitimately ordained, whatever the way they are structured or to target. If the political system, however, depends on other system performance, it does not happen only in a trivial sense, but rather, deliberative politics, or held in accordance with conventional procedures training institutionalized opinion-and will, or informally in networks of public opinion, maintains an internal relation to the contexts of a universe of life cooperative and streamlined. Just the informative political attitude that pass through the filter depend on deliberative vital resources of the universe - the liberation political culture, political socialization of enlightened, and above
all the initiatives of the associations forming opinion - resources that are formed spontaneously or in any case, can be achieved only with great difficulty, if the path chosen to try to reach them is that of political direction.

Discourse theory relies on the intersubjectivity of processes of understanding, situated at a higher level, which take place through democratic procedures or network communication spheres of public policy. These communications devoid of subjects - taking place inside and outside the parliamentary complex and its corporations - form arenas of opinion and will on matters relevant to society and in need of regulation (Habermas, 1997, Volume II, p. 22).

The reconstruction of public space within an emancipatory perspective is given, according to Habermas, contemplating procedures rational, discursive, participatory and pluralistic, allowing civil society actors communicative consensus and self-regulation, a source of legitimacy of law, concluding that neither the the domestic production nor contain this potential. The autonomy of public space participatory revalues the primacy of community and solidarity, enabling the release of systemic imperatives of civil society, that is, bureaucratic control of the State and the economic constraints of the market. Therefore, the public space is not a neutral space that is unrelated to the specific interests of social actors, but provides the institutionalization of plurality and the possibility of consensus through communicative procedures exercised in the public sphere, providing the ethical criteria for the regulation of speech practical. The public sphere, finally, is the instance generator of collective decisions and legitimation democracy. To understand the role of the public sphere, Habermas is imperative to understand how he built such a concept.

This theoretical framework is supported by an idea of argumentative deliberation, it attached to the role of the public sphere become the site of communicative deliberation, where different concepts are placed in contact, providing a network of communicative procedures approaching the achievement of democratic principle. The democratic deliberation involve "a procedimentalizada popular sovereignty and political system networks connected to a peripheral political public sphere" (Habermas, 1994, p. 7).

From those statements, it is clear the structural ambivalence of the public sphere itself, as is conceived by Habermas, corresponding to the degree of deliberation and decision-making: on the one hand, we find the general public sphere, characterized
by public discussion of problems; on the other hand, there is procedurally regulated public sphere, in which resides the decision-making role effectively, that is, herein lies the political system, which is responsible for decisions that reflect the interests of the public sphere and influence of local or general discussion outside and institutional. While previously the public nature of the negotiations and all activities should ensure the continuity between the pre-parliamentary discussion and parliamentary debate, ensuring the unity of the public sphere and public opinion was that there is today, because of its structural change, it may exercise a critical function when subject to public use of reason6[5].

In the words of Habermas:

The formation of opinion, uncoupled decisions, takes place in a public and inclusive public spheres subcultural overlapping one another, whose real borders, social and time are fluid. The structures of such a pluralistic public sphere formed a more or less spontaneous, secured a framework for human rights. And through the public sphere that is organized within associations move up the communication flows in principle unlimited, forming the components of the informal public sphere generally. Taken as a whole, they form a complex “savage” who is not completely organized. Because of its anarchic structure, the general public sphere is much more exposed to the effects of repression and exclusion of state power - unevenly distributed - structural violence and systematically distorted communication than public spheres organized the parliamentary complex, which are governed by procedures. On the other hand, however, it has the advantage of being a medium free of limitations, which can better capture new problems, conduct speeches expressive of self-understanding and articulate, more freely, collective identities and interpretations of need. The formation of democratic opinion and will will depend on informal public opinion that ideally are formed in structures of a political public sphere is not distorted by power. For its part, the public sphere needs to have a social base in which the equal rights of citizens be able to social efficiency. (Habermas 1997, p. 32).

The public sphere is constituted as the arena for the formation of collective will, a space of public debate and the clash of different actors of society. This presents a public space as twofold: developing democratic processes of formation of public opinion and the collective political will, and is linked to an effective democratic action project, in

6[5] [...] Deliberative parliament [was seen] as a means but also as part of the public, today it does no such thing, she can not even, for the very public sphere, both within and outside parliament, changed its structure ... The public sphere can only perform its function of political criticism and control as, in addition to co-management policy commitments, she is liable, without limitation, the conditions of public affairs and advertising. (Habermas, 2003a, p. 241-44).
which civil society becomes a deliberative body and legitimizing political power, in which citizens are able to exercise their legal rights public.

This understanding of democracy results in the normative requirement of a weight shift in the relationship between money, administrative power and solidarity, from which modern societies meet their needs for integration and regulation. Here the policy implications are clear: the strength and integrating social solidarity, which can not be extracted from sources of communicative action must be developed through a broad range of autonomous public spheres and democratic processes of opinion formation and will, institutionalized through a constitution, and other mechanisms for achieving social integration - the money and administrative power - through the medium of law (Habermas, 1997, Volume II, p 22).

Therefore, the public space is seen as a sphere of discourse, autonomous from the political system, as the venue of intersubjectivity interaction of citizens aware, supportive and participatory, as is also the space of social interaction between subsystems. Thus, the appreciation of the concept of citizenship led to the upgrading of social practices, leading to political participation beyond the mere act of voting.

In this reasoning, the policy goes beyond the private interests, at this point, Habermas distinguishes the liberal by giving centrality to social action, making secondary individual aspects. Public space does not constitute a space of neutrality that is unrelated to the specific interests of social actors, while allowing the institutionalization of the possibility of consensus through communicative procedures exercised in the public sphere, providing the ethical criteria for the regulation of practical discourse.

7[6] A question much debated by the speakers of Habermas is the role played by fairness in Habermasian theory. According to this perspective imparcialista reasoning is an argument designed to remove the focus of discussions in the field of power relations, namely the impartiality argument constitutes the element enabler discussions rationally motivated and directing the discussion to a deliberative consensus rationally motivated by the strength of the best arguments. Since the assumptions of communicative rationality constitute the background of the positions enabler unbiased result of public use of reason rationally motivated consensus-oriented. However this reasoning imparcialista has been heavily criticized due to its degree of abstraction and self-limiting with respect to design what are the best arguments. Strongly rejects the argument that deliberation under the right conditions - free from coercion and power relations - is the central element in the constitution of the legitimacy of laws and public policies. The element neufrágico is not an evaluation of the possibilities of a determination under conditions unattainable argumentative rules that follow very abstract, but a better understanding of the nature and meaning of the resolution under 'not ideal'. (cf. Farrelly, 2004).
In this sense, the public sphere is the instance generator of collective decisions and legitimation democracy. Habermas also distinguishes itself from Republican thinkers, in that it unifies the lawsuit communicative procedural, rather than on civic values. Public space will be developed in public debates around the collective interests, allowing a joint action from the beginning of the speech. Habermas shares with liberals the idea that legitimacy derives from the struggle public. However, for the author, this discussion does not presuppose the constraint of neutrality: being judged by the criteria of a model of practical discourse, the public sphere is possible only when all affected individuals undertake a practical discourse, evaluating their validity claims.

Thus, the notion of politically active public sphere needs to be reevaluated, in that state and society interpenetrate each other and, therefore, will be present within the state, private interests collectively organized, since they need to assert their private autonomy through a range policy within the public arena. These organizations make use of advertising a type statement. Thus, it becomes a necessary restructuring of the public sphere so that it can perform its critical function.

Thus, reconstruction of public space is, according to Habermas, in an emancipatory perspective, when we contemplate rational procedures, discursive, participatory and pluralistic, allowing civil society actors consensus communicative and self-regulation, the source of legitimacy laws. Neither the domestic nor the production contain this potential.

The autonomy of public space participatory revalues the primacy of community and solidarity, enabling the release of civil society of bureaucratic control of the state and from the dictates of the market. From this derives the democratic public sphere is understood as the locus of sociopolitical development of procedures, whose formulation and adoption can involve all those affected by general social norms and collective policy decisions.

The discursive model seems appropriate to modern societies, therefore, with the entry of new groups in the public sphere and the expansion of citizenship rights in modernity, is no longer possible to imagine a public space homogeneous and politically egalitarian. The Habermasian model enlarges the sphere of political activity, fertilizing it with communicative inflows from civil society, in this model, the normative basis of
democracy are in a theory of post-metaphysical reason, ie the theory of communicative action and more latent in the notion of discourse as a reflexive form of this type of action.

For Habermas, despite the important role played by discourses of mutual self-understanding, especially in regard to the sense of social integration, within pluralist societies - culturally and socially - there are actions related to the interests and value orientations. Therefore, justice and honesty of the agreements are measured by the assumptions and procedures that need themselves in a rational justification and even under the normative point of view of justice. Contrary to what happens with ethical issues, justice issues are not related from the origin to a particular community.

The law signed politically legitimate if desired, must at least be in line with moral principles which claim general validation, as well as a concrete legal community (cf. Habermas, 2003 p. 285).

Thus, the concept of deliberative politics can only have empirical reference is defined as the diversity of communicative structures, which formed a common intention: not only because of an ethical self-understanding, but also the search for balance between divergent interests and establishment of agreements, the legal consistency check, a rational choice of instruments and aimed for a particular purpose, and thereby, ultimately, a moral foundation. Thus, the models presented as an ideal form of typology can soak up and complement each other. The policy dialogue and instrumental, where the forms of communication are institutionalized, respectively, can intercourse in the medium of deliberations. Everything therefore depends on the conditions of communication and procedures that confer legitimation force training institutionalized opinion-and will. The model of democracy suggested by Habermas is based on communication conditions under which the political process is supposed to be able to achieve reasonable results, precisely fulfilled in all its magnitude, so deliberative. When the core of democratic theory becomes the procedural concept of deliberative politics, has resulted in a different pattern of both the liberal position the state as a defender of economic society and the Republican, who sees the state as an ethical community.

Discourse theory welcomes elements of both sides and incorporates the concept of an ideal procedure for the counseling and decision-making. This democratic
procedure creates an internal cohesion between negotiations, speeches and discourses of self-understanding of justice, and support the assumption that, under such conditions, if results sometimes crave rational, fair and honest sometimes. Thus, the practical reason moves from the universal rights of man or the ethics of a particular community specific and confined to the rules discursive and argumentative forms of action that will guide the establishment of a mutual agreement, that is, the structure of communication language, allowing a link between the concepts of rule of law and popular sovereignty considered so far, dichotomous.

**Conclusion**

The discussions about the possibilities of expansion of democracy, not only as political regime, but especially in the context of state action with respect to civil society has raised many discussions. The theory of deliberative democracy has attempted to formulate a policy framework that enables linkage between proceduralism and effective political participation in order to "democratize democracy" in terms of Boaventura de Souza Santos. In this way, several authors have presented ways in which civil society can expand their sphere of action in setting the agenda and the social regulation and control of the State, among the most common questions is the need to expand the forms of social control through the process of accountability, responsiveness, administrative, institutional transparency, reduction of state bureaucracy and more. And the expansion of social participation in policy issues, particularly in defining the political agenda and the use of social resources.

This conception of deliberative democracy places, so a new type of relationship between state and civil society from the expansion of social activity of citizens, this process of increased participation brings new questions, among them the most important concerns the institutionalization or not this participation. For Habermas civil society should remain as an autonomous space in relation to the state and the market, so communicative inflows generally produced in the public sphere can not be institutionalized, aiming to influence the decisions of politically regulated public sphere - parliament.

Therefore, deliberative democracy, understood as an alternative to the traditional model of democracy demands participation in civil society and the state in
restructuring the traditional model of political decision. In addition, therefore, the simple recognition of the contribution, this model requires an active and purposeful participation of citizens in institutional changes, becoming a model that results from joint interests and mutual commitment between the State and Civil Society. Deliberative democracy requires an institutional form that guided by the ongoing dialogue between citizens, effectively allows the realization of participation through a deliberative process. In addition to formal guarantees, the institutional structure should comprise a set of measures - actors participatory channels for participation, inclusion, pluralism - that allow the realization of this democratic model.

For Habermas, this modernization of the world cultural spheres of life is what makes it possible (but not necessary) the development of forms of association, advertising, solidarity and identity post-traditional and reflective, communicative coördinates. Only on this new cultural base can conceive of a modification of traditional society by a post-traditional. Such cultural modernization, in that its results are fed back from the institutions that specialize in daily communication, powerfully promotes the transformation of the supposed linguistic-cultural life world and its mode of operation in relation to action. The Habermasian model enlarges the sphere of political activity, fertilizing it with communicative inflows from civil society. As already noted the rationalization of the lifeworld is also a presupposition and an additional stimulus for the modernization of its structural and institutional spheres. In particular, it allows the emergence of a new form of voluntary participation with equal rights, free from the constraints of kinship, patriarchal or other duties (inheritance, wealth, nobility, status) to fill a seat belonging and renewing forms of solidarity mainly in the free interaction of its current members. Of equal importance is the emergence and stabilization of post-conventional types of personality and critical forms of culture that assumes a relationship of action combined with its world of life and ability to thematize and critique any of its components, including those present in the regulatory framework. While the steps toward regulations were first discovered in the context of personality development, the assumptions to acquire the following competencies rooted in the structures of the lifeworld in which individuals are expected to grow. The modernization of the life world is thus the basis for the parallelism between the individual forms, social and cultural conscience. Habermas originally set ultimately all moral and legal developments in the succession of three models of communicative action: the
symbolically mediated interaction, speech and speaking propositional differentiated argumentative structures that correspond to moral pre-conventional, conventional and postconventional.

The institutional form becomes important, in this model of deliberative democracy, as it is constituted as an apparatus of procedures, both formal and informal, that enable to reduce or eliminate risks that present themselves to deliberative democracy, such as populism or elitism, as well as allowing the formation of a process that minimizes inequities and allows the legend to develop without negative effects for sociability. As Nogueira argues, this institutional form should be "a synthesis of new forms of societal organization and participation and new forms of representation and state decision. In a word, a synthesis of direct democracy and participatory democracy "(Nogueira, 1998, p. 20)

Avritzer (2000, p.44), seeking to answer the question of what form it is local and the institutionalization of public deliberation, argues that these places were the forums between state and society, in which specific arrangements should ensure that guarantee political participation. In his view, the deliberative arrangements argumentative assume the idea that modern society has such a level of pluralism that the existence of partial societies is already a factor that can not be revealed to the background, becoming the central point in discussions about democracy. Thus, there is an issue for deliberative democratic theory the need to seek ways to encourage socialization of information as well as forms of experimentation that allow the accommodation of differences in the new administrative arrangements.

These arrangements need to occur outside the state in a space donated by the public and able to give the necessary flexibility argumentative process. Their results, however, should be able to link the actors so that the fruits of their discussions generate institutions capable of accommodating pluralism of democratic societies today. Thus, deliberative democracy is guided by a policy concept that is characterized by the notion that the consent authority, the task of the exercise of state power is not reduced, as in the representative case, universal suffrage, since this consent must be the result of collective discussion and deliberations able to express themselves in social and political institutions structured to recognize that political authority.
Taking as starting point for these findings, it is important to highlight the potentially negative consequences of the way of legal institutionalization of the discursive process. For the German theorist, discourses developed within the legal regulation - the parliament - have a different logical forms of communication typical of unstructured public spaces.

However, public speeches require a different specification as the object, time and social context, in view of the political formation of opinion and will in arenas of public space and in corporate law and the practice of legally correct decisions and objectively informed in courts and administrations [...]. Depending on the need for decision or subject matter, often go to the fore the moral and legal aspects of a thing, other times the ethical aspects. Sometimes these are empirical questions that require the mobilization of knowledge from experts and other times it is pragmatic issues, which can be solved only through a balance of interests, so through negotiations equitable. The very processes of legitimation flow through different levels of communication, while the forms of communication "wild" that take place in public spaces are not organized in opposition to the decision-making and deliberation of courts, parliaments and administrations, which are formally regulated. However, the rules and legal procedures that allow the realization of speech should not be confused with the procedures and patterns of cognitive arguments controlling the internal flow of discourse. (Habermas, 2003a, p. 163).

Going beyond the mere combination of individual preferences, deliberative democracy has sought to consolidate itself as a public process of deliberation that seeks to articulate the broad participation of citizens and plural within a deliberative public sphere. To do so, seeks an institutional structure that allows aggregating citizens through public debate and that fosters the construction of interests and identities to the search for consensus, ensuring the necessary conditions for this. To fully participate in decision-making process, deliberative democrats argue that the individual must participate in authentic deliberation and not simply express their preferences. This determination requires that the parties abandon strategic behavior characteristic aggregating model of democracy and instead try to reach a consensus among free and equal participants. Participate in this discursive practice is very different from participating in decision-making processes of the aggregation model of democracy. Deliberative democrats characterize participation in democratic processes as a transformative process.

Within a theory of communication, the possibility of agreement among the participants is a condition that the arguments have validity claims. The consensus this potential gives the name of consensus based. This agreement is one in which the
acceptance of all based solely on the power of the best arguments: this is the reason that should motivate us to recognize the claim to validity of a statement. Such a consensus is possible only when there is an equal positions among members of discourse.

A consensus based matching is characterized by certain conditions, be interpreted as principles of an ideal speech situation. This principle directs that condition is performed without any intervention from outside elements and without any coercion. This process is possible when all the participants of the speech have an equal chance to elect and perform speech acts, ie, have equal opportunity to participate.

The principle of democracy, which results from the positive rights, represents the principle of discourse rules of action which involved the legal system. These standards do have a claim to be in accordance with moral norms. But while the moral principle extends only on the rules of action which may be justified by moral arguments, the validity of legal norms is based not only on moral grounds, but also pragmatic and ethical-political. Therefore, the laws are legitimate when, going beyond the moral, provide a real understanding of the community, able to express a fair account of the interests and values defended as a rational choice of strategies and means.

The principle of democracy illustrates how rational demands can become institutionalized. Through the process of implementation of positive rights, it becomes possible to provide the moral demands a legal expression. Thus, the allocation of rights can be understood as a moral complement. In addition to the institutionalization of an instrument of moral norms, positive rights should also be used for political purposes. Thus, the distinction between moral norms and rights is not only a distinction that refers to the validity of each, but their ends (Habermas, 1997, p.567).

Thus, Habermas distinguishes moral norms and positive rights. The basic rights are not the result of a speech of support or a process of implementation of rights, but such a condition. The so-called basic rights are not related to the institutionalized rights, but the conditions of the possibility of communicative action, ie, the discourse ethics. These rights underlie the status of free and equal citizens.
You can see therefore that Habermas seeks a link between private and public autonomy in order to provide a theoretical model of democracy that includes both a sufficient degree of participation in public affairs, which guarantees the moral autonomy, and a space for the realization of autonomy through the positive law. Thus, the private and public autonomy presuppose each other. The inner nexus between democracy and the rule of law consists in the fact that on the one hand, citizens may only use correspondingly their public autonomy if they are sufficiently independent because of their private autonomy ensured so egalitarian. On the other hand, can only enjoy egalitarian way of private autonomy if they, as citizens, make a proper use of their political autonomy. So the fundamental rights and liberal politicians are indivisible. The image of the core and shell is misleading - as if there is a core part of the basic rights of freedom that should claim precedence over the rights to communication and participation. According to Habermas, the kind of legitimacy for Western and essentially the same source of freedom and civil rights. As soon as the practice of citizen self-determination is understood as a long and uninterrupted implementation and configuration of the system of fundamental rights, the principle of popular sovereignty had emerged by itself on the idea of rule of law. This scenario of the conceptual genesis of fundamental rights, distributed on two levels, reveals that the practice conceptual steps preparatory necessarily explicit requirements that are placed in a democratic self-legislation which is structured by way of the law. Far from constituting barriers to the practice of these requirements will not do more than clarify them. In this context, the democratic principle can only be realized with the idea of rule of law, because both principles are in a relationship of mutual material implication.
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