

# Соціальна філософія і філософія історії

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## DELIBERATIVE DEMOCRACY IN THE CONTEXT OF THE PROBLEMS OF DEMOCRATIC LEGITIMACY

**The purpose.** The article presents deep analyzes of legitimacy and the basics of the process of legitimization in democratic societies. The subject of article is to provide an understanding of deliberative democracy as the answer to the discussion about the essence of democratic legitimacy. The core element of deliberative democracy is a theory of discursive legitimating. **Methodology.** Taking into account Bourdieu's theory about symbolic power author explains the processes of legitimization as well as the processes of institute's delegitimization. Author points out that the form of bureaucratic institutes in the late capitalism may cause the delegitimization of their power. Another problem of democratic legitimacy is the confusion of the voting as procedure of decision making and voting as legitimate principle. Addressing the theory of Pierre Rosanvallon author explains how the way of decision making mistakenly is taken as the core point of democratic legitimacy. **Scientific novelty** of received results consists of the approach of deliberative democracy in the light of the problems of democratic legitimacy. **Conclusions.** The author demonstrates that discursive legitimacy as the main idea of deliberative democracy may clarify the misconception of democratic legitimacy. It is not enough to explain the legitimating power of the state as based on the assumption of legal norms and moral principles. It is discursive principle that activates the legitimacy power of state decisions.

*Key words:* democratic legitimacy, deliberative democracy, discursive ethics.

### The purpose

Prima facie it may seem that the notion of legitimacy is quite ambiguous and extremely blurred, therefore it can hardly clarify the mechanism of the power institutes' functioning. It cannot be quantitated and exactly measured. Moreover, the question of legitimacy of the legitimacy itself is also a vexed problem. Who defines anything as legitimate and what are the grounds of such definition? These are the questions the current inquiry is to deal with. Using Bourdieu's definitions we may ask: who is given the symbolic power to qualify one institute as legitimately functioning while denying this characteristic to another institute. It is also reasonable to mention, if we speak of the symbolic power in the context of legitimacy, that it possesses the property of self-multiplication, meaning that certain power always produces new power. Such a phenomenon can be recognized in many different spheres, e.g. a person who has got some capital has more opportunities for boosting his fortune than the person who hasn't got a penny at all. An author who has become famous by writing a well-received book will rather get his next book sold than a little-known poet. A scientist who

made a valuable discovery has more chances to get a grant for another research. All these examples show, firstly, the processes of power's possible transformation, its conversion into other types of power, and secondly, the fact that after gaining a resource of power people or organizations get the access to the mechanisms of strengthening their power immediately.

However, governments rotate, revolutions happen, new names in science and literature appear all the time. So there must be something existing except the visible power, behind it, that is always eager to deepen and to replicate itself. Speaking about political institutions, we should say that their creation "on the paper" or in the parliament's lobby is never enough for their proper functioning, as the institutes are the representation of various socio-economic groups. The interaction of these groups generates the energy that feeds social institutes. The basis of the interaction of the society with the political institutes, and also between the institutions within the society, includes the element of the citizen's trust i.e. a certain factor to mark the efficiency of any given initiations. Emotionally hued notion of trust to some extent correlates with the concept of legitimacy, which is much less emo-

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tionally colored; some theorists of democracy even tie it up with the exceptionally rational sphere of citizen's life. It is upon the level of trust and legitimacy that the efficiency of political institutes and the state structure's stability depends. Let's note that though the notions of trust and legitimacy are used above as very close to each other content-wise, they are not synonyms. Trust is something more or less future-oriented. High level of expectations of some hope's satisfaction is inherent in the trust while the legitimacy is all about accepting the present, existing order. It is impossible to foretell whether one or another institute will become legitimate in the future. We can rather almost post factum make notice of some politician, for example, is legitimately occupying his office. It is important to stress: almost post factum. The legitimacy is never finely formalized or established, it always evades our attempts of its conceptualization and quantification. Also, it is worth mentioning, that the trust is often personalized, man-targeted, while the legitimacy is most often talked about in the context of certain institutes. The third outstanding dissimilarity between the trust and the legitimacy is, as it was mentioned above, the emotional hue of the trust phenomenon and greater level of rationality if we speak about legitimacy. It is known that the trust as the fundament of people's ability to form various associations was analyzed in detail in works by Francis Fukuyama and Ferdinand Tönnies, but here we are first of all interested in the phenomenon of legitimacy, namely the legitimacy in its connection with the rationality, legitimacy associated with democratic regimes and so called "crisis of democratic legitimacy"[1].

So, speaking of the tasks that arose before the nations after the World War II and also reflecting upon the kind of amenities that the citizens nowadays strive for, Seyla Benhabib notes that these are the economical prosperity, the awareness of the shared identity and the legitimacy of the political regime [2, p.87]. Each of these three elements is the cornerstone and they are all complementary. The scientist stresses, that the overweight of the attention paid to one of these elements can harm the whole system. For example, immoderate attention to the collective identity might conflict the legitimacy and result in the infringement of rights of the minorities.

Due to its essential characteristics the state democratic order can be regarded as a form of governing which mostly satisfies the requirements of legitimacy and alongside with development of the capitalism and free enterprise (both consonant with the democracy) capable of securing a high level of political stability. So, democracy is the way of organizing state power that includes both qualitative and essential characteristics of the legitimacy. After all, the democracy's ideal is of achieving fullest possible satisfaction of the majority's interests without depreciating the interests of the minority. The categorization of the legitimacy types according to Max Weber will be listed below. The major characteristics of the type of legitimacy which most corresponds with democratic regimes will be given. We shall also analyze the problems of legitimacy the theory of democracy encounters and also the theory of deliberative democracy as the school which best of all corresponds with the ideals and aspirations of democratic society.

Max Weber was one of the first scholars to conceptualize and list the types of legitimacy and the mechanisms of shaping and sustaining for each of the types. It was characteristic for Weber to set the opposition between the people in power, those who are allowed to make decisions and people affected by these decisions, meaning the people for whom these decisions arise as some kind of enforcement that needs to be obeyed for some reason. Therefore, according to Weber, the crucial point in formulating the concept of legitimacy is the consent of the nation (or any other social group) with the decisions made by the people who manage the rulemaking resource. So we can point out three forms of legitimation: traditional authority, charismatic authority and legal (rational) authority. Such a typification of the legitimacy is on the one hand perhaps the first of a kind and on the other hand it is still relevant today. For even those countries that, as it could seem, do not need their nation's confirmation of their ruler's authority turn out to have a certain functioning type of legitimacy whatsoever. Although, the legitimacy in these countries is not based upon rational algorithms but rather appeals to the human emotional affect. In the countries with totalitarian or authoritarian political system the ruler anyway needs to settle accounts with his nation's thoughts and feelings.

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Considering the constant growth of the countries' population and also due to the processes of globalization the governors need to retain their power over the country one way or another. Under the conditions of traditional and charismatic legitimacy, the state machine expends great resources upon sustaining the population's approval. This type of legitimacy tends to engage the means of ideology to access people's feelings and to create the basis for the government's sacrosanctity out of the human affection. It has more to do with trust than legality and with the time such a regime will require more and more recourses to maintain its support. It will inevitably extend its enforcement machinery and, therefore, any power which is fully appealing to such type of legitimacy is foredoomed to progressive self-exhaustion.

Under the democratic regimes people in power do not appeal to paternalistic type of relations with the people. Basically, that type of authority which Weber calls rational-legal most of all corresponds not only to democratic regimes but also with the proper notion of legitimacy. Thus, as it was already mentioned, the democratic regime is not all the time in need of suppressing social resistance and that's why it is capable of sufficing the pace of any social processes. At the same time, low level of rational-legal legitimacy leads to the enforcement implementation for the purpose of the power positions retention.

Let us now switch to the characteristics of the legitimacy-related problems any democratic regime might encounter. After giving them a proper description we shall turn to consideration of the deliberative model of democracy as the one which the most matches the rational-legal type of legitimacy, as it was pointed out by Weber. We are convinced that the problems related to legitimacy and legitimation processes that can arise before the apologists of democracy can be conventionally divided into two types. All the externally induced problems i.e. those appearing because of the imperfection of the social processes' functioning and all kind of mismatching between ideal and real belong to the first type. This kind of problems of the legitimacy was analysed in detail by Jürgen Habermas in his paper "Legitimation crisis". En passant let us note now, that the second type of problems is essential for the very concept of de-

mocracy and especially for the liberal democracy. This second type of problems was point by point analysed by Pierre Rosanvallon in his book "Democratic legitimacy: impartiality, reflexivity, proximity".

Why is the former work is so important, namely the paper by Jürgen Habermas which is devoted not to the democracy, but to the late capitalism? First of all, Jürgen Habermas' contribution will be of service to us when we will regard the deliberative model of democracy, as it is Jürgen Habermas who can be called by right nearly the most well-known theorist of this line of research. Although the book is quite old, according to our reckoning it did not lose its relevance. Thus, capitalism is, firstly, such an economical system of production which almost always accompanies democracy. Secondly, to our opinion the nexus between the democracy and the capitalism is truly essential as the both have common philosophical foundations. The capitalism has got a certain idea in its basis: the image of a person – a free entrepreneur and an owner of some private property. Therefore, this person would scarcely participate in any kind of vehement revolutionary state transformations but at the same time this person would probably be interested in the events of national standing. Businessman's ability of increasing his wealth depends among the other things upon political life. So we can consider capitalism as the most likely economical formation to develop within a democratic state. So, what are the legitimacy processes' premises in late capitalism? Habermas notes that we will not find any striking controversy or opposition between the classes within the society of late capitalism. More complex and bureaucratized organization of the society results in decrease of sharpening of the interclass antagonism. Capital owners' urge to keep and multiply their fortune is coinciding with various aspirations of different social groups.

The will to retain power leads to the administrative system's and the contacts' complicating; in other words "the basic controversy is transferred from the economical sphere to the administrative one" [5, p.90]. (It is the process of the power conservation that takes place; we described at the beginning of the article). The process of the extensive intrusion of the system into the economical flow takes place. The administrative apparatus of the

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state branches and spreads itself within the areas that were previously beyond its authority. Due to this process a certain dissolve of critical social opposition takes place and either do the abrupt social transformations cease. At the same time, when the turmoils and depressions none the less happen, they turn out to be more sensible and evident. These crises start being explained by the mistakes of the system itself, as it was supposed to be designed in order to prevent such happenings. Habermas notes, that such a process raises the questions concerning legitimacy and that, in its turn, leads to gradual dissociation of the administrative sphere from the sphere of legitimacy. «Maintenance of the legitimacy turns out to be self-destructive, as only the mode of «maintenance» becomes noticeable» [5, p.99]. Habermas notes, that the further deepening of the crisis is grounded in the motivational crisis. That happens because of the system's tendency to spread its influence over the processes that were previously out of its authority field. Thus, the process of the tradition of the customs and cultural achievements, which is under normal conditions carried out without any special control or influence over it, becomes an object of the administrative institutions' influence. «Apparently, the traditions remain in strength to legitimate only as long as they fit the interpretation systems that provide their continuity and identity» [5, p.100]. Therefore, the process of the cultural capital tradition becomes one of the major tasks for the system. Nevertheless, it doesn't save the latter from the delegitimation processes and breaking with the field of the legitimate due to the fact that the abovementioned processes, as Habermas notes, lead to the motivational gap. It is about the mismatching between the motives declared by the state and those produced by the sociocultural system.

Although Habermas' book has been published in 1973, it fits very well into Jürgen Habermas' contribution at-large. Let us note that we cannot say that Jürgen Habermas' outlook was ever static. He always responds lively to everything happening in the world, therefore we can hardly speak of one monolithic philosophy of Habermas. Nevertheless, its problematics and development, as it was mentioned above, are the logically complementing the structure of the whole Habermasian philosophy.

We can notice that the phenomena described by the philosopher are the breaking processes between the system and the lifeworld. Such breakings lead to the system's loss of the rational sense-making factor the lifeworld had been providing it with. The connectedness of well-nigh all praxes of living with the sphere of rationality, and more specifically-communicatory rationality, is extremely important throughout the whole Habermasian philosophy. It is the rational basis, after all, upon which Habermas builds his theory of legitimacy and deliberative democracy, which is, in its turn, built up upon the idea of discursive legitimacy. (We shall not delve into the specifics of the Habermasian distinction between the communicatory and the instrumental rationalities. Let us only note that it is the communicative rationality to play the key role here).

Thus, referring to the preliminary consideration of the democratic legitimacy problematics, let us note that these are the problems, as it was mentioned, of the so-called external type. They arise out of the accumulation of errors within the system but remain inessential for it (though they are still important, they originate elsewhere, not in of the very "democracy" and "legitimacy" concepts).

The second type of problems was pointed out by Pierre Rozanvalon in his scientific heritage. In his work "Democratic legitimacy: impartiality, reflexivity, proximity" he refers to the legitimizing problems that emanate from the very essence of democracy and the democratic process. Pierre Rozanvalon believes that the view of democracy as a social system in which the decisions are taken by vote does not reflect the very essence of democracy. Even if we start with a simplistic notion that democracy is the type of government where the decisions about cohabitation are adopted by the people, the voting does not exhaust the idea of democracy. The philosopher remarks that in this case "the principle of justification is mixed up with the method of taking decisions". The decision adopted by a simple majority as a result of voting is not a sufficient reason to consider it a legitimate decision. In this case, firstly, the majority simply dictates its will to minority that is forced to compromise. Secondly, the process of voting itself turns out to be a simple quantitative measure of those who agree with some particular formulation of the

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agenda. We may ask then: who formulates the questions? Who is responsible for that, what is exactly written in the ballot, and just who decides that this very issue is important to the community. More or less attentive glance is enough to understand that the essence of the democratic process goes far beyond the voting process. Thus, we see that the question of legitimacy is central to questions about the way of organizing the democratic processes. Democracy as a theory that seeks to reconcile the will of the majority with the attention to the particular interests of the individual has got a paradox within, the paradox of legitimization. Pierre Rozanvalon notes that the simple majority, which is the result of the voting, serves in order to substitute itself for the will of all. Arithmetic sum of desires is being equated with the one whole will of the people.

Returning to the issue of the intercorrelation of rationality, legitimacy and discourse, let us remark that the deliberative model of democracy emerged as a result of the philosophers awareness of the paradoxes of democracy and the need to clarify the mechanisms of democratic legitimization.

### Scientific novelty

Recognizing the importance of these issues, the deliberative theory offers a different perspective on the whole process of legitimation. It is not based on the voting of the simple majority. The apologists of the deliberative theory of democracy seek to overcome the binding of the democracy theory to only quantitative measurement. The qualitative dimension arises here through rational, discursive human rationality as the ability to take reasonable decisions together. As noted, Jürgen Habermas may be rightfully regarded as the author of one of the most advanced concepts of discursive legitimation. The main points of the theory are outlined in his book "Between Facts and Norms". Referring to Kant's philosophy and its division into the categories of legal and moral, Habermas argues that the law can not be based either solely on morale or on the law. Both of these factors are not sufficient to get a particular law in effect, to give it life. For Habermas the missing element is discursive legitimacy. According to the philosopher, the desire to obey the law, to follow certain prescriptions can

only be rational. He notes that humans as rational being cannot fully implement the law, which they do not understand or believe to be irrational (of course, in some cases they can, but this performance would be rather destructive element in the state's mechanism). The philosopher notes that the law, that, of course, can be associated with an existing element of coercion, may be executed properly only when the citizens feel that they are the authors of this law. The thesis about the equality of all the citizens can not be based entirely on some mystical moral sense. If so, then this thesis should be seen as something external, like something the philosopher or the legislator delivered to people. «Legitimate law is compatible only with a mode of legal coercion that does not destroy the rational motives for obeying the law: it must remain possible for everyone to obey legal norms on the basis of insight» [4, p.121]. Habermas emphasizes that the rules certainly have a connection with moral precepts and the idea of citizens' rights. But we can not determine which of the rules are legitimate and which are not by appealing solely to the moral dimension.

In other words, Habermas' desire is a change of perspective from the perfunctory combination of the group of citizens with certain rules to the intrinsic connection when via the discursive procedures the citizens themselves become the authors of the law.

An important element here is that the laws are a medium for the expression of the citizen's opinion and position. «If the discourse principle is to be implemented as the democratic principle with the help of equal communicative and participatory rights, then the legal medium must be enlisted» [4, p.127]. This approach allows to avoid the view of the laws and regulations that regards them as endowed with the power of self-legitimation. On the other hand, the philosopher emphasizes the fact that the exclusive view on the moral premises as the only foundations for the laws make the latter lose their vitality. Any calls for revolutions would only be a static declaration of some ephemeral ideals.

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### Conclusions

These are the premises of the discursive legitimation conception that have been laid into the basis of the deliberative model of democracy. After the theoretical grounding of the deliberative democracy's principles another question rose: how is it possible to implement such a principle of legitimation into life? A lot of literature was also devoted to the search of the ways of institutionalizing such a model of democracy and at the same time figuring out if it is possible at all. The issues were the discussions based upon the representation principle, the deliberative civil commissions, that would embody *vox populi*. At this moment this is not the topic of our research. Nevertheless, let us note three moments, very important to our opinion. Firstly, the theorists of the deliberative model keep in their minds that we are dealing with the interaction between the discourses. As John Dryzek puts it: «Democracy does not have to be a matter of counting heads - even deliberating heads» [3, p.

665]. Secondly, the debate on the discursive legitimation have sharpened and demonstrated the present controversies in the whole theory of democracy. The discussion has brought the theorists of democracy out from their so to say hibernation and shown them disappointed that the new forms of democracy exist and to those, who considered themselves democrats, - that the democracy is to be executed and affirmed permanently. And finally, let us note that the discursive model of the legitimacy is not only relevant to democratic states. Remembering the image of Leviathan and the state that holds its citizens within the iron vice we shall make a last remark here. The Leviathan has itself emerged as a result of social contract and deliberation. Therefore it is only the strength of human deliberating interaction that can debunk the Leviathan and cast it back into nothingness. The crucial question here, as we think, is the following: to what extent does the state leave the door open for the full-fledged deliberation among its citizens?

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## ДЕЛІБЕРАТИВНА МОДЕЛЬ ДЕМОКРАТІЇ В КОНТЕКСТІ ПРОБЛЕМ ДЕМОКРАТИЧНОЇ ЛЕГІТИМНОСТІ

**Мета.** В статті запропоновано аналіз проблеми легітимності та передумов процесів легітимації. В роботі подано розуміння деліберативної демократії як відповідь на дискусію про сутність демократичної легітимності. Сутнісним елементом деліберативної демократії є дискурсивна теорія легітимності, запропонована

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Юргеном Габермасом. **Методологія.** Застосовуючи теорію П'єра Бурдьє про символічну владу, автор прояснює особливості процесів легітимації та делегітимації інститутів. Автор зауважує, що форма бюрократичних інститутів пізнього капіталізму може стати причиною їхньої втрати легітимності. Іншою проблемою демократичної легітимності є проблема змішування голосування як способу, процедури прийняття рішення та голосування як засобу обґрунтування легітимності того чи іншого рішення. Звертаючись до теорії П'єра Розанвалона, авторка прояснює особливості цього процесу. Наукова новизна отриманих результатів полягає в аналізі дорадчої моделі демократії в перспективі проблем демократичної легітимності. **Висновки.** Автор окреслює основні риси дискурсивної теорії легітимації як ключового елементу деліберативної моделі демократії. Прояснення легітимаційної сили державних рішень за допомогою законів та моральних приписів є неповним. Саме дискурсивний принцип є тим елементом, що активізує легітимаційну потугу державних інститутів та установ.

*Ключові слова:* демократична легітимність, деліберативна демократія, дискурсивна етика.

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**Цель.** В статье предложен анализ проблемы легитимности и предпосылок процессов легитимации. В работе дается понимание делиберативной модели демократии как ответа на дискуссию о сущности демократической легитимности. Главным элементом делиберативной демократии является дискурсивная теория легитимности, предложенная Юргеном Хабермас. **Методология.** Применяя теорию Пьера Бурдьё о символической власти, автор проясняет особенности процессов легитимации и делегитимации государственных институтов. Автор замечает, что форма бюрократических институтов позднего капитализма может стать причиной их делегитимизации. Другой проблемой демократической легитимности является проблема смешивания голосования как способа, процедуры принятия решения и голосования как средства обоснования легитимности того или иного решения. Обращаясь к теории Пьера Розанвалона, автор проясняет особенности этого процесса. **Научная новизна.** Научная новизна полученных результатов заключается в анализе совещательной модели демократии в перспективе проблем демократической легитимности. **Выводы.** Автор очерчивает особенности дискурсивной теории легитимации как ключевого элемента делиберативной модели демократии. Прояснение легитимационной силы государственных решений с помощью законов и моральных предписаний является неполным. Именно дискурсивный принцип является тем элементом, который активизирует легитимационную силу государственных институтов и учреждений.

*Ключевые слова:* демократическая легитимность, делиберативная демократия, дискурсивная этика.

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