Deliberative Democracy and the Challenge of Global Governance

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Nearly 10 years ago, in his essay “Governing the Globe” (Walzer 2004: 171-91) Michael Walzer analyzed a number of prospective developments of the world order in the 21st century and outlined what to his mind is the most desirable alternative: a complex picture which involves curbing anarchy while at the same time preserving diversity entirely. I will defend Walzer’s view as the embodiment of the best liberal view of cosmopolitan arrangements. In fact, in the same spirit as Rawls’s Law of Peoples (1999b), Walzer’s view is undergirded by the assumption that there’s nothing more anti-liberal than the idea that a just world will come into being solely when every human being on earth will turn into a liberal.

The bulk of my paper, however, will be devoted to addressing – from the standpoint of Habermas’s notion of “deliberative democracy” – the challenges raised by one point that Walzer makes at the very end of his essay. The world prospect called by him "third degree of pluralism” requires, as he admits on p. 191, among other things the building of institutions that haven’t yet developed and that will have to regulate action – action of individuals, groups, States – without resorting, in most cases, to the coercive means that are the typical prerogative of domestic government. They will have to rely on "soft law", "best practices", some version of the "open method of coordination", or in other words they will have to rely on the instruments of governance.

I’ll address the question whether this predicament will mean that we will have less democracy and more technocracy – the kind of democratic deficit often lamented of the European Union. An argument will be developed to the effect that deliberative democracy need not, by any means, remain focussed on the traditional dynamics of democratic government, but can provide a better account (relative to its competitors) of how structures of governance can operate.

Thus, if we adopt the angle of deliberative democracy, processes of governance need not be necessarily associated with a democratic deficit. On the contrary, based on a “deliberative-democratic”, as opposed to a “competitive democracy”, understanding of governance, we can rethink the fundamental keystone of any democratic rule of law – i.e., popular authorship of laws – in terms that are perfectly adequate to the reality of the "global rule of law without a State" envisaged by Walzer.

To develop my argument I will first highlight the specificity of deliberative democracy relative to mainstream competitive democracy. Then in a second section I will contrast government and governance as two models for the coordination of the action of political units. And finally, in section 3, I will try to show how deliberative democracy can give us a better account of the workings of governance than competitive democracy. In the conclusions, I’ll try to highlight what is really at stake in the correct understanding of the relation of governance to democracy.

What is deliberative democracy?
Political philosophy has certainly not been an idle discipline over the past decade and a half if we look at the production of neologisms as an indicator. One of the most felicitous lexical innovations has been the introduction of the adjective “deliberative”, often occurring in phrases such as “deliberative rationality”, “deliberative approach”, “deliberative liberalism” and, of course, “deliberative democracy”. Among the main advocates of this term we find Jürgen Habermas, Joshua Cohen and Seyla Benhabib, but the term has rapidly gained a broad currency also in the Rawlsian circles. One of the most fruitful ways of grasping the meaning of a new philosophical term is to reconstruct the reasons that have motivated those who chose to introduce it.

What is then distinctive of “deliberative democracy” and what do its supporters want to demarcate it from? Deliberative democracy stands in opposition to a largely mainstream notion of democracy understood as a procedure for the competitive selection of political élites and for the negotiatory settling of compromises among rival social interests. Where is then the difference? Certainly not in the acknowledgment of a legitimate plurality of interests – which is not in dispute between the two versions of democracy. The difference can be summed up in terms of three assumptions – accepted by deliberative democrats and rejected by the supporters of competitive democracy. The first assumption is that in every democratic process there is indeed an object of deliberation. The second assumption is the existence of a deliberating body, a subject of deliberation to be understood as a subject of collective imputation and not as a mere aggregate of individual preferences. And the third assumption is the existence of a deliberative process within which reasons in favor or against the proposed matter are exchanged and assessed.

With reference to the first assumption, in the classical competitive conceptions of democracy – for instance in Dahl’s view of “polararchy”, in Schumpeter’s notion of élite competition or in Downs’ economic theory of democracy - in the political arena a democratic competition for the affirmation of rival particular interests takes place, as well as a democratic competition of becoming the ruling élite, but strictly speaking no object of a communal deliberative practice exists. In fact, democratic politics is understood in terms of an economic model. Just as manufacturers compete on the market by way of supplying goods that in their opinion best fit the existing preferences of the consumers – who in turn reward appropriate manufacturers’ strategies by purchasing the products – so political parties compete on another market, the electoral one, by proposing platforms and policies that in their opinion meet the interests, the values and in any event the preferences of the voters, who in turn reward appropriate policy proposals by electing the proponents. The task of a “theory of democracy” is to reconstruct the rules that allow this kind of political game to operate at its best.

In response to this mainstream view of democracy – the kind of democracy that has become the object of export and that, let me repeat, amounts to a competitive game where equally particularistic organized social interests try to prevail over one another in an arena designed in order not to favor any one of these interests and actors – some theorists of democracy have felt the urge to introduce a new term. The new term “deliberative democracy” stands for the opposite idea – namely that democracy does not mean to purchase political products through one’s vote but rather means to engage in a discussion – of course, in the ways and forms in which it is possible to have a public discussion in a highly complex society – about the policies, initiatives and measures that best reflect the general interest or the common good. Also within the deliberative view of democracy

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eventually the contest of rival policies is decided through a vote, but an object of contention can be discerned which is not reducible to the convergence or divergence of the voters’ immediate preferences. Consequently, there can be a sense in which the final outcome of deliberation – the democratic decision – hits or misses what is best for us and does not simply reflect the interest of the majority.

Concerning the second assumption, according to the competitive conception of democracy no such thing exists as a collective (albeit “anonymous”) subject of deliberation. The picture is instead one in which a collection of voters exists who, based on their preferences as differently distributed across various groupings of voters, create a political demand to which the various segments of the political elite respond by supplying proposals destined to meet with very diverse degrees of acceptance. The deliberative approach to democracy suggests instead that political dynamics of a democratic society is better understood in terms of in terms of the metaphor of a dialogue among the citizens than in terms of the metaphor of supply and demand on a free market. Even within the somewhat “inhospitable” conditions of a complex society – characterized by a more imposing institutional complexity, more abstruse technicalities associated with policy options and a wider cultural gap among the social groups – it is possible to conceive of democratic politics as a dialogue about which solutions are “best for us”. The point is that such dialogue can no longer be run in a face to face assembly, as in the Rousseauian imaginary, but can only take place in certain institutional loci and in a public sphere which includes media, associations and movements. The metaphorical “dialogue” in reality becomes an “anonymous” flow of communication within a public sphere which if vital resists being reduced to an audience but rather functions as a filter that selects the most valid or less faulty reasons.

Up to this point nothing that has been said about deliberative democracy places it in a tradition any different than that liberal liberalism best exemplified by the work of Rawls, Dworkin and Ackerman. A different nuance can be detected only if we address the third assumption mentioned above. Liberal theories à la Rawls (Rawls 1999a, 2001, 2005), which place at their center the ideas of an object of common deliberation – the political conception of justice and the constitutional essentials underlying a fair cooperation among free and equal citizens – and of a deliberating body, nonetheless tend to understand the coalescing of an “overlapping consensus” and the working of public reason as the result of each single citizen’s capacity to assess the consistency of a political conception of justice, and of the ensuing constitutional essentials, with his own comprehensive conception of the good or to monitor the consistency of public reason’s conclusions with his own antecedently formed private opinions. Habermas, in fact, qualifies this Rawlsian conception of the functioning of public reason as a private use of one’s own reason for public ends. Habermas’s own conception, instead, as articulated in Between Facts and Norms (1996), has at its center the image of a deliberative process where conclusions are reached together, through the coercion-free exchange of reasons in favor or against some proposal put forward in the public sphere, and not reached in foro interno only to be subsequently checked for their compatibility with the existing reasonable comprehensive conceptions of the good.

With the discussion of these three assumptions respectively accepted and rejected by deliberative democracy and competitive democracy we have outlined one of the main foci of debate between contemporary conceptions of democracy, a debate that often cuts across the positions held in another typical controversy, that which opposes a majoritarian versus a constitutionalist view of democracy. In fact, there are constitutionalist versions of democracy that tend to embrace a competitive view, as well as deliberatively richer conceptions of democracy that tend to converge with majoritarian ones. But we will have to let go of this loose end. For now the distinction between
deliberative and competitive views of democracy must be combined with another key distinction, namely the distinction of government and governance.

Government and Governance

We are all familiar with government. In a democratic system, whether legitimated by a direct popular vote as in presidential systems or supported by a “confidence vote” of a majority of members of parliament, holders of executive power implement the mandate received in acts of policy-making, legislative initiatives and expenditure of public money. But government in its national or local capacity also has the broader meaning of a public administration regulating our actions through the enactment and enforcing of laws that are backed up by sanctions.

What is governance? Here ideas and definitions are much more vague. Some authors basically identify “governance” as a certain style of government, which promotes network-type, horizontal, non-hierarchical relations among the institutional segments of a public sector and relies on the principle of subsidiarity instead of centralizing decision-making (Paquet 2001, Thompson 2003, Zürn 1999). Others authors tend to see governance as the rise of “deliberative polyarchies” that cut across the divide between corporate private actors and institutions (Cohen and Sabel 1997) and that include a larger range of actors and stake-holders than traditional governmental institutions (Sørensen and Torfing 2004). And still others see governance as a process of administrative overlapping among several public agencies operating in a multiple-jurisdiction territory – on the model of the San Francisco Bay Area Transportation organization (Hooghe and Marks 2003). Finally, we can find broader definitions of governance as a form of “reflexive self-organization of individual actors involved in complex relations of reciprocal interdependence” (Jessop 2003). At the global level, one famous definition was offered by the Commission on Global Governance (created with full support of the then UN Secretary General Boutros-Ghali) in 1995: “Governance is the sum of many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interest” (Commission on Global Governance 1995: 4).

I find this indeterminacy frustrating and would suggest to center the contrastive definition of governance not on the kind of actors involved in the process or in the objective, but on one specific element of opposition with government. I propose to define governance in a nutshell as the coordination and regulation of action in the absence of a capacity to impose sanctions for non-compliance – sanction that down along the line must contain a dimension of physical force. Born initially in the corporate world as the reconciliation and harmonization of the needs, preoccupations, urges coming from management, consumers, stakeholders, stockholders, local communities, governance coordinates complex networks of action over extended periods of time in the absence of a structure of authority formally institutionalized and endowed with the capacity to impose sanctions.

There are more inclusive definitions that try to include the local and the global level. See for example Sørensen’s threefold notion of governance of, with and without government (2004: 62), Keohane and Nye’s four models of governance (Keohane and Nye 2001), Hirst’s five dimensions of governance (Hirst 2000: 14-19). For a good collection of reflections on governance, see Palumbo and Vaccaro (2007).
Global governance then is characterized by the supranational scope of its processes. WTO, Unesco, IMF, OECD, the World Bank, the Bank for International Settlements, are all examples of institutions that try to steer and manage global processes in the absence of global government. Such process can involve a plurality of kinds of actors: traditional State authorities, intergovernmental organizations, Ngo’s, private enterprises of global significance, political movements, non-profit organizations. The decisions emanating from structures of governance aim to orient without compelling, without formally subordinating the autonomy of the individual or institutional participants, and once again without the possibility, on the part of the coordinating agency, to apply coercion in case of non-compliance. ⁴

If the capacity to orient and coordinate the participants’ actions in the case of governance does not rest on the capacity to impose sanctions and ultimately on that legitimate use of force of which the State, in the classical Weberian formulation, retains the monopoly, on what can it rest? My suggestion is that it rests on a softer kind of monopoly, as it were, namely on the monopoly on the attribution of legitimacy. Assuming that none of the involved actors can unilaterally and conclusively “self-legitimate” itself – though of course it can claim or strategically take for granted legitimacy – only the coordinating agency can legitimate the actions of the coordinated participants.

Furthermore the idea that no sanction whatsoever is involved in governance needs qualification. Although it is certainly true that no direct sanction, ultimately linked with physical force, is possible – otherwise we would have a case of government – an indirect sanction connected with violation or disregard of the directives, guidelines and parameters issued by the governance agency consists of an increased risk of missing the goal or the benefits in view of which the process of governance has been set up in the first place.

We need to dispel the impression that governance is something entirely new. In modern political philosophy the concept was already there, though certainly not the term. The first occurrence of this notion, in an implicit way, can be dated back to Rousseau’s Discourse on the Origin of Inequality. In the state of proto-sociation which precedes the inequitable pact inaugurating the corrupting type of society hominids occasionally cooperate. Their innate disposition to rationality and propensity for self-love, jointly with the fortuitous discovery of the advantageousness of cooperation in facing a wild animal or a natural emergency, lead them to stabilize or at least resort on a recurrent and now voluntary basis to cooperation in these limited endeavors. Differently than what will happen in the unjust society of social inequality, where a formal authority is in place, at this stage there cannot be any sanction for non-cooperation. The individual who stands back and watches his neighbors fight the dinosaur, basically free-riding on their risk-taking, faces an indirect sanction. If the cooperative process from which he is withdrawing fails, he faces a much greater risk of ending up attacked and killed by the wild animal.

Moving back to our horizon, the members of the EU do have an advantage in coordinating some of their immigration policies but there are no direct sanctions for failing to join in: simply, by non-cooperating the recalcitrant member faces a stronger migratory pressure. All the countries of the planet have an interest in avoiding global warming. No direct sanctions are imposed on those who fail to comply with the guidelines emerging from structures of global governance, but only the indirect sanction of a greater difficulty in remedying the effect of global warming. In a speech delivered in March 2009 entitled Reform the International Monetary System, Zhou Xiaochuan, the governor of the People’s Bank of China called Keynes’s approach to an international currency called Bancor "farsighted" and proposed the adoption of IMF SDRs as a global reserve currency as a

⁴ On this aspect see Treib, Bähr and Falkner (2005).
response to the financial crisis of 2007–2009. The creation of what he has called a “super-sovereign” currency, “disconnected from individual nations” and “able to remain stable in the long run”, would thus remove the inherent deficiencies caused by national currencies serving global purposes, like the dollar, and in the end benefit also the national constituency of those currencies.

The lesson to be drawn from the extension of the notion of governance from management to politics is that to “coordinate without ruling” is indeed possible, to the extent that a widespread and persistent consensus exists on the objectives of coordination. Examples of this are offered by the directives and regulations contained in the 2003 Communication of the EU Commission on “Modernizing Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward” or by the OECD’s Steering Group on Corporate Governance. Perhaps the most well known example of a process of governance is the Open Method of Coordination, promoted within the EU. The OMC includes a variety of mechanisms of soft law, such as benchmarking and the sharing of standards of best practice – as tested in the European Employment Strategy of the 1990’s or the Social Inclusion OMC, where a Social Protection Committee after the Treaty of Nice set up a process of coordination of retirement policies or the OMC concerning the harmonization of health care policies. 5

This evolution of law and political coordination raises questions and poses challenges for our received notion of democracy. In fact, we often hear complaints to the effect that processes of post-national governance involve a democratic deficit. 6 Crucial for the purpose of assessing the compatibility of a deliberative democratic approach and governance is to locate exactly where the point of friction is between governance and our traditional understanding of democracy.

One might think that such point of friction has to do with the classical contest of majorities and minorities through some voting mechanism being replaced by a technical kind of expert-directed negotiation. Democracy, however, need not be identical with majority rule. Ample segments of democratic institutions – for example, the higher courts and especially the constitutional courts, but also the institutions of higher learning – may provide cases where the coordination of action and binding decisions are attained not through counting votes, as it usually is the case in parliaments, institutions of local government and other deliberative bodies, but rather through what Philippe Urfalino has called “apparent consensus”, namely a unanimously “manifest”, or at least “publicly unchallenged”, consensus.

In earlier times, “apparent consensus” was thought to be a notion of merely anthropological interest. Clyde Kluckhohn used to say of the Navajo that they, lacking any idea of representative government, would decide on the alternative options before them «until there is unanimity of opinions or until the opposition feels it is no longer worthwhile to urge its point of view». However, this supposed remnant of a premodern past has proven in the end more resilient than that grand narrative of “modernization” in the name of which it was destined for the infamous dustbin of history: in many venues, which are part and parcel of the democratic rule of law, action is coordinated and decisions are made in the same way as the Navajo used to, through a superordinate person formally in charge announcing the terms of a possible agreement among the parties, scanning around for signs of disagreement while asking whether he can take consensus for granted,

5 See Overdevest 2002; Pochet 2005; Rosenau, Czepiel 1992; Rosenau 1999; Weiss, Thakur; Barbera 2006.
7 See Urfalino (2006: 1).
while the perplexed ones rapidly must make up their mind on whether to raise objections or simply “let go” at least this time.

Thus there is nothing insurmountably problematic in conceiving of democracy as a mode of coordination of collective action which need not be based on the formation of majorities through a formal voting procedure. Even less problematical, in and of itself, is the absence of a coercive dimension in processes of governance. Where is then that point of friction between governance and democracy, which so often gives rise to the lamentation of a democratic deficit?

The challenge resides in my opinion in the questioning, so often connected with processes of governance, of another pillar of our conception of democracy: the assumption of the legislative authorship of the *demos*. We are within the democratic conceptual space, whatever our favorite definition of democracy, if and only if in some non delusional and not hypocritical sense it can be affirmed that the citizens obey laws of which they are somehow the authors, despite all the tortuous institutional intricacies that a complex society inevitably intersperses between the formation of a political intention and its final realization. Is it possible to think of a democratic order without legislative authorship on the part of the citizens, even if in the minimal version of electing the rulers for a term? This is the most difficult challenge that post-national political bodies, such as the EU, cosmopolitan institutions and processes of governance pose to democratic theory and to whomever wishes to rethink the frontiers of democracy in the 21st century.

A possible answer is in my opinion already included in the dualistic constitutionalism of Bruce Ackerman and Frank Michelman, incorporated in Rawls’s “principle of liberal legitimacy”: all that is needed is to adapt such response to the new post-national context of interest. At the core of this answer we find a bipartition of the authorial function of the citizens. Complex societies have become more and more “inhospitable” for democracy on account of the imposing extension of the electoral body – which exceeds the hundreds of millions of voters in the case of the US, the EU and India –, of the institutional complexity of society itself, which entails the technicalization of many political issues, which now require expert knowledge for assessment, and of the increasing cultural diversity inside the political body. In this new context, we can rethink the idea of democracy by replacing the idea that the citizens are ultimately the authors of the laws obeyed by them with the idea that citizens are ultimately the free and equal subscribers of a constitutional pact which in turn serves as a benchmark for the legitimacy for a lawmaking, a regulatory and an administrative action which may then follow technocratic channels.

Hence the new dualism: the classical standard of legitimacy based on the consent of the governed applies only to the higher level of law-making, constitutional law-making, and ordinary law-making can be relinquished over to parliaments legally influenced by lobbies and interest-groups, to structures of governance as well as to other sources of law-making and regulation. If we transpose this framework to the level of analysis of interest to us, namely that of transnational and potentially cosmopolitical structures of governance, we obtain a first and still provisional answer. Structures and methods of coordination, governance, *soft law*, and the *open method of coordination* do not represent as many burdens for democracy, do not subtract anything from the democratic quality of the European Union, if and only if they take place within the boundaries of those “constitutional essentials” which can be reasonably believed to meet with the consent of free and equal citizens.

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When considered from this perspective, the transition from a complex national society to a post-national form of political order, such as that of the EU, does not alter the essential terms of the answer: a democracy understood along deliberative lines enters no necessary friction with those processes of governance which more and more frequently replace the received forms of government. Furthermore, this perspective allows us to see under a proper light the often lamented absence of a European dems capable of acting as a pouvoir constituant and the ensuing manifestations of a basic democratic deficit – a democratic deficit deriving from the prominent and influential role played by governmental technostructures and European institutions staffed by nominees of the national governments. All complaints of a democratic deficit have to dispel the suspicion of a category-mistake. Democracy has survived successfully the loss of the agorà. Modern polities based on representative government are no less democratic than Athens even in the face of the impossibility of summoning the whole dems in the agorà. Just as it would be ludicrous to call undemocratic the US on account of the impossibility of consulting the demos in Washington, why should we assume that a form of democracy born with the Nation-State should serve a standard for judging the democratic quality of a post-national democracy?

Staying with Europe, the process of integration underway since half a century and culminated in the creation of the Euro and in the Treaty of Lisbon still under ratification is somehow reconfiguring that mix of factors which the modern Nation-State had contingently brought together in what seemed an indissoluble unity and now the global economy has tended to split apart again. This combination of factors, which has given rise and contributed to an unprecedented stability of democracy, includes at least a State-apparatus, a nation, a geographically delimited territory, an economy and a constitution. Some of them survive unmodified in the European Union: certainly the idea of a great European economic space, though immersed in the global economy, persists. Also the European idea of a multiethnic political community is not new. What is new, instead, is the severing or at least the loosening of the link that connects a Constitution and a State-apparatus. The former Constitutional Treaty, now superseded by the Treaty of Lisbon, does not purport to constitute the “higher law” of a State, but the higher law of a supra-national, post-national polity which includes the national polities of which we continue to be citizens. Furthermore, the degree and form of participation of the single Nation-States to the supranational European order is diverse, and in the future could be all the more diverse: as of today, the citizens of some European countries, but not all, enjoy the unrestricted mobility sanctioned by the Treaty of Schengen, and a quite different set of citizens share a common currency. It is then possible to say that the citizens of the countries of the EU can share a constitution-like legal framework but do not share fundamental aspects of the organization of any traditional Nation-State, such as a currency and the same form of unrestricted internal mobility. They can see themselves as participants in the same political community, as moved by the same constitutional patriotism, as consociates in the same rule of law, as sharers of the same historical destiny without necessarily understanding themselves as subjects to the same State apparatus and even without seeing themselves as authors, at least in the traditional way, of the laws they obey.

Moving now closer to the above-mentioned point of friction between governance and democracy, in the EU the citizens’ authorship of laws is much more indirect than the authorship to which we are used in the domestic framework of a Nation-State. Certainly for a long historical phase ahead of us legislative initiative and actual law-making will not be in the hands of the European Parliament but will be located at the crossroads of the European Parliament, the European Commission and intergovernmental bodies. Such predicament can certainly be interpreted as a democratic deficit, if appraised against the touchstone of the legislative authorship typical of the citizens of Nations-States. However, it seems more fruitful to me to at least explore the hypothesis...
that what we witness is the burgeoning rise of a new kind of democratic authorship which may be relevant for imagining the democratic authorship of the “citizens of the world” within the cosmopolitan institutions of a possible future – namely, within institutions which again will respond to a constitution-like framework already in place (the UN Charter, the Universal Declaration) without in any sense reflecting the will to give birth to a world-State.

Going back to deliberative democracy and its relation to governance, it could be said that deliberative democracy is compatible not with the denial or disappearance of the legislative authorship of citizens, but with a more indirect reconfiguring of it – namely, with the idea that the representation of the will of the citizens may take a number of additional steps relative to the pattern that is typical of the modern Nation-State. Just as no one can call “undemocratic” the virtual absence of the citizens’ authorship in the implementation of a “frame law”, which we leave to government’s decrees in the name of efficiency, so the birth of a post-national kind of politics and democracy can redirect the legislative authorship of citizens towards normative frameworks which are even more abstract and general.

Governance and Democracy: the Interpretive Advantage of the Deliberative Approach

This answer, however, only covers a part of our question, not the whole. We have made the point that deliberative democracy is not irreconcilable with the processes of governance, but a further aspect of the question must be addressed. If the challenges posed by the trends towards globalization, intensified interdependence and regional integration are best met through some technocratic approach than through the classical mechanisms of political representation, why shouldn’t a more sanguine conception of democracy – such as elite competition or special interests agonism – be preferred over the normatively more demanding deliberative approach to democracy? What can a deliberative conception offer us that the conception centered around the metaphor of the political market cannot?

Two points in relation to this question are worth examining. First, a discursive understanding of the democratic process can account better than a competitive one for the processes of moral suasion at work in governance. Second, deliberative democracy can offer a better conceptualization of rights, which defuses their entering a tension with the democratic will of the citizens.

Concerning the first advantage, let us recall the key difference between government and governance. Differently than in the case of government, there exist, within governance, no formal sanctions for exiting the coordination process or for free-riding. As we have seen, the sanctions may be indirect – such as a higher probability of suffering the consequences of a failure in attaining coordination or political isolation among the partners to the process. If we conceive of the processes of governance in terms of a competitive model of democracy, the motivations of the participants will tend to be understood along strategic, rational-choice lines: compliance or defection become a function of variables such as one’s own relative weight in the governance process, the matrix of relative utility or disutility connected with facing the potential failure of the coordinating process. On the other hand, to conceive of the same processes against the background of a discursive and deliberative model of democracy allows us to shed light on other aspects, otherwise left underaccounted: the political benefit of community- and understanding-building, the increase in the trust and social capital, the strengthening of the public sphere qua locus of an exchange of reasons.

Above all, differently than a competitive account of democracy, the deliberative view possesses conceptual resources that enable it to highlight the relevance not only of so-called
“instrumental” or “convergent” goods – i.e., goods which in principle can be attained and possessed on an individual basis and which is only more efficient to pursue jointly – but also of those “mediately common goods”, for which joint enjoyment of them carries an additional value with respect to individual enjoyment, and above all of those “immediately common goods” for which an individual enjoyment makes no sense. Concerning the latter, the good of having a pleasant conversation among friends cannot be enjoyed or possessed on an individual basis: it can only be jointly enjoyed. Similarly, to partake in the role of a global player on the scene of world politics is not a good that the European States can enjoy on an individual basis and, on the same account, to enjoy world-peace, a certain stability in population growth, a risk-safe environment, an absence of crime and corruption, or the advancement of international relations towards something resembling a global rule of law are not goods that can be separately enjoyed by a single State, like the discovery of a new oil deposit. Thus a deliberative view of democracy can offer us a more adequate conceptual framework for grasping the nature and operation of that moral suasion which constitutes the best instrument for coordination within processes of governance and can better explain why soft law can play its function even in the absence of the prerogative to impose sanctions.

The second asset afforded by a deliberative view of democracy and somehow beyond the reach of other conceptions of democracy is a certain way of reconciling the tension that opposes rights and popular sovereignty. At the core of any conception of democracy which is not populist, we find such a tension. On the one hand we wish that the democratic will of the free and equal citizens be really sovereign, namely that it be subject to nothing else external to it. On the other hand we wish that the aggregate will of the citizens not be in a position to prevaricate over the rights of a single individual, no matter whether by mistake, by negligence or by deliberate intention. We thus wish two things somewhat in tension with one another: we wish to have a truly sovereign will, which nonetheless is limited by rights not at its own disposal. The challenge of reconciling this tension has to be faced not only by theories of democratic government, but also by those theories of governance which aim at integrating governance, soft law and non-formalized processes of coordination within a democratic framework.

Deliberative democracy can be said to offer an advantage over its competitor in that it can offer all those who need to reconstruct the inner workings of governance, soft law and the open method of coordination a way of understanding rights (and rights are a fundamental condition for the functioning of the coordinating action), which does not set them in a zero-sum opposition to the coordinating action itself. In other words, deliberative democracy can explain, along lines which the other conceptions of democracy have more difficulties to follow, why it is false that the more extended the positivized rights the weaker the political autonomy of the deliberating body, that more extended the existing rights the more impeded the effective functioning of the governance structures and that, on the other hand, processes of governance, soft law and the open method of coordination function best when the policy constraints connected with rights are less stringent. Such explanation draws, as urged by Habermas (2001), on John Searle’s distinction, within the philosophy of language, of two kinds of rules: “regulative” and “constitutive” rules (Searle 1969: 33-37).

Regulative rules govern an area of human conduct which exists independently and antecedently. We drive cars, motorcycles, bicycles, and other vehicles through often crowded streets and highways: traffic regulations, some of which are expressed by road signs, govern this

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activity which if they didn’t exist would take place anyway – as in fact used to take place before such regulations were invented – but only in a more chaotic, unpredictable and dangerous way.

Constitutive rules govern an area of human conduct which they simultaneously bring into being. Consider chess playing. It is not the case that habitually we move symbolically shaped wood pieces on a board where alternating black and white squares are aligned in rows and columns of 8, and then subsequently someone has come up with rules for moving these pieces more effectively. Rather, the rule of chess enable, create that action called chess-playing which at the same time they govern and which would not qualify as such if performed independently of those rules. It is just a fact of the ambiguity of ordinary language that in both cases we say that rules govern a certain area of conduct, while in fact this imprecise way of saying obscures an essential difference. Whereas we can meaningfully say that our freedom to drive on the road as we please is limited, in the interest of the safety of everyone, by traffic regulations, it is utterly meaningless to state that the rule which forbids me to move the castle diagonally across the board limits my freedom, for the simple reason that no such activity as moving castles diagonally across chess-boards exists antecedently and independently of the institution of chess-playing and of its rules.

Deliberative democracy can apply this insight to the relation between rights and democratic will and thus can understand this relation as non antagonistic: to maintain that where fewer rights exists there we have more freedom is just as meaningless as maintaining that if the rules were suspended we would enjoy a greater freedom in our playing chess.

No reason thus exists for supporters of deliberative democracy to experience anxiety vis-à-vis the rise and diffusion of processes of governance in the post-national context of contemporary politics, or for them to think that the competitive and elitist approach to democracy is somehow better equipped in order to meet this challenge. The technicization of certain political processes somehow leads to a decline and shrinking of the democratic authorship of the citizens, and this tendency raises problematic challenges for all conceptions of democracy but, due to its affinity with dualistic constitutionalism, to its understanding of the democratic reason as an exchange of reasons and to its conception of the relation of rights to the democratic will, deliberative democracy is in a better position to account for how action can be coordinated via governance without resorting to the formal sanctions imposed by government.

In closing let us now return to Walzer’s picture of a just world as one which requires the building not of a single global center of political will and legitimate government but of a plurality of cosmopolitical institutions, structures or agencies which will have to regulate the action of large-scale global actors – such as States, multinational corporations, regional aggregates of States, transnational associations – without relying on the ultimately physical coercion which lurks behind all government imposed sanctions. We have shown how deliberative democracy can contribute to this understanding of an integrated yet plural world by highlighting certain aspects of the relation that processes of governance may establish with the practice of democracy as we can understand it from a deliberative perspective.

References


