

On the Legitimacy of Representation during the Transition towards Democracy

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From the very beginning we need to mention the fact that legitimacy as a social fact does not necessarily coincide with the legitimacy that grants the legal character, although normally the doubts concerning the legitimacy of an action, of a process, of an authority or of an institution represent the source of mistrust and are questioning their legality. (Rosanvallon, 2010, pp. 21-29) With other words, it is not enough for a process to observe the legal requirements, nor for a qualified and legally authorized or recognized body take a favourable decision. The legitimacy involves trust and total and active acceptance of the majority of citizens towards the result of the actions of institutions and of the relevant public persons.

It is true that the legitimacy of the modern state is based on the legal character of its actions but the legality involves something more than a simple concordance of the action of the state power with a law norm in force. Legality may be considered as legitimate only if the legitimacy of the norm is previously assumed. This means that the notion of legitimacy involves the acknowledgment of that law norm as being valid and that practically it was and is still used by the members of the society to harmonize their actions. (Serrano Gómez, 1994, p. 227)

In the reality of the social practice, given that the homogeneity of the modern state is just a relative presumption; the legitimacy is practically based on several types of criteria and arguments. For example the so called “unwritten rules of the political system” that is the tradition that things were always made in a certain manner. Such an unwritten rule is the acknowledged authority of a person that issues an order, or an opinion; and from the tendency to observe any procedural legality which acting based on the established, public and consensual regulations enjoys trust and credibility (the assumptions of authenticity, of veracity and legality of the actions made by the public authority). In this case, a crucial element is that the actions of the legal authorities, as well as the legal procedures be transparent, credible and clear, especially in a social environment which does not excel by the political-judicial culture.

In order to highlight the importance that legitimacy has in exercising the public power we submit broadly an excellent definition of one of the most famous doctrine makers of the past century:

„Legitimacy represents the bridge between a political regime and its national community; and means also the frame of convictions shared by that community, to which the capacity of governing is transferred of any government from any State.

Or if preferable, it means the possibility of that government to lead and to be obeyed, being protected by the real game rules which give a meaning to a political system: not only those written as laws, but also the ones that allow the coherent inclusion of numerous recipes of social structures and the exercise by authorities with the largest possible certainty. The key to legitimacy does not consist, eventually, of people who believe always blindly in all that its government does, but to have the convictions.” (Merino Huerta, 1995, p. 8)

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In what concerns us, the previously mentioned have two implications that are underlined through the fact that these represent both requirements, as well as tasks for the democratic transition.

The first of them implies that it accepts that in our country the so called democratic processes and especially the electoral ones, do not enjoy a full legitimacy, neither the trust of its citizens, given the unorthodox antecedents practiced by the political class in the twenty one years of transition towards democracy but also the tendency of a great part of the population to qualify democratically a process, only if the personally preferred one wins the elections. It thus is necessary, in order to re-establish the trust, to obtain the social legitimacy of the democratic processes.

The second one involves the passing from the so called political culture of results, that is to expect what the reform or the government offer directly and individually to citizens (e.g. if personally or somebody close obtains any kind of benefit we do not object to reform), to the culture of participation, in which the citizens develop by themselves the reform and are responsible for its results.

Thus, situations are to be avoided, which have costs on the average and long run which are still not clear such as those from the periods (such is the one we go through) in which, according to almost all major opinions, the government's legitimacy is debatable both from the point of view of the electoral process as well as of law, being a legitimacy accepted by need which takes place when the government in operation is seen as a lesser evil in order to avoid a major instability and in order to maintain the minimum acceptance from behalf of the population and to allow the continuation of transition with lower political costs.

Finally we underline the already mentioned matter of trust, which is one of the elements that allow the apparition of legitimacy of an authority or of measures in transition. In the modern and democratic society, the trust becomes a central element. This trust is characterized by credibility and anticipated reliability, deposited in social processes crystallized into institutions, which the sociologist Giddens calls *expert systems* (specialized techniques and knowledge, as for example all that is related to the legal system), having certain purposes, such as money. (Giddens, 1993, p. 39) This trust is based on the idea that none of these matters will be subjected to arbitrary changes and that these have a predictable normal functionality based on the regulations that the company established and which will make them valid for all.

In what concerns Romania, the process of reformation and modernization had certain peculiarities, which are related to the specificity of transforming the East-European rural societies into modern societies². Kenneth Jowitt notices three characteristics of the Romanian political and social realities before 1940:

- The gap between the urban Romania and the rural one, according to C. Dobrogeanu Gherea's expression;
- The mechanic transfer of the liberal institutions from the West and the fact that
- Romania is seen by intellectuals and the political leaders as suffering from multiple dependencies towards the West.

He calls this particular situation a „dependency syndrome”, (Jowitt, 1978, pp. 2-4) marking the complex of dependency of external factors of the small and undeveloped countries, which entered

² There has been a long debate on the issue if Romania follows the same stages of development as the Western countries. See (Zeletin, 1925) in which the author claims that Romania is going through the same stages of the Western capitalist development. C. Dobrogeanu Gherea (in „*Neoiobăgia*”, 1910) second edition 1977 from which we quote in this paper) and Șerban Voinea (in „*The Oligarquic Marxism*”, 1926) it underlines the differences, the specificity of the Romanian way, in a different context.

later on in the modernization process. Broadly analyzing the state of democracy in our country Stelian Tănase (Tănase, 1998, pp. 8-10) quoting Andrew Janos draws the following conclusions: „in the countries that opened the path to the material civilization, the modernization means the penetration of technology into the society, whilst in Romania ... the technology appears less as a social object but as an object of aspiration and orientation ... in the peripheral areas left behind, „the demiurge of change” (using the Marxist expression) was the desire to imitate. Consequently, certain structures – first of all the bureaucratic state and the public education system – appear not as an answer to the social differentiation and complexity, but as an anticipation of these”; „as opposed to the experience of the Western societies, in Romania ... the development of the market mechanisms was rudimentary and distorted. As a matter of fact, there is in Romania a weak impulse towards the development of the entrepreneurship spirit and towards the production of goods destined to the market ... the market remained very limited”; „... whilst the tastes and expectations were tailored at global scale – mainly according to the example provided by the „nucleus” of the advanced nations -, the resources and the means to fulfil these remained in majority outside the diminished borders of the state-nation”. (Janos, 1978, pp. 113-114) In continuation it generalizes these observations by concluding that “Once the process commences to develop in the undeveloped countries, they take as reference frame the realities, the type of structure, performances, the level of Western development. We need to underline the fact that their imitation will lead, on one hand, to the acceleration of transformations (in the lack of own searches to delay to finding of a solution and to increase the costs raised by West, by revolutions, civil wars, economic bankruptcies, etc.) and, on the other hand, to the stressing of their dependency towards the West. One needs to remark that the imitation of institutions, methods, Western criteria was made on realities which were different in many aspects. These societies are structurally different, and cover the distinction operated by Max Weber between „class-society” and „status society”. (Weber, 1978, pp. 926-938)

As to these correct observations we need to understand that in the process of reforming the Romanian society, it is necessary to remember permanently that the democracy is not a natural and necessary product of the social evolution, it appears not by itself, but as an invention or human creation. Thus, as the great contemporary scholars have underlined, the democracy is a product of active will and of the creativity of the groups involved. (Bobbio, 1995, p. 17) “Unfortunately, we did not assimilate the necessary political culture to make from the natural political dispute in democracy a means of enhancing the thinking of all and to perfect the management at the society scale”. (Iliescu, 2009, p. 28) Thus, democracy is a mere “artificial” product, that is totally human but this tends to be forgotten in times of “normality”, but the crisis situations remind us of the fact that, most of the times, the crisis, needs to be understood positively, constructively, because it uncovers the “natural” world from falsity and exposes again the image of the society as being the one which truly is. Being an “artificial” product, the construction of democracy implies a succession of options with an open result. The crisis demonstrates that democracy does not show out by itself, out of an objective necessity, but it is actually a “subjective” product and creates actors and projects. (Sartori, 1997, p. 175)

Precisely because of this, it may have many concrete forms and in itself supposes a conflict for its continuous definition, either in a more extended manner, either in a more limited manner. “Democracy in itself does not reflect only the multitude of opinions, but at its turn represents the object of very different construction”. (Lechner, 1990, p. 13)

Anyways, we need, within a society, to have a minimum consensus over the forms of understanding and on this fundament are developed the vectors of deepening or limiting the democracy: (Uribe Iniesta, 2006, p. 56)

- a) what does it mean all that is public and which represents the object of all that is public? and

b) who is the people? who (individuals or groups) belongs to the people, from the crowd, having the right to participate in the democratic processes?

The first question refers actually both to the issues that need to be debated in public and which need to make the object of the attention and of the responsibility of a group as well as to defining the “public space”, more exactly to social or theoretical establishment or predefinition of what a “public” space is. Within this meaning, it is necessary to state that in the field of issues that need to be publicly debated as well as in defining the public space, the amendment and reformulation of the type of existing relation are possible, and, moreover, more important, the need to recognize the autonomy of the attending topics is crucial. A classical example of these problematic is given by family, because it is recognized as being a “natural” space, where hierarchies are established “naturally” and there are no lawful subjects or a “social” space, as in past times, the “policy” and the “government” were considered a “divine” space, reserved to certain adored actors, such as the kings.

Today, for example, it is debated if health or the economic survival of the individuals, need to represent or not the responsibility of the States, that is to constitute public issues or issues that concern each individual. This was an issued that seemed solved when the theory of the benefactor state was prevalent, however, it is again a current matter of these times dominated by neoliberalism. In what concerns the “public space”, the discussion passes from the ones who want to limit it to certain environments, actions or institutions of the State – e.g. the limitation of discussion on economic policy to certain “solvable” actors (that is the decisions related to economics will not be subject to democratic-elective procedures, these remaining exclusively in the private area) or its extension into a state policy, which implies the need to include this problematic into the public space, in which, though debate and decision, the access is allowed, based on democratic rules for all those that belong to the community in relation to fields such as the one of the mass communication means, with the purpose of the role that they fulfil in the constitution of the real life in the modern society. (Ferry & Walton, 1995)

In the doctrine, different definitions of the public space called also *realm* or *public area* were worded. We reveal some of these:

“By public realm we understand mainly a field of our social life in which something such as public opinion can be formed. All citizens have – fundamentally – free access to it. A part of the public realm is constituted by each discussion on particular issues that are reunited in public. In this case, citizens do not relate neither as entrepreneurs, nor in the performance of their professions, whose particular matters would motivate them to do so, neither as colleagues with statutory obligations of obedience, according to the legal provisions of the state bureaucracy. On the contrary, these relate voluntarily on the guarantee that they can associate in order to express and publish freely opinions that have to do with topics of general interest. In the context of a tough competence, this communication needs certain means of conveyance and influence; today, these environments from the public realm are: the newspapers, magazines, radio and television. We are referring to the public realm almost without distinction from the literary one, when the public discussions are related to the subjects that depend on the state praxis. The State Power is, so to speak, the opponent of the public realm, but is not a part of it. Consequently, this power is considered a public power because, first of all, it is forced to contribute to the tasks that need to be fulfilled for the public good, which is to the following of the common good of all citizens. First of all, when the performance of the political dominance is subordinated effectively to the mandate from the public realm, it gains an institutionalized influence over the government, by means of the legislative body. The “public opinion” phrase, is related to the critique and control tasks that develop informally the urban competence (at the same time informally throughout the elections), as compared to the organized

domination of the State. According to this function of public opinion, dispositions exist as well around the publicity; the compulsory public realm is connected to something like the protocol type. In the public realm, in capacity of field that makes public the relation between the society and the State, in which the competence is formed as bearer of the public opinion, the following principle is important: each publicity, that once needed to be made against the monarchs' enigmatic policy, it allows now a democratic control of the state action." (Habermas, 1986, p. 53)

According to François Guizot, the European civilization is characterized by a few traits that single it out from all the other – righteousness, legality, public space and liberty. (Guizot, 2000, p. 38) By public space Guizot understands the existence of general interests, of public ideas, shortly, the society itself.

The European public space is under construction considering the aspect of discovering the legitimacies and internal reasons to govern it. The concept of "European public space", yet not completed theoretically in the specific terminology of the European integration, will include and describe in a systemic manner, the mechanisms, processes and the complex phenomena that govern the development of the public sectors and of the European administrations, highlighting the connections and determinations of administrative, economic, social or political nature.

Today it is observed that, at the level of the European Union, it is desired the creation of a transnational public space to allow the legitimacy of the European institutions and the founding of a European collective identity. Surely, the conceptual definition of the public space needs to be discovered in the light of the process of political unification of Europe, the political will having a decisive role. (Ioan, 2008, pp. 874-884)

The requirements for the existence of the European Public Space may be summed up to:

- the existence of the Union founded justly;
- the existence of community institutions which should operate in a democratic manner;
- the existence of an organized frame of debates in the public life based on the existence of the means to allow all citizens from the Union to express publicly³, and in what concerns the ways regarding the public debate and the obtaining of the European public solidarity these remain yet to be invented because the citizens of the European states, are informed from the press, radio and television on the novelties and the debates that concern their country, and the debate between partisans and opponents of the European construction is not an European debate, but a mosaic of debates in the core of each European country. (Wolton, 1993)
- the existence of the frame to allow the concepts delineated after the debates from the public life to be transformed into laws by means of the public law.

A first issue to be put into discussion regarding the relation of the "public realm" with the democracy of a society is the one that concerns to what extent the ordinary people may play a role regarding the activity of the state by means of the possibility to communicate their opinions and to influence the decisions of the State. With other words, here democracy would tend to identify with the main role that may be fulfilled by the formation and spreading of the "public opinion", in defining institutions and their policies.

³ Définition de notions de la sphère de la Société civile 2002/ Definition of concepts of the sphere of civil society in 2002, by Jean Claude Boual, Paris/Horst Grützke, Berlin, *Forum permanent de la Société civile européenne/Permanent Forum of European Civil Society*, www.europa-jetz.org.

A second question that creates controversies regarding the democracy is how to accomplish the people's participation to decisions, and from here the problematic of representation.

A third thing that needs to be clarified is the defining of persons and of categories of decisions to which these need to participate, if not considered as possible or proper for all inhabitants or members of a certain political entity to participate.

It is alleged in the specialty literature that these themes linked to democracy, representativity and its legitimacy, are gather around two basic principles that any democratic approach should follow, true criteria in order to appreciate democracy:

a) the possibility and real capacity of any natural person or legal entity from the civil society to control any decision or public human activity (of a natural person or legal entity with public attributions), to have relation or impact over its life and over the possibilities that it would have in the future.

In other words, the collective and individual possibility to decide, under the social conditions of its own life and of its descendants. "The utopia of democracy is the self-determination of a people based on their conditions and life structures." (Lechner, 1990, p. 13)

b) a second principle would be that the object of democracy be understood as a maximization issue of an individual's self-development, once with the understanding of all elements and social connections that limit or support it. (Stuart Mill, 1966)

The first need is determined by the need to establish conditions, structures and social contexts to allow the activity of individuals as citizens. In the second case, it is not enough to establish social possibilities, but is needed to underline the need that the individual act in order to become citizen and the fact that this conditions may be fulfilled only by its practicing.

Starting from these criteria and principles, a discussion appears, on the exigencies that these impose to political regimes and to legal systems.

The bases of the different democracies have been at the same time different, according to the requirements and the historical times. For example, sometimes was enough to agree upon living in a certain space so that, in order to over impose interests, to create a political integration, a public space based on what is common, forming a "city", a "polis". In a justified manner, as I have mentioned before, a basic requirement for democracy is represented by the creation and preservation of the "public space", where all that is of collective or public interest, "public matters", be acknowledged effectively by all those interested and not only by a dictator or by a particular group of persons. That is why, the first constitutions of modern democracy started by stipulating the fact that the government was not a property, neither was instituted for the benefit of "any man, family or any category of men" (North-American Constitution from Massachusetts, 1780). This public space of discussion and decision over the public matters was in Athens a material physical space: the agora (the public square). For the modern theoreticians it is more of an ideal-symbolical or institutional space: the State. This modern State appears in direct opposition to the individual. Nevertheless, in the second half of the 20th century, it was developed very time more powerful the conviction that it needs to exist an intermediary sector, even bigger or more important that the State, which is the one of the collective subjects, that nowadays is called the discussion of identities, which makes reference to the minorities right. Consequently, in what concerns the State scheme as sole answer to the social order, and of the isolated individual as sole possible alternative of liberty, is corrected now when we see that intermediary organizations appear for the exercising the liberties of individuals and of warranty for a non-punitive governability. (Uribe Iniesta, 2006, p. 63)

In the modern perspective, it was always been taken into consideration the affiliation, because all citizens become equals by the fact that they are tax payers, their taxes supporting the bureaucratic apparatus. Contrary to allegations such as the democracy represents the final political product of the Western civilization, one needs to mention that nowadays, it is debated even the possibility of democracy beyond the horizon of the so called western civilization. We may observe not only that there are “different” democracies, but also that, by its own nature, there is not and neither will exist anything that we can consider as “finite democracy”. As I have shown it is not about any fact or natural or necessary result of the human or society’s evolution, but about a sought, imagined, voluntary fact. First of all, the democracy was, and continues to be, an idea, and the transformation of this utopias into reality, its survival depends on the continuous activity of the members of the society.

So to speak, while the tyranny or the dictatorship has as sole purpose to preserve itself, the scope of democracy is to fulfil the requirements suggested and desired by citizens. The capacity of a society to integrate itself from the democratic point of view and to ensure its survival represents the conditions of the existence and permanence of any nation. With other words, the democracy becomes a requirement in order to avoid the disintegration of nations.

From the previously mentioned a first political conclusion is drawn over democracy: this persists only if there is activity and will from behalf of the ones forming the community or the defined public space. With other words, there is and it survives only where there are active citizens, not only nominal ones, and then these citizens have as explicit and implicit objective to maintain and develop a democratic system.

“The free participative institutions need certain generally accepted self-disciplines. The free citizen has the capacity to offer voluntarily his contribution to which, contrary to this, the despot would force him/her, maybe in another way. Without this, the free institutions cannot exist. There is a great difference between the societies that find cohesion by means of certain common disciplines, rooted in a public identity, and which thus allow and request the participative performance of the equal ones, on one side, and between the multitude of types of society that needs driving chains based on the incontestable authority of the other”. (Taylor, 1986, p. 2)

All the above mentioned show the importance of legitimacy, which is the only manner to allow the identity in a democratic system, an identity that we can call “public”, an identity with “public questions”, with order, with the public organization, an identity that we have to build, by means of an inter-subjective collaboration in the sense of what we feel that we think and build together. This is the meaning that needs to be lived, believed, understood and practiced by those who belong to a democratic society.

We shall have to remove the confusion regarding the conviction that democracy consists only in obtaining a government with good programs, to complete then and which should pay attention to population, and which fundaments its legitimacy upon the fulfilment of the programmed objectives. With other words, the confusion that democracy would mean a sort of agreement between the governed and the governors, in which the first renounce totally or partially to their capacity of citizens in order to be well taken care of or well governed, needs to be removed.

No, the true democracy is when the citizen transforms into a responsible and active entity and assumes the decision and its consequences.

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