



Habermasian deliberative democracy nuance: An enquiry

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Abstract

Deliberative theory of democracy or discursive democracy is distinct albeit inextricable from the concept of communicative rationality. Habermas employs this outlook in the advancement of other spine facets that institute his theory of deliberative democracy. For him, communication is a core medium for resolving many of the social malaise. The intricate issue of pursuit in this disquisition is that Habermas' deliberative democracy is exclusivist, thus, posing further encumbrances in its realization of the mutual good. The approach utilized in the pursuit of conceivable panaceas to this convoluted matter was hermeneutics. We are here to first and foremost accentuate Habermas' theory of deliberative democracy and later on proffer a critique to it. It is interesting to engage with Habermas on the tenets of democracy and strive to construe the rationale as to why he opts to attenuate or parallel democracy to communication that wears a procedural stance. In the same mode of thought, he treats other human realms from a communicative standpoint. The core domains that he employs the power of communication to develop are human rights and popular sovereignty, legitimacy, and ethics. In setting out to comprehend the link between his concept of human rights and popular sovereignty, he notes that these two realities are co-original, to denote that, they might have been con-created or they are concomitant so to mention, thus, one might not profoundly deem one exclusive of the other. The findings of the paper were: Habermas borrows his concept of popular sovereignty from Rousseau's worldview of the *social contract*. Moreover, Habermas utilizes deliberation to shape his perspective of law. For him, the laws can only be promulgated via deliberation, whereby, the members of the society actively take part in the varied sorts of debates that are to transpire within the gamut of the public sphere. What of those who are privated of the faculty of speech? Eventually, he tackles matters appertaining to discourse ethics, which ought to be informed by the public discourse(s). There is a common thread that cuts across these three central pillars of Habermas' theory of deliberative democracy, the faculty of communication, which for him, communication gives the impression of being the source and the summit of moulding the society.

Keywords: habermas, habermasian, deliberative democracy

1. Introduction

The exposition sets out to delve into the Habermasian outlook of the deliberative democracy. The conception of communicative rationality and communicative action are quite noticeable in Habermas' political theory vocabulary as they serve as an underpinning of his political-legal constraints. The aptitude for the citizenry to essentially engage with each other is prerequisite for the society to forge ahead in both realms of politics and law. The transpiring of this germane activity only takes place in the public sphere where communicative power gargantuanly subsists. The deciphering of Habermas' usage of communicative influence is akin to the public opinion. The capacity to resolve disagreements within the society in Habermas' lexicon is communicative rationality. It is for the reason of having a predilection of communicative clout that Habermas is in a position to moot his usage of discourse in certain spheres such as ethics, thus, discourse ethics, *inter alia*.

2. Power of deliberation

Habermas' outlook of deliberative democracy or discursive democracy is informed by his theory of communicative action whereby, there is the employment of communicative

rationality within the strictures of the public sphere. He uses the term *discourse* to allude to only communication that transpires in such milieus of the public sphere in which the ideal speech phenomenon is sired; where there might be an iota of debates geared towards improving the wellbeing of the society. Discourse, he writes,

could be construed as that sort of communication that is removed from milieus of experience as well as action and whose structures reassures us, that the bracketed validity claims of enunciations, recommendations or caveats are the exclusive object of dialogue, that participants, themes, and contributions are not restricted apart from with reference to the intent of testing the validity claims in question, that no force except that of the better argument is exercised and that as a sequel, all motives except that of the cooperative search for truth are expunged ^[1].

The concept of communicative power is so prized by Habermas, since, it is the very idea that he utilizes to moot his

¹ Jürgen Habermas, *Legitimation Crisis*, trans. Thomas McCarthy (Boston: Beacon Press, 1975), pp. 107-108.

theory of deliberative democracy. Drawing on his theory of communicative rationality along with discourse, he develops a model of democracy that combines a procedural account of democratic legitimacy with deliberative politics. One of the core motivating concerns driving this agenda is to specify how the normative ideal of popular sovereignty could still be maintained or feasibly implemented in recognizable modes under conditions of avant-garde social complexity. In this context, one of the central predicaments is to account for the realities of money and power within the political system deprived of utterly draining the ideal of popular sovereignty of its normative force.

A theory of democracy that affirms normative notions short of neglecting the intricacy of theoretical and political confrontations posed by complex societies is certainly desirable. Apart from his theory of deliberative democracy, he employs the same concept of communicative power and communicative rationality to institute other realms that are partly constitutive of his and any other theory of democracy. These facets that are here ingredient entail: human rights and popular sovereignty as well as legitimacy and discourse ethics. These themes are central to Habermas' theory of deliberative democracy or discursive democracy.

3. Tie between Human Rights and Popular Sovereignty

As far as Habermas' *Theory of Deliberative Democracy* is concerned, his recent book *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (1996), makes it lucid that one of the objectives of his procedural theory of democracy is to bring to the fore the co-originality of fundamental individual rights and of popular sovereignty. On one side, self-government serves to protect individual rights while on the other side, those rights engender the requisite conditions for the exercise of popular sovereignty. Once they are envisioned in such a mode, he asserts, "then one can construe how popular sovereignty and human rights go hand in hand and, hence, grasp the co-originality of civic and private autonomy [2]".

From Habermas' stance, the democratic process enables the State to attain its justification and truth. The mechanism permits the State to position itself so that, from the outset, it enjoys the support of its citizens. To impose a bill of rights onto the democratic process from the 'outside', so to speak, is to undermine the legitimacy of the social structures in place. Besides, inasmuch as it is exempt from the filter of consensual democratic discussion, any such bill of rights can only base its claims to legitimacy on one of the discredited metaphysical systems. The aforesaid is not to assert that human rights are justified only if they enjoy support from the majority. Habermas is, on the contrary, one of the most steadfast defenders of human rights within a constitutional framework [3]. He proposes conceiving human rights not as a 'counterweight' to the democratic process, but rather as one of its intrinsic premises.

At this juncture, Habermas defends what he claims to be a strictly proceduralist approach in which no limits are put on the purview and content of the deliberation. It is the procedural constraints of the ideal speech situation that will eliminate the positions to which the participants in the moral discourse cannot agree. As recalled by Benhabib, the facets of such a discourse are the subsequent: participation in such deliberation is governed by the norms of equality along with symmetry; all have the same chances to initiate speech acts, to question, to interrogate and open debates, all have the right to question the assigned topics of the conversation and all have the right to initiate reflexive arguments about the very rule of the discourse procedure and the mode in which they are utilized as well as carried out. They are no *prima facie* rules limiting the agenda of the conversation or the identity of the participants as long as any excluded person or group may reasonably illustrate that they are relevantly affected by the proposed norm under question [4].

The majority's will carries normative weight within the Habermasian viewpoint, only insofar as it conforms to certain requirements, such as the respect for basic individual rights. If not, individual dissidents would be morally indifferent to the preferences of the majority, just as they would be to the predilections of a group of complete strangers they happened to encounter [5]. The substance of human rights lies in the formal conditions for the legal institutionalization of that discursive formation of opinion and will within which popular sovereignty takes a legal form [6]. The democratic process, which discursively structures the citizens' opinion and will, calls for recognizing certain individual rights of participation, such as freedom of expression and assembly, the free vote, and equality.

Habermas would indubitably concur with Cohen that the basic individual liberties are not merely among the themes of deliberation; they aid to compromise the framework that makes it possible [7]. Habermas crucially strives to find a middle point between two extremes: the liberal tradition inspired by Immanuel Kant and its Republican counterpart based on Jean Jacques Rousseau. Both Kant and Rousseau resolve to make room in their outlines for democracy as well as for human rights. "Rousseau and Kant attempt, via the concept of autonomy, to conceive the union of practical reason and sovereign will in such a mode that the idea of human rights and the principle of popular sovereignty are interpreted reciprocally [8]."

Habermas maintains that Kant, nevertheless, ends up superimposing a categorical moral system, which entails a set of pre-eminent human rights, on the practice of democracy. In this regard, human rights, which are grounded morally, limit the sovereignty of the citizens, concurring and unified will [9]. Rousseau subordinates human rights to the general will. Consequently, he embraces the republican tradition, according

² Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (New York: The Massachusetts Institute Press, 1996), p. 127.

³ Cass R. Sunstein, *Democracy is not What You Think* (New York: Routledge, 1996), p. 29.

⁴ Seyla Benhabib, *Toward a Deliberative Model of Democratic Legitimacy* (Princeton: Princeton University Press, 1996), p. 70.

⁵ John Dewey, *The Public and its Problems* (New York: Routledge, 1954), p. 207.

⁶ *Ibid.*, p. 135.

⁷ Cohen, *Deliberation and Democratic Legitimacy, Op. Cit.*, p. 30.

⁸ Dewey, *The Public and its Problems, Op. Cit.*, p. 130.

⁹ *Ibid.*, p. 131.

to which, human rights acquire their binding eccentricity versus an essentially political community only as elements of a tradition peculiar to and consciously appropriated by such a community^[10]. In both Kant and Rousseau, Habermas belabours, there subsists surreptitiously a liaison of competition between human rights, which are grounded morally and the principle of popular sovereignty^[11].

Habermas, in contrast, takes the position that democracy and human rights are co-equal and co-originating^[12]. He consequently, pursues to establish the internal connection between popular sovereignty and human rights, which escapes Kant and Rousseau. He contends that this connection lies in the normative content of a way of exercising political autonomy, which is determined by the communicative form of the discursive formation of opinion and will. In this approach, private and public autonomy are mutually implied, while neither human rights could claim primacy over popular sovereignty nor popular sovereignty might demand pre-eminence to human rights.

In the Habermasian concept of autonomy, there is no hierarchy between public and private autonomy, as occurs in Kant's or Rousseau's theory. Habermas does not ascribe autonomy exclusively to the individual subject nor to the macro-subject of a people or a nation. The exercise of autonomy takes place instead within discourses and negotiations whose procedures are discursively grounded^[13]. Habermas clarifies that, as participants in rational discourses, legal consociates must be able to test whether a contested norm can or could obtain the acquiescence of all those who might be affected. Thus, the desired internal connection between popular sovereignty and human rights consists in the fact that the system of rights represents precisely those conditions under which communication forms that are necessary for political autonomous legislation can, in turn, be institutionalized^[14].

Public autonomy is exercised as political autonomy, that is, in the context of a discursive democratic process, which requires a respect for private autonomy as expressed in a set of human rights.

Habermas distinguishes political rights of participation, that is, the rights of empowering individuals to take part in the political process. Only political rights of participation support the reflexive and self-referential legal position of a citizen. These rights which enable people to take part in the political process do not arise independently, but rather are integral to the principle of popular sovereignty. Consequently, they cannot exist in the absence of democracy. There could be no true democracy, moreover, devoid of recognition of these political participation rights; democracy rests on the system of rights.

4. Deliberation as the fountain of legitimacy

The basis of legitimacy of democratic institutions is derived from the fact that the instances which claim obligatory power

do so on the presumption that their decisions represent an impartial standpoint which is equally in the interests of all. Cohen, subsequent to averring that democratic legitimacy arises from collective decisions among equal members, declares: "as per to a deliberative conception, a decision is collective just in case it emerges from arrangements of binding collective choices that establish conditions of free public reasoning among equals who are governed by the decisions^[15]."

Validity is a precondition for a law to be acceptable. It is rooted in the tensions between freedom and coercion, individual and collective autonomy, popular sovereignty and human rights. The struggle to arrive at a comprehensive account of law's legitimacy is due to the irreconcilability of these simultaneous forces. The legitimate law embodies the will of the people; Habermas employs a philosophical foundation of legal legitimacy descriptively basing it on his idea of the discourse theory. It strives for an infusion of a deliberative and participatory idea in legal theory.

Acceptability of law is conceivable through the democratic medium. Habermas' discourse theory dialectically reads Thomas Hobbes, John Locke, Jean Jacques Rousseau and Immanuel Kant. Legality draws from public contestation using the deliberative model of democracy. Law is a product of public conversation which is reflexive and self-correcting. Deliberation draws its roots from the idea of public reason. Law must be aptly construed as an idea of public deliberation. Law is obeyed since vulnerable people act in terms of freedom and equality as self-determining authors. Thus, this turns out to be the vibrant rapport among law, the State, and the people. The revolutionary potential of law is realized in this emancipatory reconstruction where people are rights' bearers. Consequently, the law is a system of rights presupposing people as free and equal deliberators.

In such an outlook, it is not sufficient for a democratic procedure to take account of the interests of all and to reach a compromise that will establish a *modus vivendi*. The goal is to generate communicative power as this calls for establishing the conditions for a freely given assent of all concerned, as a consequence, the import of finding procedures that would guarantee moral impartiality. Only then, could one be certain that the consensus that is obtained is a rational one and not a derisory agreement. The erstwhile is the motive as to why the prominence is accorded to the nature of the deliberative procedure and on the categories of reasons that are deemed acceptable for competent participants.

Benhabib notes: "according to the deliberative model of democracy, it is an indispensable condition for attaining legitimacy and rationality with regard to collective decision making processes in a polity that the institutions of this State are so arranged that what is considered in the common interest of all domino effects from processes of collective deliberation conducted rationally and fairly among free and equal individuals^[16]."

The process of deliberation is guaranteed to have reasonable ramifications to the extent that it realizes the condition of the ideal discourse: the more equal and unprejudiced, the more

¹⁰ *Ibid.*, p. 130.

¹¹ *Ibid.*, p. 288.

¹² Cf. Charles Larmore, "The Foundations of Modern Democracy: Reflections on Jürgen Habermas", *European Journal of Philosophy* 55, no. 3(1995).

¹³ Larmore, "The Foundations of Modern Democracy", *Loc. Cit.*, p. 134.

¹⁴ *Ibid.*

¹⁵ Cohen, *Deliberation and Democratic Legitimacy*, *Loc. Cit.*, p. 186.

¹⁶ Larmore, "The Foundations of Modern Democracy", *Op. Cit.*, p. 69.

open the process is and the less the participants are coerced and ready to be guided by the force of the better argument(s), the higher the likelihood that truly generalizable interests will be accepted by all those relevantly affected. Habermas and his disciples do not deny that there will be encumbrances on the way to the realization of the ideal discourse, nevertheless, those hurdles are conceived as empirical ones. They are due to the fact that it is unlikely, given the practical and empirical limitations of social life, that we will ever be able to completely leave aside all our particular interests in order to coincide with our universal rational self. The foregoing is the *raison d'être* as to why the ideal speech situation is presented as a regulative idea.

The idea of the discourse precept explicates the horizontal association of people acting in the aptitude of citizens as equal participants in law-making. A philosophical reconstruction is required to umpire self-determination on one hand and human rights on the other. There is discordance that could be comprehended at the gradation of private and public autonomy with human rights representing private autonomy while popular sovereignty representing public autonomy. Habermas refers to this as the divide between the *freedom of the ancients* and *freedom of the moderns*. He proves that private and public autonomy reciprocally presupposes one another with neither being superior to the other.

Self-determination is founded on rudimentary tenets of equality and freedom. For attaining political autonomy, private autonomy is a precondition. People acting freely and equally denotes individualized rights as autonomous beings in voluntary associations. Devoid of these, there is no medium for legally institutionalizing those conditions under which citizens may make use of their civic autonomy. The realization of self-determination is made possible by the surety of human rights. The preceding argument corroborates the reciprocal relation of public and private autonomy with its co-relations of popular sovereignty and human rights. Democracy and rule of law are inter-subjectively explicated through securing rights of private autonomy and rights of political self-determination. Appertaining to the preceding he posits in a two-stage process of people mutually granting each other horizontal rights equally and freely; and, then, the second step of the constitutional process of institutionalization in law. The elucidation is referred to as co-originality.

The principle of co-originality serves as the underpinning for a deliberative model of the democratic legal theory. Deliberative practice is the prerequisite for legal legitimacy, its privation leads to both democracy and law to be contentless. Public articulation conveys that naught is beyond re-examination. It is tintured as much about dissensus as about consensus. Benhabib contends that deliberation is open to revision on the highest common goods and values that society commonly bonds^[17]. A society after all, seldom ever retains one linear conception of the good at assorted points in time. Deliberation captures this flux in peoples' reasoning.

People in a free society aspire for stability and continuity. The *telos* in a civil society is to reach a platform of social perfectibility where each is able to maximally realize their free

selves. Law as deliberation is a reconfigured notion of legitimacy having adequate counter-majoritarian safeguards, as, it ripostes how freedom is probably in law.

5. Discourse Ethics

Discourse ethics refers to a brand of argument that attempts to inaugurate normative or ethical truths by examining the suppositions of discourse. Variants of this argument have been employed in the instituting of egalitarian ethics as well as libertarian ethics. Habermas and Karl-Otto Apel, both of German origin are deemed to be the originators of modern discourse ethics.

Habermas' discourse ethics is his attempt to explicate the implications of communicative rationality in the sphere of moral insight and normative validity. It is a multifarious theoretical venture to reformulate the fundamental insights of Kantian deontological ethics in terms of the analysis of communicative structures. The denotation is that it is an attempt to elucidate the universal along with the obligatory nature of morality by evoking the universal obligations of communicative rationality. It is also a cognitivist moral theory which implies that justifying the validity of moral norms might be undertaken in a mode analogous to the corroboration of facts. However, the entire project is undertaken as a rational construction of moral insight. It claims only to reconstruct the implicit normative orientations that enlighten individuals as it purports to access these through an enquiry of communication. Furthermore, Habermas, now concedes that there are issues that have to remain outside the practices of rational public debate, like existential themes which concern not questions of *justice* but *good life*, this is for him the domain of ethics or conflicts between interests groups about distributive predicaments that could only be resolved by means of compromise. Nonetheless, he deems that this differentiation within the realm of subjects that call for political decisions negates neither the prime significance of moral considerations nor the practicability of rational debate as the very form of political communication^[18].

In his view, fundamental political questions belong to the same category as moral questions and they might be decided rationally. Contrary to ethical questions, they do not depend on their context. The rationality of their answers comes from an independent source and has a universal reach. He remains adamant that the exchange of arguments and counter-arguments as envisioned by his approach is the most suitable procedure for reaching the rational formation of the will, from which the general interest will emerge.

Additionally averred, Habermas puts forward the idea of public discourse ethics; whereby, it consists of conversations about ideas in civic or community contexts marked by a diversity of perspectives requiring thoughtful public engagement. The discourse is constituted of different insights that help to shape the public's engagement with one another. The brand of discourse is intended to safeguard as well as to promote the public good. For public discourse ethics to be successful, there must be an effective gradation of civility between people or persons embroiled. The implication is that

¹⁷ Benhabib, *Toward a Deliberative Model of Democratic Legitimacy*, Loc. Cit., p.73.

¹⁸ Jurgen Habermas, *Habermas and the Public Sphere* (Cambridge: Massachusetts Institute of Technology, 1992), p. 448.

public discourse ethics has to be accompanied by accountability on the public stage. Devoid of any act of accountability, the ethics of the discourse is no longer valid and cannot carry on.

Public accountability consists of three basic factors: a diversity of ideas, an engagement of public decision making and an account for continuing a practice or way of fulfilling something or a means or motive for altering the practice. Public discourse ethics puts a great imputability on the individual.

Habermas maintains that normative validity cannot be construed as separate from the argumentative procedures employed in everyday practice, such as those utilized to resolve issues concerning the legitimacy of actions and the validity of the norms governing interactions. He makes this claim by referring to the validity dimensions attached to speech acts in communication and the implicit brands of argumentation they imply. The validity of a moral norm cannot be justified in the mind of an isolated individual reflecting on the world. The validity of a norm is justified only intersubjectively in processes of argumentation between individuals in a dialectic.

The validity of a claim to normative rightness depends upon the mutual construing attained by individuals in the argument. Suppositions of argumentation would turn out to be imperative. Kant extracted moral tenets from the necessities forced upon a rational subject reflecting on the cosmos. Habermas extracts moral principles from the provisions forced upon individuals engaged in the discursive justification of validity claims, from the inescapable conjectures of communication and argumentation. These presumptions were the categories of idealization that individuals had to make in order for communication to even commence.

Such presuppositions would, for instance, be: that participants in communicative exchange are using the same linguistic expressions in an akin manner, that no relevant argument is suppressed or excluded by the participants, that no force except that of the better argument is exerted, that all the participants are motivated only by a concern for the better argument, that everyone would agree to the universal validity of the claim thematised, that everyone capable of speech and action is entitled to participate and equally entitled to introduce novel topics or express attitudes, needs or desires, no validity claim is exempt in principle from critical evaluation in argumentation.

The presuppositions of argumentation and communication that have been rationally reconstructed by Habermas are both factual and normative. The prior is the comprehension at this point since he is striving to reconcile the *is* and *ought*. The mutual recognition and exchanging of roles and outlooks that are demanded by the very structural condition of rational argumentation. These factual presuppositions of communication imply the deep structure of moral norms, the conditions that every valid norm fulfill.

The supposition of communication expresses a universal obligation to maintain impartial judgement in discourse, which constraints all affected to adopt the perspective of all others in the exchange of ideas. From this, Habermas extracts the principle of universalization (U), which is the condition every valid norm has to fulfil: (U) All affected could accept

the sequels and the side effects that the norms, general observance may be anticipated to have for the satisfaction of everyone's interests and the corollaries are preferred to those of known alternative possibilities for regulation^[19]. The previous might be comprehended as the deep structure of all accepted moral norms and ought not to be confused with the principle of discourse ethics (D), which presupposes that norms subsist that satiate the conditions specified by (U). (D) Only those norms could claim to be valid that meet or possibly will meet with the approval of all affected in their aptitude as participants in a practical discourse.

The implications of (U) and (D) are quite profound. (U) Claims to be a rational reconstruction of the impartial moral point of view at the heart of all cognitivist moral theories. According to moral cognitivists such as, Kant, Rawls, *inter alia*, it is only from such a moral outlook that insight into the actual, precisely, *quasi-factual* impersonal obligations of a general will could be gained, as this perspective relieves decisions from the inaccuracies of personal interests. Habermas' reconstruction is asserted since it is intersubjective. Unlike Kant or Rawls, Habermas formulates the moral stance as it emanates from the multiple perspectives of those affected by a norm under consideration.

The moral worldview elucidated in (U) is not the property of an individual subject nonetheless the property of a community of interlocutors, the outcome of an intricate dialogical process of role taking and standpoint exchange. Moreover, (U) is deduced from a rational reconstruction of the presupposition of communication, which disparages the transcendentalism of Kantian ethics by instituting a foundation in inner-worldly processes of communication. (D) On the other hand is a principle concerning the manner in which norms conforming to (U) must be justified through discourse. (D) Proposes that moral doctrines must be validated in actual discourse and that those to be affected by a norm ought to be able to participate in argumentation concerning its validity.

No number of thought experiments could supplant a communicative exchange with others regarding moral norms that will affect them. Likewise, this general prescription concerning the brand of discourse requisite for the justification of moral norms opens the process of moral deliberation to the breed of learning that accomplishes a fallibilistic orientation. (U) and (D) are catalysts for a moral learning process, which though fallible, is not relative.

The aforementioned spawns discourses with a rational trajectory, which are grounded in the particular circumstances of those involved but aimed at a universal moral validity. The application of discourse ethics is situated within democracy and the legislative processes^[20].

6. Theory of deliberative democracy

Habermas' deliberative democracy model may be construed to suffer from certain shortcomings: its demand for *reason* and, consequently, its mandate for both individuals as well as collective rationality along with its assumption of the existence of a common good and the feasibility of technical

¹⁹ Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge: Massachusetts Institute of Technology, 1991), p. 65.

²⁰ *Ibid.*, p. 43.

resolutions and progress. Informed by these reviews, we argue that deliberation tends to be an anti-pluralistic, elitist and oppressive model that proffers a mechanism for establishment and maintenance of hegemony rather than other goods usually associated with democratic governments, such as, equality, pluralism, and liberty *et cetera*.

Nevertheless, even if convincing this basic analysis of deliberative democracy does not lead to repudiation of Habermas' argument for deliberation which is exercised via participation as a mechanism of legitimacy; eventually, we hold that this is the rationale why deliberation ought not to be mandated by respective governments while in some instances it should be limited in order to foster democratic aspirations, methods, and by-products.

Cohen's ideal deliberative procedure is a good point of departure for a review of Habermas' deliberative democracy. The most radical facets of this conception are the ideas that institutions must silhouette preferences that individuals ought not to deliberate based on their interests and private penchants but rather on some conceptions of a common good and that deliberation should be essentially apolitical. By apolitical, we denote that Habermas' deliberative democracy procedure is devoid of conflict of fixed and narcissistic penchants, privated of power liaisons and unable to amend fundamentally the rules or the assumptions of the procedure itself. Additionally, it is succinct that some starting assumptions and rules of deliberation cannot be changed through deliberation ^[21].

Deliberative democracy, albeit the dominant theme in recent democratic theory, remains on the face of implausibility, at least to the gradation that it is cast as an elucidation of democratic legitimacy. Joshua Cohen's classical formulation theory was arrived at in this mode, and this is still the purport at the theory's core: that corollaries are legitimate to the extent they receive reflective assent through participation in authentic deliberation by all those subject to the decision in question ^[22].

Seyla Benhabib asserts that "legitimacy in complex democratic societies must be thought to result from the free and unconstrained deliberation of all about matters of common concern ^[23]. The quintessence of deliberation is by and large taken to be that claims for or against collective decisions need to be justified to those subject to these decisions in terms that, given the chance to reflect, these individuals can accept. Outcomes are democratically legitimate, if and only if they could be the object of a free as well as reasoned agreement among equals ^[24].

The Public Sphere becomes the most vital location for deliberation and conceptualizes deliberation itself as a multifaceted interchange or contestation across discourses within the Public Sphere. Discursive legitimacy is, then, secured to the degree that collective outcomes are responsive to the balance of competing discourses in the Public Sphere, to the extent that this balance is itself subject to disperse and competent regulation.

²¹ Habermas, *Habermas and the Public Sphere*, *Loc. Cit.*, p. 146.

²² *Ibid.*, pp. 17-34.

²³ Benhabib, *Toward a Deliberative Model of Democratic Legitimacy*, *Loc. Cit.*, p. 67.

²⁴ Habermas, *Moral Consciousness and Communicative Ethics*, *Loc. Cit.*, p. 22.

Deliberative democrats influenced by Habermas have long emphasized the Public Sphere as perhaps the most imperative locale for deliberative politics ^[25]. Habermas deems dispersed "subjectless communication" that generates public opinion ^[26]. Correspondingly, Benhabib is of the view of "anonymous public conversation" in "interlocking and overlapping networks and associations of deliberation, contestation, and argumentation ^[27].

Rawls's ambition is to elaborate a democratic liberalism which would reply to the claim of both liberty and equality. He wants to find a solution to the disagreement which has existed in democratic thought over the past centuries between the tradition associated with John Locke, which proffers greater weight to what Constant termed "the liberties of the moderns", freedom of thought and conscience, certain basic rights of the person and of property and the rule of law and the tradition associated with Rousseau, which accords grander weight to what Constant termed the "liberties of the ancients", the equal political liberties and the values of public life ^[28].

Cohen and Benhabib as disciples of Habermas and Rawls stress the reconciliatory move in the deliberative project. While Cohen asserts that it is mistaken to envisage the "liberties of the modern" as being exterior to the democratic process and that egalitarian and liberal values are to be observed as elements of democracy rather than as constraints upon it, ^[29] Benhabib declares that the deliberative model can surpass the dichotomy between the liberal emphasis on individual rights and liberties and democratic emphasis on collective formation and will-formation.

There is a common insistence on the possibility of grounding authority and legitimacy on some sorts of public reasoning and their shared belief in a brand of rationality which is not merely instrumental but that has a normative dimension, the "reasonable" for Rawls, "communicative rationality" for Habermas. In both instances, a strong separation is established between "mere agreement" and "rational consensus" and the proper field of politics is identified with the exchange of arguments among reasonable persons guided by the principle of impartiality. Habermas' deliberative democracy is defined by the ideal speech phenomenon, he employs his argument of communicative action which has a conspicuous flaw; it is reliant on language and deduces abstract perfect understanding emanating from it. The exact quagmire of multi-ethnic and unequal societies brings with it hard realities of how ideal speech among incongruent positions is possible.

Conceding deliberation as a vehicle for legal legitimacy invites certain concerns: deliberation presupposes the people to enact Socratic dialogues or assumes them to be self-styled intellectuals. In the real world, people are seldom flexible and supple enough to accommodate discrepancies. There is hardly any back and forth, leave alone self-quail in our general

²⁵ Benhabib, *Toward a Deliberative Model of Democratic Legitimacy*, *Op. Cit.*, p. 68.

²⁶ Habermas, *Between Facts and Norms*, *Loc. Cit.*, p. 486.

²⁷ Benhabib, *Toward a Deliberative Model of Democratic Legitimacy*, *Loc. Cit.*, p. 74.

²⁸ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 5.

²⁹ Joshua Cohen, *Democracy and Liberty* (Cambridge: Cambridge University Press, 1988), p. 187.

nature. It is intricate to identify the forum or constituents belonging to a public sphere of reason. Is it the city council, local assembly, family or workers' unions? It raises impasses of implementation; sounding more utopian than pragmatically probable. Michelman opposes the deliberative model casting it as infinitely regressive owing to what he terms its recursiveness^[30]. By the same token, his recourse of deep democracy ("right reason") is more constitutionalist than democratic^[31].

The legitimacy of the political decisions is a political problem and not an epistemic drawback. The averred is the reason why we cannot admit that a political decision is legitimate when it is adopted only by a small group of experts, even if it is the right epistemic decision. In such an elitist regime, "epistocracy" as Cristina Laffont terms it, even if the right resolution was found, it does not imply that common citizens would give their consent for it: "even if someone could know better than the other which political decisions are in one's own interest, this does not connote that anyone could be better than the other at giving one's own authorization to act on them^[32]."

The rational consensus is likely to lead to hegemony and exclusion by those powerful within the association, thereby, persecuting the voiceless. Do all people truly bear the same proficiency as free and equal? Marion Young points out that deliberation does not protect the weaker voices from political domination^[33]. In this context, she observes that deliberation does not account for cultural and social disparities^[34]. In the same vein, Young advances an interesting alternative conception of *communicative democracy*. It draws from Socrates and Plato's rhetorical approaches to foster dialogue. Her novel idea requires more thought in future as it hints at *greeting*, *rhetoric*, and *storytelling* as some modes of sharing narratives.

These trepidations further raise issues of practical functioning. However, it does not warrant obliterating deliberative project altogether. Deliberation must be identified as fulfilling the pledge of democracy. Democracy results in the rule of elites devoid of an apposite deliberative framework for the citizenry converging and diverging in the act of self-governance.

Deliberative democracy does not expect innate intellectualisms from people. Its model is simple and directly confronts the dilemmas of the life world. It develops an ethic of citizenship that is founded not on epistemic grounds, nevertheless, on pooling one's expertise together in a reasoned manner. There need not be a finite venue or forum delimited for these iterations since it confers legitimacy to the inevitable communications in today's social sphere. These communications take place in varied techniques, inter-systemic and beyond. The task of the deliberative model is to

evaluate outcomes. There is a heuristic value in deliberation which prevents the *status quo* and hegemony in associations. It does not call for any code or regulation as each forum has its idiosyncratic internal code. The self-correcting mechanism of these codes is exactly what makes deliberation fundamental and vital to the practice of democracy itself.

Deliberative democracy establishes a brand of legitimacy which is transcendental. The co-originality is the normative core of the deliberative paradigm conferring the discourse as *idealized* and *constitutive*. It is *idealized*, as, the law is a dialectical medium: it participates in resolving these disproportions functionally through dialogue and public reason. The constitutional process envisaged in the Habermasian model is ongoing across time. Correspondingly, the idealized version is also constitutive. It lays down the basis of freedom and equality as elementary terms for any negotiations, thus, making it constitutive (all *must* have the capability to deliberate). Accordingly, co-originality is the basis for resolving the tension between democracy and constitutionalism.

The peoples' revolution is an idea appearing through the discourse theory of law. It foresees the spectrum of law-making originating through numerous regional and global intermediaries: agents share law-making powers. In a modern context, law-making is increasingly creeping from disparate spheres opening potentially wide *legislative crevices*. These crevices are perpetuated by globalization, markets, non-governmental agencies, interest groups, media and other actors in a complex interconnected web.

Public reason articulated through the discourse tenet reflects the democratic idea which gains acceptance through contestation and challenge. The enunciated is revolutionary: affected people are procedurally empowered to reason and act for themselves. It captures the Kantianism, "argue as much as you want and about what you want, but obey^[35]." The foundations of free-will in legal obligation is a radical re-theorization of the Hobbesian contract into a social treaty. In the social contract, a person obeys because of contractual obligations to the State. On the other hand, as per the discourse theory, a person obeys, since one reciprocally confers this right to others through self and collective legislation.

The process of debating and reasoning which corresponds to Habermas' deliberative theory of democracy can be discriminatory. The issue is mostly mentioned by followers of feminism and multiculturalism. They argue that the so-called "neutral" and "objective" ideal of public reasoning privileges the modes of expression typically associated with highly educated White people. In their opinion, these norms are culturally specific and discriminatory^[36].

Gutmann and Thompson strive to offer a response to this demurral by underlining the fact that those disadvantages are features of the political system that are not bolstered by deliberation. On the contrary, deliberation permits those groups to find representatives that are capable to articulate

³⁰ Frank Michelman, *How Can the People Ever Make Laws? A Critique of Deliberative Democracy in Deliberative Democracy* (Oxford: Oxford University Press, 1997), p. 145.

³¹ Bonnie Honig, *Between Decision and Deliberation* (New York: Routledge, 2007), p. 101.

³² Cristina Laffont, *Is the Ideal of Deliberative Democracy Coherent?* (Burlington: Ashgate Publishing Limited, 2006), pp. 11-12.

³³ Iris Marion Young, *Communication and the Other: Beyond Deliberative Democracy* (New Jersey: Princeton University Press, 1996), p. 120.

³⁴ *Ibid.*

³⁵ Immanuel Kant, *Perpetual Peace and Other Essays*, trans. Ted Humphrey (New York: Routledge, 1992), p. 45.

³⁶ Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), p. 38.

their interests and ideals. In this way, it offers the weak a weapon that can significantly reduce the discriminatory effects of the inequalities^[37].

Habermas' focus on rational-critical debate which arguably is based on an elitist conception of liberal democracy precludes a more radical conceptualization of democracy as dissensus and conflict^[38]. His comprehension of democracy merely favours an elite minority and has not resulted into a true democratization of power relations. For instance, Laclau and Mouffe have argued that the problem with actually existing liberal democracies is not with their constitutive values crystallized in the principles of liberty and equality for all, but with the system of power which redefines and limits the operation of those values. These scholars, thus, advocate for a more substantive definition of democracy which surpasses merely the regular conduct of free and fair elections, a multi-party system, and respect for human rights. Scholars such as Dahlberg and Siapera (2007) have utilized Laclau and Mouffe's normative concept of radical democracy to assess the democratizing potential of the internet.

Habermas' idea of rational debate as a power-free zone ought to, thus, be understood as a profoundly ideological construct. It presumes that particularly those with access to education and those with property can participate in a rational debate, thereby, excluding those without education and property. In his account of the public sphere, he assumes the possibility of a consensual world in which there is a shared, mutual understanding of the conventions of debate and a shared interest in the outcome of political and moral debates^[39].

The Habermasian public sphere is typified by rational communication that is undistorted by interests or power structures. The aforesaid is in strong contrast to, for illustration, Foucault who questioned whether it even makes sense to speak of the possibility of 'rational communication', given that power relations permeate all of the human relations. Foucault would firmly repudiate the possibility of a power-free zone of communication. Habermas does not deal with the exclusion that is entangled in the designation of a 'particular' sort of communication as the rational and democratically legitimate norm.

Foucault would be more interested in investigating under what conditions knowledge is deemed to be true and under what conditions a public sphere is considered to be rational. For him, the truth is something that is contingent and constantly mutating. Habermas retains a firm belief in the enlightenment project, in a single truth which he would define as the outcome of rational public deliberations. For Foucault, rationality and power are not two opposing categories, in the sense that one situation is epitomized by power and the next step is to move towards consensus and rationality.

Foucault does not deem it possible to conceive of a public sphere as space which is free from power relations under the right circumstances. However, for Habermas, the absence of market pressures under capitalism, which according to him resulted in the ebbing of the public sphere in the nineteenth

century, could lead to a 'better' public sphere. Foucault, on the other hand, considers power relations to be at all moments prevalent and he prefers to identify the public sphere as a site of political struggle and strife rather than as a consensual space.

Like the concept of civil society, the Habermasian notion of public sphere should, thus, be construed principally as a normative concept. The concept of the public sphere has predominantly been criticised from the realms of media studies and political science. Points of contention have been the bourgeois character of the Habermasian public sphere, his assumption of a unitary public sphere and his neglect of power relations within the public sphere.

Habermas' most vital contribution to democratic theory to date is eclipsed by a crucial ambiguity in one of its central concepts; communicative power. He introduces the concept of communicative power as the central normative resource for countering the norm-free steering media of money and administrative power. Linking communication with power already intimates a mix of the normative resources of communicative action with the impersonal force of power. Unfortunately, he does not employ this concept consistently, nor does he offer a concise account of its role. Unequivocally, it is nebulous whether communicative power amounts to discursive power engendered via arguments within informal public spheres or is elementarily associated with the institutional power to make binding decisions. Since the concept plays such a core role in determining the overall trait of Habermas' democratic theory hinges to some extent on defining the role of communicative power.

7. Conclusion

We have belaboured to construe Habermas' theory of deliberative democracy, from which, a host of issues have emanated: Habermas prizes communication in his advancement of themes afflicting the society, his deliberative theory of democracy could be charged with being elitist, since there are many people who may not partake of his model of debating. Such a society that is presented in his theory of democracy is chauvinistic. From this evaluation, we may term Habermas to have had a splendid intention of progressing his democratic theory, alas, it was quite exclusive, thus, hazy in the acquisition of the intended common good.

On his concept of human rights and popular sovereignty is tintured by the ascription of co-originality, it becomes worthwhile for us to grasp, to what extent communicative rationality can underpin these two realities. Habermas fails to comprehend as well as appreciate the relative nature of human rights. As from what and how he presents the concept of human rights, he should come into terms with the mere fact that, human rights do not enjoy an absolute status.

For Habermas, deliberation founds law. At this time, we have learned that it is only via communication that laws may be promulgated. It is imperative for us to accentuate that, there is an ambiguity of how this concept of communicative action is utilized. Habermas does not make it explicit of how communicative power may be put in place to birth other societal benefits. He assumes that once communication commences, the rest could be attained automatically. The advancement of this is a plain goof, as what it is that precedes

³⁷ Amy Gutmann and Dennis Thompson, *Why Deliberative Democracy?* (Princeton: Princeton University Press, 2004), pp. 49-50.

³⁸ Chantal Mouffe, *The democratic paradox* (New York: Verso, 2000), p. 40.

³⁹ *Ibid.*

communication for there to be a sense of communicative rationality, which could sire the benefits that we enumerated to be the core of his deliberative theory of democracy.

Pertaining to discourse ethics, Habermas introduces two ideas of Universalism (U) and Discourse (D). He borrows the concept of universalism from Immanuel Kant's ethical contribution, that is, the categorical imperative. The aspect of Universalism (U), for Habermas, ought to apply to all the individuals from wherever they might be.

Guided by this scenery of Habermas' theory of deliberative democracy, we have leveled a number of criticisms that might be of relevance to the improvement of his construing of deliberative democracy.

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